

REPORT OF THE FOIA/GRA WORK GROUP

Introduction

The Cherokee Nation's Freedom of Information Act may be the most rigorous in all of Indian country and we have been able to confirm that by reviewing a large number of tribal codes and policies. We have found no tribes that have the transparency and access our Cherokee citizens do. In fact many tribes don't have open meetings as well as no public access to tribal records. This review of FOIA and GRA laws is similar to other reviews the council has undertaken, such as improving our Cherokee preference law (TERO) or increasing business profits to health care (Health Dividend Act of 2011). The main goal of this Work Group was to ensure that the Freedom of Information Act and Government Records Act were providing information and transparency to our citizenry in the most streamlined and efficient way possible.

Although the FOIA and GRA have been useful tools for our citizens, our tribe and businesses have grown tremendously in the past three years, so clearly reviews and amendments to the FOIA and GRA Acts are needed to ensure that the legislative purposes of these Acts are fully realized. Since the inception of FOIA (2001) and GRA (1998) the number of requests has increased, and the increase of requests has been very dramatic since 2012. It is wholly appropriate at this time to review our FOIA and GRA laws to see if any opportunities for improvement can be identified.

A. FOIA ISSUES

i. INCREASING ACCESS TO FOIA

Although the number of FOIA requests has increased dramatically, the number of citizens making requests for information has NOT increased during this time. There have been 35 FOIA requests and 26 GRA requests in 2014 alone, but the vast majority of the requests are from two Council members whose motives are unclear but information requested does not appear to be needed for their positions as Council members. This indicates that some fine tuning of the FOIA and GRA may be necessary to ensure the Cherokee Nation resources are going to provide all citizens with access to information, and not only for the benefit of one or two council members. The cost of FOIA compliance, both in employee hours and copying costs, etc. are borne by the Cherokee people, so it is important to make sure that these dollars and employee time away from other tasks are ultimately benefiting our people.

For FY2014, the Cherokee Nation and its entities have already spent more than \$70,000 responding to FOIA and GRA requests. But for the past 2 ½ years the total costs to the tribe and its businesses for these requests have amounted to over \$300,000. The Nation spent \$4000 providing homeownership and other housing program information to a Tribal Council member, even though the information requested had already been provided to the Tribal Council as a

whole during their monthly committee reports. Considering the many needs of the Cherokee people, it is clear that this money could have been put to better use.

ii. PRIVACY OF INFORMATION

Cherokee Nation citizens come to the Cherokee Nation for many reasons: they request health care, child care, assistance with housing or utility bills, they report child abuse, request behavioral health assistance, obtain car tags, or seek help escaping from domestic violence, among other things. Many times, Cherokee citizens give extremely personal information to our tribal employees, who use this information to help our citizens obtain the services they need. If that information was not rigorously protected by the Cherokee Nation's government, many people would not feel that could come to the Nation for help. Transparency of the government must co-exist with the need to protect the privacy of our citizens.

As the Cherokee Nation has continued to grow its businesses and increase its health care system, so the number and size of projects placed out for bid has grown as well. Through the bid process, the Cherokee Nation selects vendors who provide essential services to our citizens. To get the best possible prices and highest quality services, it's important that vendors have confidence that proprietary information provided to the Nation won't be turned over to competitors through the FOIA. If the pool of vendors willing to do business with the Cherokee Nation shrinks, the value the Nation receives for every dollar spent will shrink as well. This clarification of the existing law will ensure that the Cherokee Nation is getting the best value for dollars spent.

B. SUGGESTED IMPROVEMENTS

- i. *Increase the time limit for answering the requests by 5 days, with an additional ten day extension at the request of the Nation.* As noted above, the volume of FOIA and GRA requests has increased dramatically since 2012 and there is every reason to believe that this trend will continue. Often, these FOIA requests have required many hours of searching and reviewing documents, copying, etc. that pull employees away from their primary duties. This change to the law will give tribal employees more flexibility so that a FOIA request made during a busy time can be completed without pulling employees away from other essential tasks.
-
- ii. *Direct Individuals Seeking FOIA documents to publicly available information.* In the past two years, it has become common for individuals to make multiple FOIA requests for the same information, or request information that is already publicly available. It is difficult to justify forcing tribal employees spend valuable time in such a way when the information is already publicly available.
- iii. *Increase protection for tribal citizen personal information.* No citizen should be afraid that his or her personal information will be shared with anyone without their

express permission. In the intervening years since the FOIA was first drafted, the trend of maintaining electronic instead of paper records has continued. Under the new law, every citizen's social security number, date of birth, Cherokee citizenship number, email and other electronic identifiers will be specifically exempted from release under FOIA.

- iv. *Clarify that proprietary bid documents continue to be protected.* The law continues to state that a contract is not exempt from disclosure once executed, but bid or other financial documents of the vendors that bid on a project will be protected from disclosure. Vendors who wish to do business with the Cherokee Nation can do so with confidence that its competitors won't end up with an unfair advantage – and this will lead to a more robust pool of vendors and a more competitive bid process.

C. GRA ISSUES

Our GRA is unique, and it has a different purpose than FOIA. While FOIA is focused on providing information to the public, GRA's purpose is to ensure that duly elected Tribal Council members can access information, even information that may be proprietary or confidential, as necessary to ensure that legislative duties are responsibly carried out. Some of the issues with FOIA also are issues with the GRA – and the same solution is proposed. For instance, the time allowed for Cherokee Nation departments to respond to a GRA request is being enlarged so that employees may more effectively cope with the increased number of requests. The GRA is also being amended to permit Departments to redact individual social security numbers, dates of birth, home addresses and Cherokee Citizenship numbers even in confidential releases of information. This information should never be released without the permission of the individual who submitted it. Another amendment will amend and clarify penalties for violation of the law. Any violation of the law has been a misdemeanor in the past, but under the new amendments it would only be a crime to violate the law willfully or maliciously – protecting departments and employees who make innocent mistakes and good faith decisions from criminal prosecution.

Some of the information provided to Tribal Council members is extremely confidential; the Cherokee Nation could often be liable for substantial financial penalties if the information provided to a Tribal Council member were to be released. Allowing multiple paper or electronic copies of such sensitive documents presents an unnecessary risk to the Nation, when confidential review of the documents could provide the Tribal Council member with any information he or she requires. This change to the law merely clarifies a longstanding practice that has spanned multiple administrations and safeguards Cherokee Nation assets.

D. INFORMATION OFFICER

To improve the entire FOIA/GRA process, the work group is recommending that a new position be created within the Office of the Attorney General. The information officer would serve as a liaison that would help tribal citizens seeking information from their government. In addition, this individual would be responsible for facilitating, gathering, tracking and responding to FOIA requests. Many FOIA requests require large interdepartmental searches that must be

coordinated, and all responsive documents must then be prepared for the requestor within the timelines provided for in the Act.

Having one person designated to perform these tasks will improve response times and coordination. In addition, this person will provide monthly updates to the Tribal Council so that FOIA issues are given the time and attention that they deserve every month.

Conclusion

The FOIA and GRA provide important access to Cherokee Nation citizens and officials. Transparency is critical to successful and accountable governance, and the members of this work group believe that the proposed changes will enhance the transparency of the government while improving protections over private information. In addition, the work group believes that more attention should be given to adhering to the provisions of the law that currently exist: for instance, requests by Tribal Council members are supposed to be given to the legislative aide, but that procedure is not be followed by all Tribal Council members. With this combination of improved enforcement and the proposed amendments, the FOIA and GRA should continue to serve the Cherokee people well.