



Legislation Text

File #: 14-044, Version: 2

AN ACT AMENDING LA-25-01, LA-24-04, AND LA-04-12, "FREEDOM OF INFORMATION AND RIGHTS OF PRIVACY ACT" DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the "Freedom of Information and Rights of Privacy Act of 2014" and codified as Freedom of Information and Privacy Rights under Title 67, Chapter 2, Section 101 et. seq.

Section 2. Purpose

The purpose of this Act is to amend the Freedom of Information and Rights of Privacy Act to clarify the former legislation.

Section 3. Legislative History

LA-25-01, amended by LA-24-04, LA-25-07, and LA 04-12.

Section 4. Substantive Provisions

§75-1-1. shall be amended as follows: ~~§75-1-1. Title and Codification:—~~ §101. Short Title

This act shall be known as the "Freedom of Information and Rights of Privacy Act of 2014" and codified as Freedom of Information and Privacy Rights under Title ~~75~~ 67, Chapter 2, Sections ~~4-17~~ 101, et seq. of the Cherokee Nation Code Annotated (~~75~~ 67 CNCA ~~§4-17~~ 101, et seq.).

§75-1-2 shall be renumbered as §102 and read as follows: Findings and Purposes:

A. The Council of the Cherokee Nation and the Principal Chief of the Cherokee Nation find that it is vital in a democratic society that public business be performed in an open and public manner. Toward this end, provisions of this chapter must be construed so as to make it possible for Cherokee citizens, or their representatives, to have their public officials and governmental activities at a minimum cost or delay to the persons seeking access to public documents or meetings.

B. Citizens have a right to know the basis of the formulation of public policy. Therefore, it is the public policy of the Cherokee Nation that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity.

§75-1-3 shall be renumbered as C. under §102:

C. 1. Article II of the Constitution of the Cherokee Nation contains the provisions of the "Bill of Rights" which apply to the membership. These provisions assure certain judicial remedies and guarantee the protections afforded by the Federal Indian Civil Rights Act of 1968 (25 USCA 1302-1303). This Chapter affirms those rights as intended by the Constitution.

2. Various administrative policies have adopted the Federal laws regarding access to records and privacy. This Chapter applies to specifically identified tribal records. All federal records such as federal lease

contracts and other federal records and files maintained by the Cherokee Nation are subject to the applicable federal laws governing the access of federal records.

§7-1-4 shall be amended as follows: §7-1-4 §103. Definitions

For purposes of this Title:

A. “Tribal Council” means one legislative body called the Council of the Cherokee Nation. This body consists of ~~15~~ 17 members, who are members by blood of the Cherokee Nation.

B. “Public Body” means any Cherokee Nation board, commission, agency, authority, any public or governmental body or political subdivision of the Nation, including any organization, corporation, or agency supported in whole or in part by public funds under the authority of the Cherokee Nation or expends public funds under the care of the Nation, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the Nation, the business enterprises of the Nation and its political subdivisions, including, without limitation, bodies such as the Public Service Authority, the Port Authority, and any corporation for profit or non-profit.

C. “Person” includes any individual, corporation, partnership, firm, organization, or association.

D. “Public record” includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, law enforcement investigative files and names of confidential informants, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act. Nothing herein requires a governmental body to retain documents past the timeframes required under IRS guidelines or other applicable federal or tribal laws.

E. “Meeting” means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

F. “Quorum” for regular session of the Council means two-thirds (2/3) of members thereof regularly elected and qualified shall be in attendance. For all other meetings, unless otherwise defined by applicable law, quorum means a simple majority of the constituent membership of a public body.

§7-1-5 shall be amended as follows: §7-1-5 §104. Right to inspect and/or copy public records; fees; notification as public availability of records; presumption upon failure to give notice; records to be available when requester appears in person

A. Any ~~person~~ Cherokee Nation citizen has a right to inspect or copy any public record of a public

body, except as otherwise provided by Section 6 105, in accordance with reasonable rules concerning time and place of access.

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 ~~fifteen~~ twenty business days ~~(excepting Saturdays, Sundays, and legal public holidays)~~ of the receipt of any such request notify the person making such request of its determination and the reasons therefore. The governmental body can extend the time to respond by an additional ten days, but must provide written notification to the requesting party. Nothing in this act shall supercede 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 ~~fifteen~~ twenty 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 the of a public body;
2. all reports identified in Section ~~7(A)(8)~~ 106(A)(8) for at least the fourteen-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 Officer of the Attorney General will employ a regular, fulltime 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 serve as a liaison to tribal citizens seeking information.
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 FIOA 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.

§ 75-1-6 shall be amended as follows: ~~§75-1-6~~ §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; and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.
- (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) ~~these documents~~ the contract ~~are~~ is not exempt from disclosure once a ~~contract~~ is entered into

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 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.
- (1) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.
- (6) 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.
- (1) 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.
- (6) 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 years before or after the gift is made, the identity of the maker is not exempt from disclosure.
- (1) 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.
 - (b) 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.

- (c) 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.
- (d) 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.
- (e) 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) 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 publically available or previously provided.

B. Any record that is requested and is determined to be exempt and not disclosed and marked confidential shall be accompanied by a statement setting out the reasons for such determination.

§ 75-1-7 shall be amended as follows: ~~§75-1-7 §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;
 - (2) administrative staff manuals and instructions to staff that affect a member of the public;
 - (3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
 - (4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;
 - (5) written planning policies and goals and final planning decisions;
 - (6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
 - (7) 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;

(8) 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;

(9) 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.

§ 75-1-8 shall be amended as follows: ~~§75-1-8~~ §107. Meetings of public bodies shall be open

Every meeting of all public bodies shall be open to the public unless closed pursuant to ~~§ 75-1-9~~ 108 of this chapter.

§ 75-1-9 shall be amended as follows: ~~§75-1-9~~ §108. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of Tribal Council

A. A public body may hold a meeting closed to the public for one or more of the following reasons:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of other employees or clients whose records are submitted for use at the hearing.

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations of criminal misconduct.

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

B. Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in item (1) through (5) of subsection (A) of this section. However, when the executive session is held pursuant to Section ~~75-1-9~~ 108(A)(1) or ~~75-1-9~~ 108(A)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a

polling of members in executive session

- B. No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.
- C. This chapter does not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.
- E. Sessions of the Tribal Council may enter into executive session authorized by the Constitution of this Nation and rules adopted pursuant thereto.

§ 75-1-10 shall be amended as follows: ~~§75-1-10~~ §109. Notice of meetings of public bodies

- A. All public bodies must give written public notice of their regular meetings and special meetings as required by the Constitution and laws of the Cherokee Nation. Provided that agendas must be posted, in accordance with this Act, ten (10) days prior to any regular meeting of a public body or twenty-four (24) hours in case of a special meeting.
- B. Legislative committees must post their meeting agenda at least ten (10) days prior to the meeting. Subcommittees of standing legislative committees must give notice if it is practical to do so.
- C. Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (A), must make reasonable and timely efforts to give notice of their meetings.
- D. Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.
- E. Informal legislative conferences between the Principal chief and the Council of the Cherokee Nation are authorized, provided that the date, time and place of such meetings are posted at least ten (10) days in advance of such meetings. No formal action shall be taken at these conferences. Such conferences are open to the public unless closed pursuant to Section ~~75-1-9~~ 108 of this Act.
- F. All public bodies shall make efforts to notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

§ 75-1-11 shall be amended as follows: ~~§75-1-11~~ §110. Minutes of meetings of public bodies

- A. All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:
 - (1) The date, time and place of the meeting.
 - (2) The members of the public body recorded as either present or absent.
 - (3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.
 - (4) Any other information that any member of the public body requests be included or reflected in the minutes.
- B. The minutes shall be public record and shall be available within a reasonable time after the meeting.

- C. All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to § ~~75-1-9~~ 108 of this chapter, provided that in so recording, there is no active interference with the conduct of the meeting. Provided, further, that the public body shall not be required to furnish recording facilities or equipment.

§ 75-1-12 shall be renumbered as §111 and read as follows: Injunctive relief; costs and attorney's fees

- A. Any citizen of the Nation may apply to the district court of the Cherokee Nation for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one (1) year following the date on which the alleged violation occurs or one (1) year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.
- B. If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

§ 75-1-13 shall be renumbered as §112 and read as follows: Penalties

Any person or group of persons who willfully and maliciously violates the provisions of this chapter may be found guilty of a crime and upon conviction 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.

§ 75-1-14 shall be renumbered as §113 and read as follows: Identification (I.D.) Records:

Photographs, signatures, addresses, and digitized images from a driver's license or personal identification cards are not public records.

§ 75-1-15 shall be amended as follows: ~~§75-1-15~~ §113 Privacy of driver's license information

- A. Any ~~Department of Public Office~~ No public body ~~may not~~ shall sell, provide, or furnish to a private party a person's height, weight, race, social security number, date of birth, photograph, or signature in any form that has been compiled for the purpose of issuing special identification cards or completing an application for specific program requirements. The ~~department~~ public body shall not release to a private party any part of the record of a person under fifteen years of age who has applied for or has been issued a special identification card.
- B. A person's height, weight, race, photograph, signature, and digitized image contained in compiled application request or special identification card record are not public records.
- C. Notwithstanding ~~another provision of law~~ Subsection A above, a private person or private entity shall not use an electronically-stored version of a person's photograph, social security number, height, weight, race, or signature for any purpose, when the electronically- stored information was obtained under this Act from a driver's license record.

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.