

# An Act

Legislative Act 98- 6

ACT RELATING TO  
GOVERNMENTAL RECORDS  
OF THE CHEROKEE NATION

BE IT ENACTED BY THE CHEROKEE NATION

1. Title and Codification.

This Act shall be known as the Cherokee Nation Governmental Records Act and codified as Title \_\_, Section \_\_ of the Cherokee Nation Code Annotated.

2. Purpose.

The purpose of this Act is to provide for open access to each member of the Council of the Cherokee Nation ("Council") to all "records" as defined below prepared in the discharge of governmental duties of the "Cherokee Government" as defined below, and to provide procedures under which the Council and its members shall obtain such records.

3. Findings.

The Council of the Cherokee Nation finds as follows:

a. Pursuant to Article V, Section 7 of Cherokee Constitution of 1975, the Council, as the legislative department of the government, has "the power to establish laws which it shall deem necessary and proper for the good of the Nation."

b. Among the constitutional duties of the Council are the responsibilities to oversee the implementation of the laws enacted by the Council and oversee the disbursement of funds appropriated by the Council. In order to carry out these duties, the Council must have access to all records of the Cherokee Government.

4. Definitions.

"Cherokee Government" -- collectively, the Cherokee Nation, its elected officials, officers, employees, agents and contractors, or any of the Nation's agencies, commissions, boards, corporations and their subsidiaries, or other entities, and their elected officials, officers, directors, employees, members, agents and contractors.

"Records" -- all documents, including but not limited to any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of the Cherokee Government. "Records" does not mean computer software or nongovernmental personal effects.

5. Substantive Provisions.

A. Requests for records shall be in writing and addressed to the Principal Chief or his designated officer. The request shall identify with particularity the agency(ies) or other entity(ies) and/or the matter(s) which are the subject of the request. Said

requests shall be delivered to the legislative aide of the Council, who shall enter said request in the records of the Council and shall deliver it to the Principal Chief or his designee on the same or the following working day.

B. The Principal Chief shall cause the records requested to be produced within six (6) working days of the receipt of such request at no cost to the Council Member(s). If it is not possible to produce the requested record during the prescribed time limit, the Principal Chief shall, within the prescribed time limit, provide a written explanation to the Council Member(s) as to why the requested record cannot be made available. If the record cannot be made available at a later date, the Chief will include a statement as to when the record will be provided to the Council Member(s). In no event shall the total time to produce be extended beyond sixteen (16) working days from the date of the receipt of the initial request.

C. No confidentiality agreements affecting records covered by this Act or claim of privilege or confidentiality shall prevent the Council Members from having access to any records.

D. In the event that the record submitted to the Council Member(s) is "privileged or confidential" as defined under the federal Freedom of Information Act, 5 U.S.C. Section 552(b)(4) and the federal case law thereunder, that record shall, nevertheless, be produced or otherwise made available to the requesting Council Member(s); provided, however, that the producing Cherokee Government officer shall give notice to the Council Member(s) of such status and shall clearly mark each such record with the words "Privileged and Confidential." The Council Member(s) shall make no disclosures of such privileged or confidential records to third parties. Without limiting the generality of the foregoing, personal financial information, credit reports or other financial data obtained by or submitted to the Cherokee Government for the purpose of evaluating credit worthiness, obtaining a license, permit or for the purpose of becoming qualified to contract with the Cherokee Government shall be "privileged or confidential" under this Act.

E. Individual health, adoption, and medical records, records deemed classified by the U.S. Government, records constituting attorney-client privilege and any records prohibited by federal law from delivery to the Tribal Council shall not be disclosable to the Council under this Act.

F. A violation of this Act shall be a misdemeanor.

6. Provisions as cumulative.

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

7. Severability.

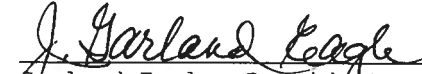
The provisions of this Act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts of provisions of this Act.

8. Emergency declared.

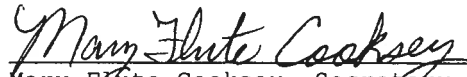
It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by

reason whereof this action shall take effect and be in full force after its passage and approval.


Enacted by the Council of the Cherokee Nation of the 9TH day of FEBRUARY, 1998.

  
Garland Eagle, President  
Council of the Cherokee Nation

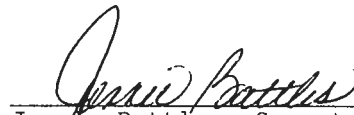
ATTEST:

  
Mary Flute-Cooksey, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 9TH day of FEBRUARY 1998.

  
Joe Byrd, Principal Chief  
Cherokee Nation

ATTEST:

  
Jennie Battles, Secretary-Treasurer  
Cherokee Nation

YEAS AND NAYS AS RECORDED

|                    |            |                         |            |
|--------------------|------------|-------------------------|------------|
| Don Crittenden     | <u>YEA</u> | Barbara Starr-Scott     | <u>YEA</u> |
| Sam Ed Bush        | <u>YEA</u> | Harold "Jiggs" Phillips | <u>YEA</u> |
| Bill John Baker    | <u>YEA</u> | Troy Wayne Poteete      | <u>YEA</u> |
| Harley L. Terrell  | <u>YEA</u> | Barbara Conness         | <u>YEA</u> |
| Mary Flute-Cooksey | <u>YEA</u> | Nick Lay                | <u>YEA</u> |
| Paula Holder       | <u>NAY</u> | William Smoke           | <u>YEA</u> |
| Harold DeMoss      | <u>YEA</u> | Charles "Chuck" Hoskin  | <u>YEA</u> |
| Dora Mae Watie     | <u>YEA</u> |                         |            |