

**TRIBAL CODE**

**CHAPTER 15:**

**TRIBAL FREEDOM OF INFORMATION ORDINANCE**

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**HISTORY NOTE:**

**Current Ordinance:**

Resolution No. 2015-12, adopted January 6, 2015, adopts Tribal Code Chapter 15: Tribal Freedom of Information Ordinance, effective February 6, 2015.

**TRIBAL CODE**

**CHAPTER 15:**

**TRIBAL FREEDOM OF INFORMATION ORDINANCE**

**15.101 Purpose and Authority.**

It is the public policy of the Tribe that all Tribal Members are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as Tribal officials and Tribal employees, consistent with this Chapter. The Authority for this Chapter is Article III of the Tribal Bylaws.

**15.102 Findings and Declarations.**

The Board of Directors finds and declares:

- (1) It is vital in a democratic society that Public Records are readily available and accessible to Tribal Members. The free flow of information from the Tribal government to Tribal Members instills trust in the Tribal membership that the actions of their Tribal government in conducting its affairs are ethical and intended for the betterment of the Tribe.
- (2) Article III of the Tribal Bylaws provides that “All books, records and financial accounts of the Sault Ste. Marie Tribe of Chippewa Indians, including the tribal roll, shall be open to inspection by tribal members upon reasonable request to the board of directors.” This provision captures the essence of the benefits of public disclosure of governmental information.
- (3) That a need exists to present uniform guidelines governing the disclosure of Public Records and the redress of wrongly withheld information while recognizing the need to protect certain information that, if disclosed, may be harmful to the Tribe or to individual Tribal Members.
- (4) This Chapter implements Article III of the Tribal Bylaws by establishing a process by which governmental information is made available instead of requiring Tribal Members to bring such requests directly to the Board of Directors.

**15.103 Definitions.**

For purposes of this Chapter:

- (1) “Tribe” or “Tribal” means the Sault Ste. Marie Tribe of Chippewa Indians.
- (2) “Board of Directors” or “Board” means the Board of Directors of the Tribe.

(3) “Public Records Officer” means the employee(s) of the Tribe designated by the Board of Directors to process responses to requests for information made pursuant to this Chapter. The initial designation shall be the Executive Assistant for the Board of Directors, until such time as the Board of Directors of the Tribe may otherwise designate by Resolution.

(4) “Tribal Member” means any individual duly enrolled member of the Tribe.

(5) “Tribal Body” means the Board of Directors or any Tribal officer, employee, agency, department, division, bureau, board, commission, committee, subcommittee, council, authority, or other body acting in the performance of an official governmental function for the Tribe. Tribal Body does not include the Tribal Court, including the court clerk and employees thereof when acting in the capacity of clerk to the Tribal Court.

(6) “Public Record” means a Writing prepared, owned, used, in the possession of, or retained by a Tribal Body in the performance of an official governmental function for the Tribe, from the time it is created. Public Record does not include confidential notes made by a member of the Board of Directors for his or her own exclusive use.

(7) “Unusual Circumstances” includes the need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct Public Records pursuant to a single request or the need to collect the requested Public Records from numerous offices, facilities, or other establishments, but only to the extent necessary for the proper processing of a request.

(8) “Writing” means handwriting, typewriting, printing, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(9) “Written Request” means a writing from a Tribal Member that asks for a copy of or the opportunity to inspect a Public Record and includes a writing transmitted by facsimile, email, mail, or other electronic means.

#### **15.104 Access to Public Records.**

Unless a Public Record is exempt from disclosure under section 15.113 of this Chapter, a Tribal Member has a right to inspect, copy, or receive copies of a Public Record of a Tribal Body if the Tribal Member submits a Written Request to the Public Records Officer that describes the Public Record sufficiently to enable the Public Records Officer and the Tribal Body to identify the Public Record

#### **15.105 Receipt of Electronic Requests.**

A Written Request may be made by facsimile, email, or other electronic transmission but shall not be deemed received by the Public Records Officer until 1 business day after the electronic

transmission is made. When a Written Request is made by email or other electronic transmission, a written response required under this chapter may be made via the same electronic medium.

**15.106 Retention of Requests.**

The Public Records Officer shall keep a copy of all Written Requests for Public Records on file for no less than one (1) year.

**15.107 Determinations Regarding Public Records.**

Upon receiving a Written Request pursuant to Section 15.104, the Public Records Officer shall:

- (1) Within seven (7) work days provide a written acknowledgement of the receipt of the request and a brief statement outlining the rights and responsibilities of the Tribe and the requestor under this Chapter.
- (2) Obtain the requested Public Records from the appropriate Tribal Body. It is the responsibility of the Tribal Body to produce all requested Public Records to the Public Records Officer.
- (3) If the request involves any material that may be exempt from disclosure under Section 15.113 of this Chapter, refer the request and the Public Records to the Tribe's legal counsel who shall review the material and assist the Public Records Officer in determining whether the requested Public Records are exempt from disclosure in whole or in part pursuant to Section 15.113 of this Chapter.
- (4) If it is determined that the requested Public Records contain both material that is exempt from disclosure under Section 15.113 of this Chapter and material that is not exempt from disclosure, separate or redact the exempt material in order to make the nonexempt material available to the Tribal Member.

**15.108 Response to Written Request.**

Unless otherwise agreed to in writing by the Tribal Member making the request, the Public Records Officer shall respond to a request for a Public Record within thirty (30) business days after the Public Records Officer receives the request by issuing a written notice to the requesting Tribal Member that does one of the following:

- (1) Grants the request;
- (2) Denies the request pursuant to Section 15.109.
- (3) Grants the request in part and denies it in part pursuant to Section 15.109; or

(4) If Unusual Circumstances exist, extends for not more than fifteen (15) business days the period during which the Public Records Officer shall respond to the request. The Public Records Officer shall not issue more than one (1) notice of extension for a particular request.

#### **15.109 Written Notice of Denial of Request.**

If a request for Public Records is denied in whole or in part, the written notice of denial shall contain the following information:

(1) If the denied material is claimed to be exempt from disclosure, (a) an explanation of the basis under this Chapter or other applicable federal, state, local or Tribal law for the determination that the Public Record, or portion of that Public Record, is exempt from disclosure and (b) a general description of any material redacted or withheld unless that description would reveal the contents of the exempt information to a degree that would defeat the purpose of the exemption.

(2) If the requested material does not exist or cannot be located, a statement certifying that the Public Record does not exist or could not be located.

(3) An explanation of the requesting Tribal Member's right to seek review of the denial under Section 15.115.

#### **15.110 Written Notice of Extension of Time to Respond.**

If the Public Records Officer issues a notice extending the period for a response to the request pursuant to Section 15.108(4), the notice shall specify the Unusual Circumstances for the extension and the date by which the Public Records Officer will otherwise respond to the request.

#### **15.111 Final Determination.**

A written notice denying a request for a Public Record in whole or in part pursuant to Section 15.109 is the Public Records Officer's final determination to deny the request or portion of that request. Failure to respond to a request pursuant to Section 15.108 constitutes a final determination to deny the request.

#### **15.112 Production of Public Records.**

The Public Records Officer shall furnish copies of the requested Public Records or provide an opportunity for inspection and examination of the Public Records to the Tribal Member making such request. Upon written request, copies furnished shall be certified copies of the Public Record. Reasonable facilities shall be made available to the requesting Tribal Member for making memoranda or abstracts from the requested Public Records at times during normal business hours. Either the Public Records Officer or a Tribal Body shall take reasonable steps to

protect Public Records from loss, unauthorized alteration, mutilation, or destruction and to prevent excessive and unreasonable interference with the discharge of their functions.

### **15.113 Exemptions from Disclosure.**

(1) The Public Records Officer or a Tribal Body may exempt from disclosure as a Public Record under this Chapter any of the following:

- (a) Information of a personal nature, including without limitation employment, education and health records, if public disclosure of the information would constitute an unwarranted invasion of an individual's privacy or disclose the identity of a specific individual;
- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a Public Record would do any of the following:
  - (i) Interfere with law enforcement proceedings;
  - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication;
  - (iii) Constitute an unwarranted invasion of personal privacy;
  - (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source;
  - (v) Disclose law enforcement investigative techniques or procedures; or
  - (vi) Endanger the life or physical safety of law enforcement personnel.
- (c) A public record that if disclosed would prejudice a Tribal Body's ability to maintain the physical security of persons arrested or convicted of a crime;
- (d) Records or information specifically described and exempted from disclosure by Tribal Code;
- (e) Records or information originally furnished to the Tribe by another governmental entity if the records were exempt from public disclosure when they were created or compiled by that governmental entity provided that the considerations giving rise to that exemption remain applicable;
- (f) Information or records subject to the attorney-client privilege;
- (g) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, or other privilege recognized by statute or court rule including information exempt from disclosure pursuant to the deliberative process privilege;
- (h) A bid or proposal by a person or entity to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired;

- (i) Appraisals of real property to be acquired or sold by a Tribal Body until an a purchase or sales agreement is entered into or three (3) years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated;
- (j) Test questions and answers, scoring keys, and other examination instruments or data used for purposes of obtaining a license, professional certification, employment, or examination;
- (k) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation;
- (l) Communications and notes within a Tribal Body or between Tribal Bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final determination of policy or action;
- (m) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel;
- (n) Testing or evaluation data developed by a Tribal Body in determining whether bidders' products or services meet the required specifications for purchase by the Tribal Body;
- (o) Public Records of law enforcement, the release of which would do any of the following:
  - (i) Identify or provide a means of identifying an informant.
  - (ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.
  - (iii) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.
  - (iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.
  - (v) Disclose operational instructions for law enforcement officers or agents.
  - (vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.
  - (vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.
  - (viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.
  - (ix) Disclose personnel records of law enforcement agencies.
  - (x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(p) Records of a Tribal Body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the Tribal Body.

(q) Records or information relating to a civil action in which a Tribal Body is a Party.

(r) Information or records that would disclose the social security number of an individual.

(s) Computer software or other documents subject to copyright protection.

(t) Information or records exempted from disclosure by any other applicable tribal, federal, state, or local law.

(u) Lists of the names of current or former employee of the Tribe or any Tribal Body.

(v) Any information that indicates the names or identities of any person involved in either a child welfare or domestic violence matter before the Tribal Court, including the files of the Tribal departments relating thereto, and any information that is required to be kept confidential under the provisions of the Child Welfare Code (Tribal Code, Chapter 30) or the Juvenile Code (Tribal Code, Chapter 36).

(w) Proprietary business information that, if disclosed, may place the Tribe or a tribal business or economic enterprise at a competitive disadvantage.

(2) This Chapter does not authorize the withholding of information otherwise required by law to be made available to a party in a contested litigation case.

(3) This Chapter does not require the Public Records Officer or a Tribal Body to make a compilation, summary, or report of information, except as required in Section 15.109.

(4) This Chapter does not require the Public Records Officer or a Tribal Body to create a new Public Record, except as required in Section 15.109.

#### **15.114 Fees.**

The Public Records Officer may charge a fee that shall not exceed the Tribe's actual costs of reproduction of materials. All fees assessed shall be equally assessed to all requesting parties to ensure equitable treatment. A search for a Public Record may be conducted or copies of Public Records may be furnished without charge or at a reduced charge if the Public Records Officer determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the Public Record can be considered as primarily benefiting the general public or for reasons of indigence of the Tribal Member making the request.

**15.115 Review of Denial.**

- (1) If the Public Records Officer makes a final determination to deny all or a portion of a request, the requesting Tribal Member may commence an action in the Tribal Court to compel the disclosure of the Public Records within thirty (30) days after the Public Records Officer's final determination to deny a request.
- (2) The Tribal Court, upon de novo review and without a jury, shall determine whether a Public Record is exempt from disclosure. Only the Tribal Court has jurisdiction for such determinations.
- (3) The Tribal Court, on its own motion, may view the Public Record in controversy in private before reaching a decision.
- (4) If the Tribal Court determines that the Public Records Officer's decision to deny disclosure in whole or in part was clearly erroneous, arbitrary or capricious, the Tribal Court shall order disclosure of the Public Record only to the extent the Tribal Court determine the Public Records to be not exempt.
- (5) An action commenced under this Section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
- (6) If a Tribal Member asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails, in whole or in part, in an action commenced under this Section, the Tribal Court may determine an award of an appropriate portion of attorney fees not to exceed actual expenses.

**15.116 Effective Date.**

This Chapter shall become effective February 6, 2015.