



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
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Legislation Details (With Text)

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| Sponsors: | Mike Shambaugh, Victoria Vazquez, Dora Patzkowski, Johnny Kidwell, E. O. "JR." Smith, Daryl Legg | | | | |
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| 11/20/2023 | 1 | OFFICE OF THE CHIEF | Signed | |
| 11/6/2023 | 1 | TRIBAL COUNCIL | Approved | Pass |
| 11/6/2023 | 1 | RULES COMMITTEE | Approved and Forwarded to Council | Pass |

AN ACT AMENDING TITLE 67 OF THE CHEROKEE NATION

CODE ANNOTATED

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the "Freedom of Information Modernization Act" and codified under Title 67, Chapter 2, Sections 104, 105, and 106 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this legislative act is to amend and enhance the existing Freedom of Information Act in order to better align it with the expanding operations of the Cherokee Nation.

Section 3. Legislative History

LA-25-01

LA-24-04

LA-25-07

LA-04-12

LA-16-14

Section 4. Substantive Provisions

Title 67, Chapter 2, Sections 104, 105, and 106 shall be amended as follows:

§ 104. Right to inspect and/or copy public records-Fees-Notification as to public availability of records-Presumption upon failure to give notice-Records to be available when requestor appears in person

- A. Any Cherokee Nation citizen has a right to inspect or copy any public record of a public body, except as otherwise provided by 67 CNCA § 105, in accordance with reasonable rules concerning time and place of access. [A request to inspect or copy any public record submitted under this Chapter must reasonably describe the records being requested. No provision of this Chapter requires a public body to create or compile new records or to create explanatory material in response to a request.](#)
- B. The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. However, members of the Tribal Council may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.
- C. Each governmental department or branch of the Executive or Legislative public or corporate body, upon written request for records made under this chapter, shall within twenty (20) business days of the receipt of any such request notify the person making such request of its determination and the reasons therefore. The governmental public body can extend the time to respond by an additional ten (10) days, but must provide written notification to the requesting party. Nothing in this Act shall supersede Legislative Act 98-6, relating to access to records by members of the Tribal Council. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the twenty (20) business days allowed herein, unless extended, the request must be considered disapproved and the requestor may appeal the denial as provided by this Act.
- D. The following records of a public body must be made available for public inspection and copying during the hours of operation of the public body without the requestor being required to make a written request or inspect or copy the records when the requestor appears in person:
1. minutes of the meetings of a public body;

2. all reports identified in 67 CNCA § 106(A)(8) for at least the fourteen (14)-day period before the current day; and
3. documents identifying persons confined in any jail, detention center, or prison.

E. Independent Information Officer

1. The Office of the Attorney General will employ an Information Officer who will be responsible for facilitating, gathering, tracking and responding to FOIA and Government Records Act requests pursuant to the requirements herein. The Information Officer also serves as a liaison to tribal citizens seeking information and all other related duties as assigned. The Independent Information Officer will be independent in his/her duties and will be free of political or undue influence and shall be terminated only for cause.
2. No part of this section shall be construed such that the Information Officer is responsible for fulfilling FOIA and GRA requests. It shall be incumbent upon the department head to which the request is addressed to fulfill the requirements of the request.
3. The Information Officer shall publish and disseminate, by any means, digital and printed materials in order to educate department heads and the public about the FOIA and its compliance requirements.
4. The Information Officer will deliver monthly reports to the Tribal Council regarding the number of FOIA and GRA requests and other statistical information.
5. Such Independent Information Officer shall be a Cherokee Nation citizen.

§ 105. Matters exempt from disclosure

A. A public body may, but is not required to, exempt from disclosure the following information:

1. Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential; [confidential information, processes, strategies, or techniques utilized in acquisitions or operations of businesses or business assets](#), and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for [business entities of the Cherokee Nation](#), [information relating to](#) those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, evaluations, [competitive information](#), and other materials which contain references [confidential information](#) relating to potential customers, [acquisition targets, strategic operations](#), competitive information, or evaluations.
2. Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses and information relating to public records which include the name, address, social security number, date of birth, Cherokee citizenship number, email or other electronic identifiers, and telephone number. This provision must not be interpreted to restrict access by the public and press to information contained in public records.
3. Records of law enforcement and public safety agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:
 - a. disclosing identity of informants not otherwise known;
 - b. the premature release of information to be used in a prospective law enforcement action;
 - c. disclosing investigative techniques not otherwise known outside the government;
 - d. by endangering the life, health, or property of any person.

4. Matters specifically exempted from disclosure by statute or law.
5. Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchase of property; however:
 - a. the contract is not exempt from disclosure once executed or the property is sold or purchased except as otherwise provided in this section but the bid or financial documents reflecting the basis for the cost of the contract provided to the public body by a vendor remain exempt;
 - b. a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve (12) months from the date of sale or purchase;
 - c. confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.
6. All salary compensation paid by public bodies to individuals by authorized positions as classified by Cherokee Nation laws or Executive and Legislative Human Resources or Personnel Policies and Procedures. The annual budgets shall contain such position listings without the names of the individuals holding such positions.
7. Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.
8. Memoranda, correspondence, and working papers in the possession of individual members of the Executive and Legislative Departments or Branches or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.
9. Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body to attract business or industry to invest within the Cherokee Nation.
10. Information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of the gift or any member of his immediate family has any business transaction with the recipient of the gift within three (3) years before or after the gift is made, the identity of the maker is not exempt from disclosure.
11. Records exempt: Council, Committees, Commission and Board meetings in executive session; disclosure of deliberation; exemptions.
 - a. Meetings while acting as trustee of the retirement system or by its fiduciary agents to deliberate about, or make tentative or final decisions on, investments or other financial matters may be in executive session if disclosure of the deliberations or decisions would jeopardize the ability to implement a decision or to achieve investment objectives.

A record of the board or of its fiduciary agents that discloses deliberations about, or a tentative or final decision on, investments or other financial matters is exempt from the disclosure requirements of this chapter, to the extent and so long as its disclosure would jeopardize the ability to implement an investment decision or program or to achieve investment objectives.

Adoption of annual investment plan; quarterly review; deliberations in executive sessions; exceptions to making records public; administrative costs; duty of care; independent advisors.
 - b. The panel may discuss, deliberate on, and make decisions on a portion of the annual investment plan or other related financial or investment matters in executive session if disclosure thereof would jeopardize the ability to implement that portion of the plan or achieve investment objectives.

c. A record of the panel or of the retirement system that discloses discussions, deliberations, or decisions on portions of the annual investment plan or other related financial or investment matters is not a public record to the extent and so long as its disclosure would jeopardize the ability to implement that portion of the plan or achieve investment objectives.

d. Not in conflict with any other disclosure rules subject to federal regulations.

12. The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a Nation regulatory agency.

13. If any public record contains material which is not exempt under subsection (A) or (B) of this section, the public body shall separate the exempt and the nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

14. Documents otherwise publicly available or previously provided.

B. The Office of the Attorney General shall have the authority to exempt certain information from disclosure in accordance with this provision. Such information may include, but shall not be limited to, information contained in investigatory files of the Attorney General, information that may unreasonably interfere with the Cherokee Nation's interests in litigation or potential litigation, and information deemed essential for safeguarding the legitimate interests of the Cherokee Nation.

1. The Office of Attorney General shall establish policies and procedures in order to objectively carry out the provisions of this Chapter.

2. Such policies and procedures shall be made available to the public.

§ 106. Certain matters declared public information-Use of information for commercial solicitation prohibited

A. Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of sections of this chapter:

1. the names, sex, race, title, and dates of employment of all employees and officers of public bodies;
1. administrative staff manuals and instructions to staff that affect a member of the public;
2. final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
3. those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;
4. written planning policies and goals and final planning decisions;
5. information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
6. the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to the Constitution and law of the Cherokee Nation;
7. reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report;
8. final audits of the Cherokee Nation and its subsidiaries.

B. No information contained in a police incident report or in an employee salary schedule revealed in response to a request

pursuant to this chapter may be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.

Section 5. Provisions as Cumulative

The provisions of this act shall be cumulative to existing law.

Section 6. Severability

The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 7. Effective Date/Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Section 8. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.