



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Text

File #: 14-043, Version: 3

AN ACT AMENDING LA-06-98 AND LA-21-12, "CHEROKEE NATION GOVERNMENTAL RECORDS ACT" DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the "Governmental Records Act of 2014" and codified as Government Records under Title 19, Chapter 5, Section 41 et. seq.

Section 2. Purpose

The purpose of this Act is to amend the Cherokee Nation Governmental Records Act to clarify the former legislation.

Section 3. Legislative History

LA-06-98, amended by LA 21-12.

Section 4. Substantive Provisions

§1 shall be renumbered as §41 and read as follows: Short Title

This Act shall be known as the Cherokee Nation Governmental Records Act and codified as Title 19, Chapter 5, Section 41 et. seq. of the Cherokee Nation Code Annotated.

§2 shall be renumbered as §42 and read as follows: 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 shall be renumbered as §43 and read as follows: 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 shall be renumbered as §44 and read as follows: Definitions

A. "Cherokee Government" -- collectively, the Cherokee Nation, its elected officials, officers, employees,

agents and contractors, or any of the Nation's constitutionally or statutorily created agencies, commissions, boards, corporations and their subsidiaries, or other entities, and their elected officials, officers, directors, employees, members, agents and contractors.

B. "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 shall be amended as follows: §5 Substantive Provisions § 45 Requests for Records

A. Requests for records shall be in writing and addressed to the Director, CEO, or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request. 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 Director, CEO, or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request on the same or the following working day.

B. The Director, CEO, or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request shall cause the records requested to be produced within ~~six~~ twenty ~~TEN (6 20 10)~~ working business 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 Director, CEO, or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request shall, within the prescribed time limit, provide a written explanation to the Legislative Aide and 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 Director, CEO, or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request 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~~ twenty ~~TEN(16 20 10)~~ working business days from the date of the receipt of the initial request. The Cherokee Nation can extend the time to respond by an additional ten days, but must provide written notification to the requesting party.

C. The Director, CEO, or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request shall provide the requested records to the requesting council member and the Council's Legislative Aide so that the response is made a part of the records of the council. The Legislative Aide shall also provide a copy or a list of documents made available for review if the documents were determined to be confidential of all requested records to the Principal Chief and Speaker of the Council.

D. 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.

E. 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, is exempt from disclosure under the Cherokee Nation Freedom of Information and Rights of Privacy Act, as amended, or is confidential under Cherokee Nation law, 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.

F. Individual health, adoption, and medical records, records deemed classified by the Cherokee Nation or 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.

G. Nothing in this Act shall be construed to require the disclosure of any individual's social security number, date of birth, home address or Cherokee Citizenship number. Such information may be redacted even though the record is marked "privileged and confidential" pursuant to §45(E).

GH. A Willful and malicious violation of this Act ~~shall~~ ~~misdemeanor~~ is a crime and upon conviction an individual shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense, and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

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 of 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. Declaration of Emergency.

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.