

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

MAY 04 2023

DATE

ORDINANCE NO. 591 (2023)

WHEREAS, Chapter 132 of the Cherokee Code concerning public information and records was established in 2006, and,

WHEREAS, the chapter creates laws for the authorizing, timing, and types of government information that may be provided to the community, and,

WHEREAS, there is a need to review, update, and address changes in the need and timing for community access to governmental information, and,

WHEREAS, the Cherokee One Feather and the Attorney General's office have identified areas of update for Chapter 132, and these changes would benefit the community individually and communally in their information and education and access to information

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that Chapter 132 of the Cherokee Code be amended as indicated in the attached copy.

BE IT FINALLY RESOLVED that the Principal Chief of the Eastern Band of Cherokee Indians carry out the intent of the ordinance change, which shall remain in effect until rescinded, and any conflicting laws within the Cherokee Code are superseded by this act once it is ratified.

Submitted by:

Robert Jumper on behalf of the Cherokee One Feather Editorial Board

Chapter 132 PUBLIC RECORDS

ARTICLE I. ACCESS AND DISCLOSURE

Sec. 132-1. Short title.

This act shall be known and may be cited as the "Public Records Act of 2006."

(Ord. No. 380, 8-4-2006)

Sec. 132-2. Findings and purpose.

- (a) The Tribe finds 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 Article must be construed so as to make it possible for members of the Eastern Band of Cherokee Indians, or their representatives, to have access to public records at a minimum cost and with minimum delay to the persons seeking access.
- (b) Members and their representatives have a right to know the basis of the formulation of public policy. Therefore, it is the public policy of this Tribe that members shall be advised of the performance of public officials and of the decisions that are reached in public activity.

(Ord. No. 380, 8-4-2006)

Sec. 132-3. Application.

- (a) This Article applies to the tribal records identified in this Article and governed by Tribal law. It does not apply to records that are governed by the federal law including, but not limited to, the federal Privacy Act, the Freedom of Information Act and the Health Insurance Portability and Accountability Act.
- (b) Nothing in this Article prohibits public bodies and their employees and agents from obtaining, accessing, using, copying and sharing records and information governed by this Article if the action is necessary for the performance of official job-related duties.

(Ord. No. 380, 8-4-2006)

Sec. 132-4. Definitions.

In this Article:

- (a) *Member* means an **enrolled** member of the Tribe or his or her agent or representative.
- (b) *Person* includes any individual, corporation, partnership, firm, organization, or association.
- (c) *Public Body* means the government of the Eastern Band of Cherokee Indians and any of its agencies, enterprises, entities, authorities, boards, commissions, committees, subcommittees, organizations or corporations supported in whole or in part by funds created, managed, disbursed or passed-through by the Tribe or which expends such funds under the care of the Tribe, including any quasi-governmental

body of the Tribe, the business enterprises of the Tribe and its political subdivisions, including Qualla Housing Authority, the Cherokee Boys Club and Vocational Opportunities of Cherokee.

- (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 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 non-identifying 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.
- (e) *Tribal Council* or *Council* means the one legislative body of the Eastern Band of Cherokee Indians. This body consists of 12 members, who are members by blood of the Eastern Band of Cherokee Indians.
- (f) *Tribe* or *Tribal* means the Eastern Band of Cherokee Indians.

(Ord. No. 380, 8-4-2006)

Sec. 132-5. Right to request, inspect and/or copy public records.

- (a) Any ~~person~~ member has a right to request and to inspect or copy any public record of a public body, except as otherwise provided by this ~~Article~~ Chapter, and in accordance with reasonable rules concerning time and place of access.
- (b) Except as provided in section 132-10, a request to inspect or copy a public record must be in writing including all forms of email communication. The writing may be handwritten ~~and informal~~ or in the form of an email or letter. Each writing ~~but~~ must express the request with enough clarity to enable the public body to accurately identify the record sought. The request must also state the date, name, address, ~~and~~ telephone number ~~and email if available~~ of the requesting member, ~~and must be signed by the requesting member.~~

(Ord. No. 380, 8-4-2006; Ord. No. 524, 7-17-2015)

Sec. 132-6. Fees.

The public body may establish and collect fees not to exceed the actual cost of searching for and/or making copies of public records. Fees charged by a public body must be uniform for copies of the same records or document. However, members of the Tribal Council may receive copies of records or documents at no charge from public bodies when their requests ~~relates~~ relate to their legislative duties. The intent of this section is to establish that the records should be furnished at the lowest possible cost to the person requesting the records while ensuring that the requestor pays for the searching and copying of the record and to not have the public body bear the cost of searching and copying. When appropriate, records may be furnished without charge or at a reduced charge where the public body determines that waiver or reduction of the fee is in the public interest because furnishing the 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 section prevents a public body from charging a reasonable hourly rate for making records available to the public or from requiring a reasonable deposit of these costs before searching for or making copies of the records.

Created: 2023-03-09 13:34:59 [EST]

(Supp. No. 32, Update 2)

(Ord. No. 380, 8-4-2006)

Sec. 132-7. Production of records; form of records.

Public records must be ~~provided~~ **produced to the requestor** in a form that is both convenient and practical for use by the person requesting copies of the records; provided, however, nothing in this Article requires the public body to provide the record in a form other than that in which it is normally stored, or to create a new record. ~~A public body may decline a request if the same records have been produced to the same requestor within the immediately preceding one year period.~~

(Ord. No. 380, 8-4-2006)

Sec. 132-8. Notification after request.

- (a) When a public body receives a ~~written~~ **written** request to inspect or copy a public record, the public body must, within ~~15~~ **3** days (excepting Saturdays, Sundays, and Tribal government holidays) of the receipt of the ~~written~~ **written** request, notify in writing the person making the request of its determination and the reasons for its determination. Nothing in this Article shall supersede Tribal law or policy relating to access to records by members of Tribal Council, the Principal Chief or his representative or the Vice-Chief or his or her representative. ~~The determination shall constitute the final opinion of the public body as to the public availability of the requested public record.~~
- (b) If the request to inspect or copy a public record is granted, the record must be furnished or made available for inspection or copying within ~~a reasonable time~~ **3 days (excluding Saturday, Sunday, and Tribal government holidays)**.

(Ord. No. 380, 8-4-2006)

Sec. 132-9. Presumption upon failure to give notice.

If the public body does not mail or personally deliver written notification of its determination regarding the availability of the requested public record to the person requesting the record, within the ~~15~~ **3** days allowed in section 132-8, the request must be considered disapproved and the requestor may appeal the denial using the procedure provided in this Article.

(Ord. No. 380, 8-4-2006)

Sec. 132-10. Records to be available when requestor appears in person.

When the requestor appears in person, a public body shall make following public records 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 to inspect or copy the records:

- (a) Written minutes of the meetings of the public body, if such have been transcribed or otherwise reduced to writing.
- (b) Documents identifying persons confined in any jail, detention center, or prison.

(Ord. No. 380, 8-4-2006)

Sec. 132-11. Records exempt from disclosure.

- (a) A public body may 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 of the information would constitute unreasonable invasion of personal privacy. Information of a personal nature includes, but not be limited to, enrollment number, social security number, personal address, personal telephone number, and the following information in a manner that identifies it to a specific person or entity: information as to gross receipts contained in applications for business licenses, rental rate, tribal levy and lease taxes. This provision shall not be interpreted to restrict access by a member to information contained in public records. ~~if the personal~~ Personal information may be redacted from the public record ~~with an effort that the public body determines is reasonable,~~ and the public body ~~may choose to~~ must provide the record in redacted form. Reasonable costs for redacting may be charged to the requestor.
 - (3) Matters specifically exempted from disclosure by law.
 - (4) Documents of, and documents incidental to, a proposed RFP, bid, contractual arrangement or proposed sale or purchase of real property; however:
 - a. These documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section.
 - b. A contract for the sale or purchase of real property shall remain exempt from disclosure until the deed is executed, by this exemption applies only to those contracts for sale or purchase where the execution of the deed occurs within 24 months from the date of the sale or purchase.
 - c. Confidential proprietary information provided to a public body for economic development or contract negotiation purposes is not required to be disclosed.
 - (5) All salary compensation paid by public bodies to individuals by authorized positions as classified by the Tribe. The annual budgets shall contain such position listings without the names of the individuals holding such positions.
 - (6) Correspondence, work-products and/or communications of legal counsel for a public body and any other material that would violate attorney-client relationships, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the Tribe is a party or by which it is or may be directly affected. Written communication and copies there of shall not be open to public inspection, examination or copying unless specifically made public by the Tribal Council.
 - (7) Memoranda, correspondence, and working papers in the possession of individual members of the executive and legislative branches or persons employed in 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 Article and not specifically exempted by any other provisions of this Article.

~~(8) Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body to attract business or industry to invest within the Tribe.~~

- (9) A record of a public 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 article, to the extent and so long as disclosure would jeopardize the ability to implement an investment or financial decision, or to execute the program or plan or to achieve investment, financial, plan or program objectives.
- (10) The identity, 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 by a public body; provided, however, that if the complaint or information is used in a prosecution in a judicial or quasi-judicial proceeding, this subsection shall not preclude the defendant's due process rights to confront and examine the complainant and witnesses.
- (11) If any public record contains material which is not exempt under this section, the public body shall separate or redact the exempt and the nonexempt material and make the nonexempt material available in accordance with the requirements of this Article.
- (12) ~~Tax information of a public body except as determined by the Principal Chief. The type and amount of taxes and levy collected or paid by a public body.~~ (13) Information and records the disclosure of which would reveal an account number used for payment or collection of money.
- (14) Financial records of the Tribe's casino and the Tribal Casino Gaming Enterprise.
- (15) Information that is part of negotiations in a proposed land purchase by the Tribe until that land purchase is completed.
- (16) Records of the Enrollment Office and Enrollment Committee shall be treated as provided in Chapter 49 of the Cherokee Code.
- (17) Records describing the health, condition, family status, parentage, care, placement or adoption of juveniles who are in the custody of a public body other than a public law enforcement agency or public emergency medical services agency. In this subsection, a juvenile is a person who is younger than 18 years of age.

(Ord. No. 380, 8-4-2006)

Sec. 132-12. Certain matters declared public information.

- (a) Without limiting the meaning of other sections of this Article, the following categories of information are specifically made public information subject to disclosure except as restricted in ~~this Article the Cherokee Code~~:
- (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 judicial and quasi-judicial cases;
 - (4) Those statements of policy and interpretations of policy, statute, and governing documents 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) Minutes of proceedings of public bodies and the votes in the proceedings, except as restricted by Tribal law governing executive sessions.
 - (8) Reports which disclose the nature, substance, and location of any emergency or crime or alleged crime reported to a law enforcement or public safety agency; provided however, that where a report contains information that Tribal law says is not a public record or is exempt from disclosure, the law enforcement or public safety agency may delete that information from the report.
 - (9) Final audits of a public body.
 - (10) The following records of the Cherokee Court are public records and may be withheld only when sealed by order of the court:
 - a. Arrest and search warrants that have been returned by law enforcement agencies.
 - b. Criminal complaints and statements of charges.
 - c. Criminal summonses.
 - d. Non-testimonial identification orders.

(Ord. No. 380, 8-4-2006)

Sec. 132-13. Law enforcement records.

- (a) Records of public law enforcement agencies and public safety agencies not otherwise available by law that were compiled in the process of detecting and investigating crime shall not be disclosed if the disclosure of the information would harm the agency by:
 - (1) Disclosing identity of informants not otherwise known.
 - (2) Prematurely releasing information to be used in a prospective law enforcement action.
 - (3) Disclosing investigative techniques not otherwise known outside the government.
 - (4) Endangering the life, health, or property of any person.
- (b) Unless otherwise prohibited by subsection (a) or other provision of Tribal law, the following are public records within the meaning of this Article and **may** must be disclosed:
 - (1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.
 - (2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.
 - (3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.
 - (4) The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies or public safety agencies, except as prohibited from disclosure in Cherokee Code Chapter 62.
 - (5) The contents of communications between or among employees of public law enforcement agencies or public safety agencies that are broadcast over the public airways.
 - (6) The name, sex, age, and address of a victim or complaining witness; provided, however, that a public law enforcement agency or public safety agency shall temporarily withhold the name or address of a victim or complaining witness if release of the information is reasonably likely to pose a threat to the

Created: 2023-03-09 13:34:59 [EST]

(Supp. No. 32, Update 2)

mental health, physical health, or personal safety of the complaining witness or victim or materially compromise a continuing or future criminal investigation or criminal intelligence operation.

(Ord. No. 380, 8-4-2006)

~~**Sec. 132-14. Use of information for commercial solicitation prohibited.**~~

~~A public record and any information in a public record may not be used for commercial solicitation except as approved by Tribal Council by resolution. Any person or entity who uses public records or information therein for commercial solicitation without Tribal Council's approval, and any person who assists such person knowing of their intent to use the record or information for commercial, may be fined in an amount not to exceed \$5,000.00 per violation; provided, however, this provision must not be interpreted to restrict access by members to information contained in public records.~~

~~(Ord. No. 380, 8-4-2006)~~

Sec. 132-15. Jurisdiction.

Any member who requests, obtains or uses a public record or information therein, which records and information are governed by this Article, is subject to the personal and subject matter jurisdiction of the Cherokee Court for violations of this Article.

(Ord. No. 380, 8-4-2006)

Sec. 132-16. Declaratory and injunctive relief; costs and attorney's fees.

- (a) A member may file a complaint in the Cherokee Court seeking a declaratory judgment or injunctive relief, or both, to enforce the provisions of this Article in appropriate cases so long as the complaint is made no later than one year following the date on which the alleged violation occurred. No other form of action is permitted. The court may order equitable relief as it considers appropriate. A violation of this Article is considered to be an irreparable injury for which no adequate remedy at law exists.
- (b) If a member seeking such relief prevails, the member may be awarded reasonable attorney fees and other costs of litigation. If the member loses in part and prevails in part, the court may, in its discretion, award the member reasonable attorney fees or an appropriate portion thereof. No other damages may be awarded.

(Ord. No. 380, 8-4-2006)

Sec. 132-17. Privacy of driver's license information.

- (a) A public body may not sell, provide, or furnish to a member a person's height, weight, race, social security number, 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.
- (b) A person's height, weight, race, photograph, signature, and digitized image contained in an application request or special identification card are not public records.
- (c) Notwithstanding another provision of law, a private person or private entity may 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 from a program application, special identification card, or driver's license record.

(Ord. No. 380, 8-4-2006)

Sec. 132-18. Provisions as cumulative.

The provisions of this Article are cumulative to existing law.

(Ord. No. 380, 8-4-2006)

Sec. 132-19. Severability.

The provisions of this Article 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.

(Ord. No. 380, 8-4-2006)