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TITLE 2

NOOKSACK TRIBAL RECORDS ACT

Title 2 - Nooksack Tribal Records Act
Amended by Res. No. 16-125, dated July 20, 2016

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**CHAPTER 1
GENERAL PROVISIONS**

2.01.010 Authority.

This Title is enacted pursuant to Art. VI, §§ 1(F), 1(H), and 1(J) of the Constitution and Bylaws of the Nooksack Indian Tribe of Washington.

2.01.020 Purpose.

The purpose of this Title is to establish procedures for retaining and disposing of Tribal records; to set forth criteria for disclosure of records while safeguarding individuals against invasions of personal privacy; and, to protect the political and legal status of the Nooksack Indian Tribe. Nothing in this Title shall be interpreted to prevent the lawful enforcement of other Tribal laws or to authorize the withholding of information from the Tribal Council.

2.01.030 Short Title.

This Title shall be known as the Nooksack Tribal Records Act.

2.01.040 Construction.

Disclosure provisions under this Title shall be narrowly construed and its provisions concerning exemptions from disclosure shall be liberally construed to promote the purposes outlined herein.

2.01.050 Definitions.

For the purpose of this Title, unless otherwise expressly provided, the following definitions shall apply:

- A. "Applicant" means a person completing a written request for a tribal record.
- B. "Council" means the Nooksack Indian Tribal Council.
- C. "Minor" means any person under the age of eighteen (18) years.
- D. "Tribe" means the Nooksack Indian Tribe.
- E. "Tribal member" or "member" means any living person who is an enrolled member of the Nooksack Indian Tribe.
- F. "Tribal record" means any writing, specifically including all books, papers, maps, photographs, machine-readable materials, electronic mail, or other documentary materials, regardless of physical form or characteristics, made or received by the governmental services of the Nooksack Indian Tribe in connection with the transaction of Tribal business, and preserved or appropriated for preservation by the entity as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the governmental services of the Nooksack Indian Tribe.
- G. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including,

but not limited to, letters, words, pictures, sounds, symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

- H. "Search" means all time spent looking for material that is responsive to a request, including a line-by-line or page-by-page identification of material within documents.
- I. "Duplication" means the process of making a copy of the document necessary to respond to a request.
- J. "Review" means the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld.

2.01.060 Disclaimer of Public Liability.

No arm of the Tribal government, Tribal official, or a Tribal employee shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release (or non-disclosure) of a Tribal record.

2.01.070 Administration of Title.

The Tribal General Manager is hereby delegated the responsibility to administer the provisions of this Title. The General Manager is hereby delegated all powers which are specifically provided for in this Title, or impliedly necessary to implement its provisions. Such powers specifically include authorizing the internal sharing of information when necessary for the benefit of the Tribe and its members and not otherwise in conflict with applicable law.

2.01.080 Administrative Action.

The General Manager shall promulgate regulations pursuant to this Title, formulate revisions of or amendments to this Title, and take other actions necessary for the administration of the provisions of this Title subject to the approval of the Tribal Council.

CHAPTER 2
MAINTENANCE OF TRIBAL RECORDS

2.02.010 Duty of Tribal Secretary.

In accordance with Article 1 § 3 of the Bylaws of the Nooksack Indian Tribe of Washington, the Tribal Secretary shall have the duty to keep an accurate record of all matters affecting the tribal records and accounts. Nothing herein shall be construed to alter or otherwise diminish the Secretary's duties under the Constitution.

2.02.020 Records Management.

All Tribal records shall be, and remain, the property of the Tribe. The records shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, in accordance with the provisions of this Title and the regulations, policies and procedures pursuant hereto.

Subject to other applicable federal and tribal law, the General Manager, after consultation with the Tribal Council, may adopt procedures concerning the following:

- A. the inspection, inventorying, cataloging, of all Tribal records;
- B. the maintenance and security of all Tribal records, including insuring against unauthorized removal or destruction which may include retention, transfer and disposition schedules; and
- C. the disclosure of records.

2.02.030 Transfer to Archives.

To the extent reasonably practicable, all Tribal records not required in the current operation of the office where they are made or kept, and all records of every department, agency, commission, committee, or any other activity of Tribal government service, which may be abolished or discontinued, shall be transferred to the Tribal archives so that the valuable historical records of the Tribe may be centralized and insured permanent preservation, subject only to approved retention and destruction schedules; provided that this section shall have no application to Tribal records approved for destruction under the subsequent provisions of this Title.

2.02.040 Destruction of Records.

An official Tribal record may only be destroyed under the following circumstances: (1) in accordance with an approved retention schedule; or (2) when the original, or the last remaining copy, of an official Tribal records has been copied or reproduced by any photographic or other process, which accurately reproduces or forms a durable medium for reproducing the original.

CHAPTER 3
DISCLOSURE OF TRIBAL RECORDS

2.03.010 Records Officer.

The General Manager may identify one or more persons to serve as records officer(s) whose responsibility is to serve as a point of contact for persons requesting disclosure of tribal records and to oversee the governmental services compliance with the public records disclosure requirements of this Title.

2.03.020 Records which may be Disclosed.

The Tribe may disclose the following record(s) upon appropriate request:

- A. when to an outside agency, any record or series of record(s) required in order to maintain compliance with federal law, a contract(s) entered into pursuant to federal law, or a contract(s) or agreement(s) entered into by Tribal Council;
- B. when to a party (or its representative) final opinion(s) made in the adjudication of cases;
- C. when to a Member, resolution(s), enactment(s) and statement(s) of Tribal policy and final action(s), which have been adopted by the Tribe unless the record clearly identifies that it is not subject to disclosure;
- D. when to a Member, administrative Tribal manual(s) that affect the Member;
- E. record(s) specifically authorized for disclosure pursuant to Tribal law;
- F. any other record(s) reasonably necessary to carry on the day-to-day functions of a department; and
- G. any other record(s) authorized by the Tribal Council or the General Manager for disclosure.

2.03.030 Exempt Records.

The following records shall be exempt from disclosure:

- A. record(s) related solely to internal rules and practices of the Tribe and Tribal divisions;
- B. record(s) concerning trade secrets of the Tribe, including active business documents, financial statements and bid packages, which could jeopardize the competitive position of the Tribe;
- C. record(s) that would be privileged at common law;
- D. record(s) of investigations compiled for law enforcement purposes, except to the extent that non-disclosure of such information would deprive a person of a fair trial;

- E. personnel, medical, personal, enrollment, and any other similar records, which would constitute a clearly unwarranted invasion of personal privacy;
- F. intertribal memos, internal records, letters or draft materials not yet final and not approved for release;
- G. record(s) disclosed to only those officers, employees and agents of the Tribe who have a need for the record in the performance of his or her duties;
- H. law enforcement records, the nondisclosure of which is essential to the effective law enforcement or for the protection of any person's right to privacy;
- I. records regarding minors, unless requested by a parent or legal guardian;
- J. records relevant to a controversy to which the Tribe is a party but which records would not be available to the opposing party under the rules of pretrial discovery for causes pending before a Tribal, state, or federal court;
- K. records specifically exempt from disclosure by Tribal law and/or
- L. records which the General Manager deems exempt from disclosure in order to safeguard and promote the political integrity, economic security, peace, safety, morals, and general welfare of the Tribe.

A person's right to personal privacy as used in this Title is invaded or violated only if disclosure of information about the person would be highly offensive to a reasonable person and disclosure of the material is not of legitimate concern to the public. The provisions of this Title dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this Title as express exemptions from the public's right to inspect, examine, or copy public records.

If the Records Officer deems that a record should be disclosed except for certain information contained within the record(s), which is otherwise exempt from disclosure, the Records Officer shall redact such exempt information to allow the disclosure of the remaining record.

2.03.040 Records Requests.

Records requests shall be made on an approved form, which shall include at a minimum: (1) name of the applicant; (2) mailing address; (3) telephone or message phone number; (4) email, if any; (5) date of request; and (6) a detailed description of the record(s) sought. Requests for records shall be directed to the Records Officer.

The General Manager may establish a reasonable fee for fulfilling records requests, including researching the availability of a record or providing copies of records, which shall not exceed the amount necessary to reimburse the Tribe for its actual costs directly incident to fulfilling such

requests. In addition to such copying fees, the Tribe may require an advance deposit if such records request is voluminous or may take substantial staff resources to fulfill.

When establishing such fees, the General Manager shall consider the following: (1) the salary rate of the employee(s) making the records search or conducting the records review for exempt information; and (2) the cost of reproduction of the record.

No Tribal facilities will be open to the public for use as a copying facility.

2.03.050 Prompt Response.

Upon receipt of a completed request, the Records Officer should review a request within thirty (30) calendar days to determine whether:

- A. the request may be granted and provide the requested documents to the applicant; or
- B. the request may be granted and notice of an internet address and link to a Tribal website to the specific records requested can be located, except in the case the applicant notifies the Tribe that the applicant cannot access the records through the internet, then the Tribe must provide copies of the record or allow the applicant to view copies using a Tribal computer; or
- C. the request should be denied in part, or in full, and provide the applicant notice of said decision and the specific reasons therefor with notice of the right to have said decision reviewed; or
- D. an acknowledgment that the Tribe has received the request and cannot furnish the record within the initial thirty (30) days and provide the applicant a reasonable estimate of the time the Tribe will require to respond to the request.

The Records Officer may base a response that additional time is necessary to review the request upon the need to clarify the applicant's request; to locate and assemble the information requested; to notify third persons or agencies affected by the request; or to determine whether any of the information requested is exempt, and that a denial should be made as to all or part of the request. In acknowledging receipt of a record request that is unclear, the Records Officer shall attempt to contact the applicant to clarify what information the applicant is seeking. If the applicant fails to clarify the request, the Records Officer need not respond to it.

2.03.060 Process for Reconsideration and Appeal.

- A. **Request for Reconsideration.** Any person whose application is denied may file a notice for reconsideration within thirty (30) calendar days as follows:
 - 1. The Request for Reconsideration shall be in writing, dated and signed by the aggrieved party; and

2. The Request for Reconsideration shall include a concise statement of relief requested and any new or previously unconsidered information that supports the relief; and
3. The Notice of Request for Reconsideration shall be given to the Tribal General Manager.
4. Within seven (7) calendar days following receipt of the Request for Reconsideration, the General Manager shall inform the applicant of the final determination in writing.

B. Appeal from Final Determination. Any person who is aggrieved by a final determination of the General Manager, pursuant to sub-section (A) above, may appeal the decision to the Tribal Council.

1. The aggrieved party shall file a written Notice of Appeal with the Tribal Council within thirty (30) calendar days of issuance of the General Manager's final determination and said appeal shall be added to the agenda of the next regular Tribal Council meeting; and
2. The aggrieved party shall attach to the written Notice of Appeal, copies of the original Request for Reconsideration and supporting documentation submitted for consideration to the General Manager.
3. Upon the filing of the Notice of Appeal, the Tribal General Manager shall provide any records submitted in the initial application or the Request for Reconsideration to the Tribal Council; and
4. The General Manager shall attend the Tribal Council meeting at which the appeal is to be heard.
5. The appeal shall be heard in a closed session of the Tribal Council meeting; and
6. The Tribal Council shall reverse a final determination of the Tribal General Manager only upon a finding that it was arbitrary, capricious, or an abuse of discretion.

**CHAPTER 4
MISCELLANEOUS**

2.04.010 Effective Date.

This Title shall be effective from the date of its approval by the Tribal Council.

2.04.020 Amendments.

The Council may amend this Title by a majority vote of a quorum at duly called meeting.

2.04.030 Severability and Savings Clause.

If any provision of this Title, or its application to any party, is held invalid, that provision shall be stricken and severed from the remainder of this Title and the remainder of the Title shall be unaffected.

2.04.040 Sovereign Immunity.

This Title does not, and shall not be construed to, waive the sovereign immunity of the Nooksack Indian Tribe or its officers or employees, except as specifically stated herein. Nothing herein shall be deemed a waiver of the Tribe's sovereign immunity to permit in any manner whatsoever, the payment of monetary damages or attorney's fees relating to claims arising from any claim identified herein, or create any private right of action except as stated herein.