

CHAPTER X CLAIMS AND LITIGATION

' 10100 GENERAL

' 10101 Authority to Litigate, Compromise and Settle Claims By and Against the District.

' 10101.01 Prosecution or Defense of Claims.

The General Manager in consultation with the Executive Committee is authorized to institute, prosecute or defend any action, claim, appeal or other legal or equitable proceeding, including an alternative dispute resolution proceeding, to enforce or preserve any right or defense of the District where the amount in controversy does not exceed \$100,000. Board approval is required for the institution, prosecution or defense of any claim or proceeding on behalf of the District where the amount in controversy is greater than \$100,000.

' 10101.02 Settlement of Claims.

The General Manager, after consultation with the District's legal counsel, is authorized to resolve, settle or compromise any claim, dispute, action or proceeding where the amount in controversy does not exceed \$100,000. Board approval is required for any settlement or compromise involving an amount in controversy greater than \$100,000.

CHAPTER XI RECORDS ACCESS AND MANAGEMENT

' 11001 General Purpose.

The District adopts this chapter to establish guidelines for open governmental information recognizing the need to maintain and preserve accurate records, to provide public access to public records and to preserve the right of privacy of personal data collected or received by the District.

' 11002 District Policy.

The District recognizes the enactment of the Government Records Access and Management Act, UCA ' 63-2-101 et seq. (GRAMA), and its application to District records. The purpose of this chapter is to conform to UCA ' 63-2-701, which provides that each political subdivision may adopt an ordinance or a policy relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention and amendment of records. This chapter is intended to provide modifications to the general provisions of State law, where allowed, to best meet the public needs, operation, management capabilities and resources of the District.

' 11003 Compliance with State Law.

The District recognizes the following sections of GRAMA apply to the District and adopts them by reference as part of the Code:

Part 1 General Provisions

- ' 63-2-101 Short title
- ' 63-2-102 Legislative intent
- ' 63-2-103 Definitions
- ' 63-2-104 Administrative Procedures Act not applicable
- ' 63-2-105 Confidentiality agreement

Part 2 Access to Records

- ' 63-2-201 Right to inspect records and receive copies of records
- ' 63-2-202 Access to private, controlled and protected documents
- ' 63-2-205 Denials
- ' 63-2-206 Sharing records

Part 3 Classification

- ' 63-2-301 Records that must be disclosed
- ' 63-2-302 Private records
- ' 63-2-303 Controlled records
- ' 63-2-304 Protected records
- ' 63-2-305 Procedure to determine classification
- ' 63-2-306 Duty to evaluate records and make designations and classifications
- ' 63-2-307 Segregation of records
- ' 63-2-308 Business confidentiality claims

Part 6 Accuracy of Records

- ' 63-2-601 Rights of individuals on whom data is maintained
- ' 63-2-602 Disclosure to subject of records - Context of use
- ' 63-2-603 Request to amend

Part 7 Applicability to Political Subdivisions: The Judiciary and the Legislature

- ' 63-2-7-1 Political subdivisions to enact ordinances in compliance with chapter

Part 8 Remedies

- ' 63-2-801 Criminal penalties
- ' 63-2-802 Injunction - Attorneys' Fees

- ' 63-2-803 No liability for certain decisions of a governmental entity
- ' 63-2-804 Disciplinary action

Part 9 Archives and Records Service

- ' 63-2-905 Records declared property of the State-Disposition
- ' 63-2-907 Right to replevin

Part 10 Other

- ' 63-30-10.65 Attorneys' fees for records request

Any inconsistency or conflict between the Code and the referenced statutes shall be governed by the statutes.

' 11004 Definitions.

The following definitions apply to this chapter:

- (a) "Computer software program" means the series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation, manuals, or other source material explaining how to operate the software program. "Software" does not include the original data or records manipulated by the software.
- (b) "Controlled" records are those defined as controlled under the provisions of GRAMA.
- (c) "Data" refers to individual entries, such as birth date or address, in records.
- (d) "Dispose" means to destroy, or render irretrievable or illegible, a record or the information contained in it by any physical, electronic, or other means, including unauthorized deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.
- (e) "District" includes both the District and any public or private entity which, pursuant to contract with the District, has agreed to produce and maintain public District records.
- (f) "Non-public" records are those records defined as private, controlled, or protected under the provisions of GRAMA.
- (g) "Private" records are those records classified as private under the provisions of GRAMA.
- (h) "Protected" records are those records classified as protected under the provisions of GRAMA.

(i) "Public" records are those records not classified as non-public in accordance with the provisions of GRAMA.

(j) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the District where all the information in the original is reproducible by some mechanical, electronic, photographic or other means.

"Record" does not mean:

(i) Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom they are working;

(ii) Materials that are legally owned by an individual in their private capacity;

(iii) Materials to which access is limited by the laws of copyright or patent;

(iv) Junk mail or commercial publications received by the District or by an officer or employee of the District;

(v) Personal notes or daily calendars prepared by any District employee for personal use or the personal use of a supervisor or such notes, calendars or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting closed pursuant to Utah Open Meetings Act; or

(vi) Proprietary computer software programs as defined in subsection C. above that are developed or purchased by or for the District for its own use.

' 11005 Public Right to Records.

(a) Members of the public shall have the right to see, review, examine and take copies of, in any format maintained by the District, all District governmental records defined as "public" under the provisions of this chapter, upon the payment of the lawful fee and pursuant to the provisions of this chapter and GRAMA.

(b) The District has no obligation to create a record or record series in response to a request from a member of the public, if the record requested is not otherwise regularly maintained or kept.

(c) When a record is temporarily held by a custodial District agency, pursuant to that custodial agency's statutory function, such as records storage, investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purposes of this chapter. The record shall be considered a record of the District and any requests for access to such records shall be directed to the District, rather than the custodial agency, pursuant to the procedures of this chapter.

' 11006 Public, Private, Controlled and Protected Records.

(a) Public records are those District records classified as "public," as defined in UCA ' 63-2-201. Public records shall be made available to any person. All District records are considered public unless they are (1) expressly designated, classified, or defined otherwise by the District in accordance with policies and procedures established by this chapter, (2) are so designated, classified or defined by GRAMA, or (3) are made non-public by other applicable law.

(b) Private records are those District records classified as "private," as defined in UCA ' 63-2-302, and as designated, classified or defined in procedures established pursuant to this chapter.

Private records shall be made available to the following persons: the subject of the record, the legal guardian of an incapacitated individual who is the subject of the record, any person who has a power of attorney or a notarized release from the subject of the record or their legal representative, or any person possessed of and serving a legislative subpoena or a court order issued by a court of competent jurisdiction.

(c) Controlled records are those District records classified as "controlled," as defined in UCA ' 63-2-303, and as designated, classified, or defined in procedures established in this chapter. Controlled records shall be made available to a physician, psychologist, or licensed social worker who submits a notarized release from the subject of the record or any person presenting a legislative subpoena or a court order signed by a judge of competent jurisdiction.

(d) Protected records shall be those District records classified as "protected," as defined in UCA ' 63-2-304, and as designated, classified or defined in procedures established in this chapter. Protected records shall be made available to the person who submitted the information in the record, to a person who has a power of attorney or notarized release from any persons or governmental entities whose interests are protected by the classification of the record, or to any person presenting a legislative subpoena or a court order regarding the release of the information and signed by a judge of competent jurisdiction.

' 11007 Privacy Rights.

(a) The District recognizes and upholds the right of privacy retained by persons who may be the subject of governmental records.

(b) The District may, as determined appropriate by the manager, notify the subject of a record that a request for access to the subject's record has been made.

(c) The District may require that the requester of records provide a written release, notarized within thirty (30) days before the request, from the subject of the records in question before access to such records is provided.

' 11008 Designation, Classification and Retention.

All District records and records series, of any format, shall be designated, classified and scheduled for retention according to the provisions of GRAMA and this chapter. Any records or record series generated in the future shall also be so designated, classified and scheduled for retention. Records designation, classification and scheduling for retention shall be conducted under the supervision of the District Clerk.

' 11009 Procedures for Records Request.

(a) Under circumstances in which the District is not able to immediately respond to a records request, the requester shall fill out and present to the District a written request on forms provided by the District. The date and time of the request shall be noted on the written request form and all time frames provided under this chapter shall commence from that time and date. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records.

(b) The District may respond to a request for a record by approving the request and providing the records, denying the request, or by making such other appropriate response as may be established by policies and procedures.

(c)(i) In most circumstances and except for extraordinary circumstances as set out below, the District shall respond to a written request for a public record within ten business days after that request.

(ii) Extraordinary circumstances shall justify the District's failure to respond to a written request for a public record within ten business days and shall extend the time for response to that time reasonably necessary to respond as determined by the General Manager. Extraordinary circumstances shall include but are not limited to the following circumstances:

(a) Some other governmental entity is currently and actively using the record requested;

(b) The record request either is for a voluminous quantity of records or requires the District to review a large number of records or perform extensive research to locate the materials requested;

(c) The District is currently processing a large number of record requests or is subject to extraordinary seasonal workloads in the processing of other work;

(d) The request involves an analysis of legal issues to determine the proper response to the request;

(e) The request involves extensive editing to separate public data in a record from that which is not public; or

(f) Providing the information request requires computer programming or other format manipulation.

(iii) When a record request cannot be responded to within ten (10) days, the General Manager shall give the requester an estimate of the time required to respond to the request.

(d) The failure or inability of the District to respond to a request for a record within the time frames set out herein, or the District's denial of such a request, shall give the requester the right to appeal as provided in Section 11011.

' 11010 Fees.

Applicable fees for the processing of information requests under this chapter shall generally be set at actual cost or as otherwise established by policies adopted under this chapter. The District will charge the following fees for requests relating to GRAMA:

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| 1. Reviewing a record to determine if it is subject to disclosure | No |
| Charge | |
| 2. Inspection of record by requestor | NoCharge |
| 3. Copying Fees | 25 cents per page
(District prepared copies) |
| 4. Computer Disk | Actual Cost
(includes overhead and time of district staff in
preparation of information request) |
| 5. Other Forms | Actual Cost (same as #4) |
| 6. Miscellaneous Fees | Actual Cost (same as #4) |

' 11011 Appeal Process.

(a) Any person aggrieved by the District's denial or claim of extraordinary circumstances may appeal the determination within 30 days after notice of the District's action to the General Manager by filing a written notice of appeal. The notice of appeal shall contain the petitioner's name, address and phone number; the relief sought; and, if petitioner desires, a short statement of the facts, reasons and legal authority for the appeal.

(b) If the appeal involves a record that is subject to business confidentiality or affects the privacy rights of an individual, the General Manager shall send a notice of the requester's appeal to the affected person.

(c) The General Manager shall make a determination of the appeal within 30 days after receipt of the notice of appeal. During this 30-day period the General Manager may schedule an

informal hearing or request any additional information deemed necessary to make a determination. The General Manager shall send written notice to all participants providing the reasons for the determination.

(d) If the General Manager affirms the denial in whole or in part, his written decision shall include a statement that the requester has a right to appeal the denial to the Board within 30 days at the next scheduled Board meeting.

(e) The person may file a written notice of appeal to the Board to be heard at the next scheduled meeting of the Board. If there is no meeting scheduled within the next thirty days the Board shall schedule a meeting for the purpose of hearing the appeal. The final decision of the Board shall be by majority vote of a quorum of the Board. The Board shall prepare a written decision outlining its final determination and the reasons for the final determination.

(f) If the Board affirms the denial, in whole or in part, the person may petition for judicial review in district court as provided in UCA ' 63-2-404.

' 11012 Reasonable Accommodation.

Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with the Americans with Disability Act upon request of the applicant.

' 11013 Records Amendments.

Government records held by the District may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the District Clerk and shall set forth, with specificity, the amendment or correction requested. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise by GRAMA or other State or Federal law.

' 11014 Penalties.

(a) District employees who knowingly refuse to permit access to records in accordance with GRAMA and this chapter, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority, dispose of, alter, or remove records, or allow other persons to do so in violation of the provisions of GRAMA, this chapter or other law or regulation, may be subject to criminal prosecution and disciplinary action, including termination.

(b) In accordance with GRAMA, neither the District nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented evidence of authority to obtain the records, even if it may be subsequently determined that the requester had no such authority.

' 11015 Records Officer.

A District Records Officer shall be appointed to oversee and coordinate records access, management and archives activities. The District Records Officer shall make annual reports of records services activities to the Board of Trustees.

' 11016 Records Maintenance.

(a) Records maintenance procedures shall be developed to ensure that due care is taken to maintain and preserve District records safely and accurately over the long term. The District Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of District records. He/she shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use and maintenance of records.

(b) All District records shall remain the property of the District unless federal or state legal authority provides otherwise. Property rights to District records may not be permanently transferred from the District to any private individual or entity, including those legally disposable obsolete District records. This prohibition does not include the providing of copies of District records otherwise produced for release or distribution under this chapter.

(c) Custodians of any District records shall at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors or supervisors, or to the District Records Officer.