

Council Meeting of December 2, 2015

Agenda Item No. *8.e.*

REQUEST FOR COUNCIL ACTION

SUBJECT: Discussion and possible action regarding a violation of duty of non-disclosure of confidential documents and information and potential violation of the Government Records Access and Management Act [Councilmember Rice]

BACK GROUND:

See Attached

Council Rules, Policies and Procedures

6. Discussion regarding deployment of security personnel, devices, or systems; and
7. Investigative proceedings regarding allegations of criminal misconduct.

b. Records or Minutes Required. Section §52-4-7.5 of the Utah Code, defines the record of closed meetings and how they must be kept. This section states that if a public body closes a meeting to discuss the character, professional competence, or physical or mental health of an individual or to discuss the deployment of security personnel, devices, or systems, the person presiding must sign a sworn statement affirming that the meeting was closed for one of these sole purposes. If a public body closes a meeting for any other purpose, the public body shall either tape record the closed portion of the meeting or keep detailed written minutes that disclose the content of the closed portion of the meeting.

c. Confidentiality Required. It is imperative that all closed meeting discussions remain completely confidential. No Council Member shall disclose confidential information acquired by reason of the officer's official position or use such information for the officer's or another's private gain or benefit. **Any person violating this duty of non-disclosure may be subject to criminal sanctions.**

d. Notice. Notice of a closed meeting must be in an Council agenda, dully posted and publicized. This notice must, usually, be given 24 hours before a scheduled meeting. However, emergency meetings, including closed meetings, may be held as provided and controlled by §52-4-6 of the Utah Code.

C.8 ELECTRONIC COUNCIL MEETINGS

a. Conditions: Elements. Utah law authorizes the City Council to hold meetings electronically. The law defines an electronic meeting as a public meeting convened or conducted by means of a telephonic, telecommunications or computer conference. In order to participate, members of the Council must have the ability to communicate with all other members, either verbally or electronically, so that each Council Member can hear or see the communication. Public hearings are also allowed, as part of the electronic meeting. However, as with any public meeting, electronic meetings must be properly noticed in compliance with the Open Meetings Act.

63G-2-801 Criminal penalties.

(1)

- (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses a private, controlled, or protected record knowing that the disclosure or use is prohibited under this chapter, is, except as provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.
- (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released private, controlled, or protected information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.
- (c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.
- (d) It is a defense to prosecution under Subsection (1)(a) that the public employee or other person disclosed, provided, or used the record based on a good faith belief that the disclosure, provision, or use was in accordance with the law.

(2)

- (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which the person is not legally entitled is guilty of a class B misdemeanor.
- (b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

(3)

- (a) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law, is guilty of a class B misdemeanor.
- (b) It is a defense to prosecution under Subsection (3)(a) that the public employee's failure to release the record was based on a good faith belief that the public employee was acting in accordance with the requirements of law.
- (c) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by a final unappealed order from a government entity, the records committee, or a court is guilty of a class B misdemeanor.

Amended by Chapter 298, 2013 General Session

10-3-826 Official neglect and misconduct class A misdemeanor -- Removal from office.

In case any municipal officer shall at any time wilfully omit to perform any duty, or wilfully and corruptly be guilty of oppression, malconduct, misfeasance, or malfeasance in office, the person is guilty of a class A misdemeanor, shall be removed from office, and is not eligible for any municipal office thereafter.

Amended by Chapter 178, 1986 General Session