

**BILL NUMBER NCA 20-017**

**TO BE INTRODUCED INTO THE MUSCOGEE (CREEK) NATIONAL COUNCIL**

**March 9, 2020**  
**(DATE OF INTRODUCTION)**

**INTRODUCED BY: Mark Randolph**

**SPONSOR(S): Mark Randolph**

**COMMITTEE ON: Business, Finance & Justice**

**CLASSIFICATION: 37-Tribal Government**

1 **A LAW OF THE MUSCOGEE (CREEK) NATION CREATING A NEW CHAPTER 9,**  
2 **ENTITLED “FREEDOM OF INFORMATION ACT” IN MCNCA TITLE 37 “TRIBAL**  
3 **GOVERNMENT”**

4  
5 **Be it enacted by the National Council of the Muscogee (Creek) Nation:**

6  
7 **SECTION ONE. Findings. The National Council finds that:**

8  
9 A. The Muscogee (Creek) Nation believes in the importance of having an  
10 informed citizenry and finds that it is vital that Muscogee (Creek) citizens be entitled to  
11 information pertaining to the affairs of its government.

12  
13 B. There is a need to establish law regarding citizens’ access to the Nation’s  
14 public records in order to present guidelines governing the disclosure of governmental  
15 information.

16  
17 **SECTION TWO. NEW LAW.** The following new law shall be codified in Title 37 of  
18 the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of  
19 codification of said new law and its inclusion in pocket parts for the Code of Laws of the  
20 Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve  
21 any changes related to the manner in which sections, articles, chapters and sub-  
22 chapters are designated in this law in order to be consistent with the format in the Code  
23 of Laws published in 2010 by West Publishing Company; (2) to include footnoted  
24 references to the legislative history in said pocket parts to the Code of Laws; and (3) to  
25 note in said pocket parts any editorial correction of minor clerical or grammatical errors  
26 in the following new law:

27  
28 **TITLE 37. TRIBAL GOVERNMENT**

29  
30 **CHAPTER 9. FREEDOM OF INFORMATION ACT**

31

1 **§ 9-101. Short title and codification**

2  
3 This Act shall be known and may be cited as the Muscogee (Creek) Nation Freedom of  
4 Information Act (“FOIA”) and shall be codified as Chapter 9 in Title 37, “Tribal  
5 Government” of the Muscogee (Creek) Nation Code Annotated.  
6

7 **§ 9-102. Purpose**

8  
9 The purpose of the Chapter is to ensure equal access to public records by Muscogee  
10 (Creek) citizens.  
11

12 **§ 9-103. Definitions**

13  
14 A. “Business day” means regular working day of the Nation when the  
15 Nation’s offices and departments are open for regular operating hours and does not  
16 include weekends or holidays recognized by the Nation.  
17

18 B. “Citizen” means an enrolled member of the Muscogee (Creek) Nation that  
19 has obtained a Muscogee (Creek) Nation citizenship card.  
20

21 C. “Confidential” means information or documents that may be subject to an  
22 evidentiary privilege or whose unauthorized disclosure is prejudicial to the interest of the  
23 Nation or of a personal nature.  
24

25 D. “Court” means the District Trial Court of the Muscogee (Creek) Nation.  
26

27 D. “Nation” means Muscogee (Creek) Nation.  
28

29 E. “Non-citizen” means any non-Native American or non-Muscogee (Creek)  
30 Nation citizen.  
31

32 F. “Protected records” means any record or part of any record containing  
33 data that is confidential and/or proprietary or otherwise protected by this Act.  
34

35 G. “Public body” means any administrative, advisory, executive, judicial or  
36 legislative office or body of the Muscogee (Creek) Nation, including without limitation, all  
37 agencies, independent agencies, boards, chartered communities, commissions,  
38 committees, special or advisory committees, corporations, departments, divisions,  
39 enterprises, entities and organizations.  
40

41 H. “Public employee” means all officials and employees of the Muscogee  
42 (Creek) Nation public bodies.  
43

44 I. “Public record” means any record that is not confidential, proprietary or  
45 otherwise protected and that is not exempt from disclosure as provided in this Act.  
46

1 J. "Record" means any material on which written, drawn, printed, spoken,  
2 visual or electromagnetic information is recorded or preserved, regardless of physical  
3 form or characteristics, which has been created or is being kept by public body.  
4 "Record" includes, but is not limited to, handwritten, typed or printed pages, maps,  
5 charts, photographs, films, recordings, tapes (including computer tapes), computer  
6 printouts and optical discs. "Record" does not include drafts; materials which are purely  
7 personal property of public employees and have no relation to his or her office;  
8 computer programs that are developed or purchased by or for any public body for its  
9 own use; notes or internal memoranda prepared as part of the deliberative process by a  
10 member of the judiciary or any other body charged with quasi-judicial function; inter-  
11 office and intra-office electronic mail; text messages by mobile telecommunication  
12 devices; inter-branch document requests and responses; all mail and all electronic mail  
13 addresses used in surveys of members of the Muscogee (Creek) Nation; any materials  
14 to which access is limited by copyright, patent, contractual agreement or bequest; and  
15 published materials in the position of a public body other than a public library which are  
16 available for sale or which are available for inspection at a public library.

17  
18 **§ 9-104. Establishment of FOIA**

19  
20 It is the official policy of the Muscogee (Creek) Nation that all citizens shall have access  
21 to the public records of the Nation's departments and programs and other records,  
22 including, but not limited to, resolutions, ordinances, minutes, all transactions involving  
23 loans, description of tribal lands, the leasing and exchanging of tribal lands and records  
24 regarding any tribal contractor.

25  
26 **§ 9-105. Access to Public Records**

27  
28 A. Unless a public record is exempt from disclosure under § 9-107. of this  
29 chapter, a citizen or public employee has a right to inspect, copy or receive copies of a  
30 public record of a public body.

31  
32 B. Non-citizens, excluding public employees, shall not have access to public  
33 records except upon written permission of the Office of the Attorney General.

34  
35 **§ 9-106. Public Records**

36 A. The following records are public except to the extent that they contain  
37 information expressly permitted to be treated as protected as provided for in § 9-107.

- 38 1. The names, sex, race, title and dates of employment of all employees  
39 and officers of public bodies;  
40 2. Job titles, job descriptions and business addresses and telephone  
41 numbers;  
42 3. Administrative staff manuals and statements of policy and procedure  
43 that affect a member of the public;  
44 4. Laws;  
45 5. Bylaws and charters of any public body;

- 1 6. Final opinions, including concurring and dissenting opinions, and  
2 orders that are made by a government body in an administrative,  
3 adjudicative or judicial proceeding except that if the proceedings were  
4 properly closed to the public, the opinion may be withheld to the extent  
5 that they contain information that is protected;
- 6 7. Final interpretations of statutes or rules by a public body;
- 7 8. Written planning policies and goals and final planning decisions;
- 8 9. Information in or taken from any account, voucher or contract dealing  
9 with the receipt or expenditure of public or other funds by public  
10 bodies;
- 11 10. Minutes of proceedings of public bodies and the votes in the  
12 proceedings, excluding executive sessions;
- 13 11. All audio recordings of public meetings or public portions of meetings;
- 14 12. Reports which disclose the nature, substance and location of any  
15 emergency or crime or alleged crime reported to a law enforcement or  
16 public safety agency; provided however, that where a report contains  
17 information that is not a public record or is exempt from disclosure, the  
18 law enforcement or public agency may delete that information from the  
19 report;
- 20 13. Judicial records unless the Court orders the record to be restricted or  
21 unless the records are protected by this chapter;
- 22 14. Arrest warrants after issuance, except that, for good cause, a court  
23 may order restricted access to arrest warrants prior to service;
- 24 15. Search warrants after execution and filing of the return, except that,  
25 for good cause, a court may order restricted access to search  
26 warrants prior to trial;
- 27 16. Correspondence by and with a public body in which the public body  
28 determines or states an opinion upon the rights of the Nation, the  
29 public or any person except that which constitutes an attorney-client  
30 privilege with a public body;
- 31 17. Records filed with or maintained by public bodies that evidence  
32 incorporations, corporation or business entity names or name changes  
33 and uniform commercial code filings;
- 34 18. Documentation of the compensation that a nonbusiness public body  
35 pays or has paid to a contractor or private provider;
- 36 19. Information received in response to an invitation for bids or request for  
37 proposals after a contract is awarded if the contract is a  
38 nonconstruction contract, except that proprietary information may be  
39 redacted;
- 40 20. Information received in response to an invitation for bids or request for  
41 proposals after bids have been opened and before a contract is  
42 completed if the contract is a construction contract, except that  
43 proprietary information may be redacted;
- 44 21. Records documenting a contractor's or private provider's compliance  
45 with the terms of a construction contract or original bid requirements of  
46 a construction contract with the public body;

- 1 22. Records documenting a contractor's or provider's compliance with the  
2 terms of a nonconstruction contract or original bid requirements of a  
3 nonconstruction contract with the public body except:  
4  
5 a. Confidential and/or proprietary information in attorney contracts or  
6 billing statements;  
7 b. Professional service contracts where descriptions of service  
8 contain confidential information, then only the general terms of the  
9 contract are public and the protected sections must be segregated;  
10  
11 23. Contracts, excluding personal addresses, social security numbers and  
12 employer identification numbers, entered into by a nonbusiness public  
13 body subject to the provisions of the section;  
14 24. Any voucher, contract or account information, except account  
15 numbers, that deal with the receipt or expenditure of funds by a  
16 nonbusiness public body;  
17 25. Data on an individual that would otherwise be protected under this  
18 chapter if the individual who is the subject of the record has been  
19 given the public body signed and notarized written permission to make  
20 the records available to the public;  
21 26. Final audits of a public body;

22 **§ 9-107. Protected Records**

- 23 A. A public body may exempt from disclosure the following information:  
24 1. Records dealing with internal matters of a relatively trivial nature for  
25 which there is no legitimate public interest or benefit. This exemption  
26 is applicable when it would impose an administrative burden on the  
27 public body to process the request; Examples may include:  
28  
29 a. Leave slips, time records and attendance sheets;  
30 b. Messages on voice mail or other telephone message storage and  
31 retrieval systems;  
32 c. Electronic (email) messages; and  
33 d. Calendars and schedules;  
34  
35 2. Information or records specifically protected from disclosure by the  
36 Nation's law or applicable federal law including common law privileges  
37 of confidentiality. This includes but is not limited to records protected  
38 by the Health Insurance Portability and Accountability Act ("HIPPA"),  
39 the HIPPA Security Rule, provisions in MCNCA Title 6. Children and  
40 Family Relations, Title 7. Citizenship, Title 16. Executive Branch, Title  
41 18. Education, Title 20. Elderly Services, Title 21. Gaming, Title 22.  
42 Health and Safety, Title 26. Judicial Branch/Courts, Title 27. Judicial  
43 Procedures and Title 31. Tribal Officers and others;

- 1 3. Information of a personal nature, including without limitation  
2 enrollment number, social security number, personal address,  
3 personal telephone number and employment, education, housing  
4 assistance, Human Services programs and medical records if  
5 disclosure of the information would constitute an unwarranted invasion  
6 of an individual's privacy. However, all citizens and public employees  
7 shall have access to their personnel records maintained by the Nation  
8 or department or program thereof upon written request;
- 9 4. Items which the Cultural Center Archives and Historic and Cultural  
10 Preservation Departments and Council House determine are too  
11 fragile to be handled or copied;
- 12 5. Information that would reveal the location of archeological or culturally  
13 significant sites;
- 14 6. Records of a public body's security measures, including security  
15 plans, security codes and combinations, passwords, passes, keys and  
16 security procedures, to the extent that the records relate to the  
17 ongoing security of a public body;
- 18 7. Computer software or other documents subject to copyright protection;
- 19 8. Confidential and proprietary information collected by a public body in  
20 the performance of its investigative or regulatory functions;
- 21 9. Trade secrets, which are defined as unpatented, secret, commercially  
22 valuable plans, appliances, formulas or processes, which are used for  
23 the making, preparing, compounding, treating or processing of articles  
24 or materials which are trade commodities which are generally  
25 recognized as confidential, and work products, in whole or in part  
26 collected or produced for sale or resale, and paid subscriber  
27 information. Trade secrets also include, for those public bodies who  
28 market services or products in competition with others, feasibility,  
29 planning and marketing studies and evaluation and other materials  
30 which contain references to potential customers, competitive  
31 information or evaluation;
- 32 10. Proposals and bids for any contract or agreement, including  
33 information which if it were disclosed would frustrate procurement or  
34 give an advantage to any person proposing to enter into a contract or  
35 agreement with the Nation, until an award or final selection is made  
36 and after deletion of portions which are exempt from disclosure under  
37 this act. Information prepared by or for the public body in preparation  
38 of a bid solicitation shall be exempt until an award or final selection is  
39 made;
- 40 11. A record of a public body or its fiduciary agents that discloses  
41 deliberations about, or a tentative or final decision on, investments or  
42 other financial matters is exempt from the disclosure requirements of  
43 this section, to the extent and so long as disclosure would jeopardize  
44 the ability to implement an investment or financial decision, or to  
45 execute the program or plan to achieve investment, financial, plan or  
46 program objectives;

- 1 12. Memoranda, correspondence, documents and working papers relative  
2 to efforts or activities of a public body to attract business or industry to  
3 invest within the Nation;
- 4 13. Records of a public body's audit agency regarding an ongoing or  
5 planned audit until the final audit is released;
- 6 14. Documents of, and documents incidental to, a proposed RFP, bid,  
7 contractual arrangement or proposed sale or purchase of real  
8 property; however:  
9
  - 10 a. These documents are not exempt from disclosure once a contract  
11 is entered into or the property is sold or purchased except as  
12 otherwise provided in this section;
  - 13 b. A contract for the sale or purchase of real property shall remain  
14 exempt from disclosure until the deed is executed, by this  
15 exemption applies only to those contracts for sale or purchase  
16 where the execution of the deed occurs within twenty-four (24)  
17 months from the date of the sale or purchase;
  - 18 c. Confidential proprietary information provided to a public body for  
19 economic development or contract negotiation purposes is not  
20 required to be disclosed;
- 21
- 22 15. Information that is part of negotiations in a proposed land purchase by  
23 the Nation until that land purchase is completed;
- 24 16. Contracts or other agreements which specifically prohibit disclosure of  
25 the content of the agreement to third parties;
- 26 17. Records to which access is restricted pursuant to court rule or as a  
27 condition of participation in a state or federal program or for receiving  
28 state or federal funds;
- 29 18. Records from a public body's executive session or other non-public  
30 meeting;
- 31 19. Inter-office communications relating to proposals or matters which  
32 have not been introduced for consideration in a public meeting. This  
33 includes:  
34
  - 35 a. Inter-office memorandums, personal notes, drafts, communications  
36 with staff and other records which relate to ongoing matters or  
37 works in progress currently being performed;
  - 38 b. Records relating to the subject of an ongoing investigation; or
  - 39 c. Records relating to proposals which did not result in legislation;
- 40
- 41 20. The identity, information tending to reveal the identity, of any individual  
42 who in good faith makes a complaint or otherwise discloses  
43 information, which alleges a violation or potential violation of law or  
44 regulation by a public body; provided, however, that if the complaint or  
45 information is used in a prosecution in a judicial or quasi-judicial  
46 proceeding, this subsection shall not preclude the defendant's due

- 1 process rights to confront and examine the complainant and  
2 witnesses;
- 3 21. Investigating records compiled for law enforcement purposes, but only  
4 to the extent that disclosure as a public record would do any of the  
5 following:  
6  
7 a. Interfere with law enforcement proceedings;  
8 b. Deprive a person on the right to a fair trial or impartial  
9 administrative adjudication;  
10 c. Constitute an unwarranted invasion of personal privacy;  
11 d. Disclose the identity of a confidential source, or if the record is  
12 compiled by a law enforcement agency in the course of a criminal  
13 investigation, disclose confidential information furnished only by a  
14 confidential source;  
15 e. Disclose law enforcement investigative techniques or procedures;  
16 or  
17 f. Endanger the life or physical safety of law enforcement personnel;  
18
- 19 22. Privileged attorney-client information or attorney work product. This  
20 privilege may be waived by the client who created the attorney-client  
21 relationship, and if a waiver of the privilege is made, the records shall  
22 be made public;
- 23 23. Records that would be within the scope of a privilege against  
24 discovery or use as evidence recognized by the Nation's Court in civil,  
25 criminal and family trials if the records or inspection thereof were  
26 sought in the course of a court proceeding;
- 27 24. Drafts or prior versions of a final record. Only public records in their  
28 final form are available for disclosure under the provisions of this  
29 chapter;
- 30 25. Information and records that disclose an account number used for  
31 payment or collection of money;
- 32 26. Tax information of a public body except as determined by the Attorney  
33 General;
- 34 27. Financial records of the Nation's casinos; and
- 35 28. If any public record contains material which is not exempt under this  
36 section the public body shall separate or redact the exempt and  
37 nonexempt material and make the nonexempt material available in  
38 accordance with the requirements of this chapter.

39 **§ 9-108. Procedures for requesting public records**

- 40 A. Citizens requesting public records from a public body shall either:  
41  
42 1. Provide a written request, which must include the date, name, address,  
43 telephone number and signature of requesting citizen, and copy of  
44 citizenship card; or



- 1                   2. Complete form provided by public body with all required information  
2                   and submit a copy of citizenship card.

3                   B. A request may be made by facsimile, email or other electronic  
4 transmission and a response may be made through the same electronic medium.  
5

6                   C. The public body may establish and collect fees not to exceed the actual  
7 cost of searching for and/or making copies of public records. Fees charged by a public  
8 body must be uniform for copies of the same records or document. However, members  
9 of the National Council shall receive copies of records or documents at no charge from  
10 public bodies when their requests pertain to their legislative duties.  
11

- 12                   1. Records shall be furnished at the lowest possible cost to the person  
13 requesting the records while ensuring that the requestor pays for the  
14 searching and copying of the record and to not have the public body  
15 bear the cost of searching and copying.  
16                   2. When appropriate, records may be furnished without charge or at a  
17 reduced charge if the public body determines the waiver or reduction  
18 of the fee is in the public interest because furnishing the information  
19 can be considered as primarily benefiting the general public.  
20                   3. Fees may not be charged for examination and review to determine if  
21 the documents are subject to disclosure.  
22                   4. Nothing in this sub-section prevents a public body from charging a  
23 reasonable hourly rate for making records available to the public or  
24 from requiring a reasonable deposit of these costs before searching  
25 for or making copies of the records.  
26

27                   D. Upon the receipt of a written request for access to records, the public body  
28 shall respond to the request within twenty (20) business days by doing the following:  
29

- 30                   1. Granting the request in accordance with that public body's policies  
31 and procedures;  
32                   2. Issuing a written notice denying the request and listing the specific  
33 reason(s) for the denial and a statement that the requester has the  
34 right to file a petition in the Nation's Court for an order releasing the  
35 record within ninety (90) days from the date of the request denial;  
36                   3. Granting the request for access in part and issuing a written notice  
37 denying request in part and listing specific reason(s) for the partial  
38 denial, including any decision to redact portions of the record sought  
39 and a statement that the requester has the right to file a petition in the  
40 Court for an order releasing the record within ninety (90) days from the  
41 date of the request denial;  
42                   4. Notifying the requester in writing that it does not maintain the record  
43 and providing, if known, the name and address of the public body that  
44 maintains the record;  
45                   5. Issuing a notice extending, for not more than twenty (20) business  
46 days, the period during which the public body shall respond to the

1 request. The public body shall not issue more than one extension per  
2 request;

- 3 6. Returning the written request due to request being incomplete, along  
4 with a letter of explanation regarding what information is incomplete  
5 and what information is required to process the request; or
- 6 7. Failure to timely respond with one of the responses under this  
7 subsection shall be deemed to be a denial of the request.

8  
9 E. A public body is not required to create a record in response to a request.  
10 However, upon request, a public body shall provide a record in a particular format if the  
11 public body is able to do so without unreasonably interfering with the public body's  
12 duties and responsibilities.

13  
14 F. Nothing in this subsection requires a public body to fulfill a person's  
15 request if the request exceeds two prior requests for the same records from that person.

16  
17 G. Each public body shall keep a copy of written request for public records on  
18 file for no less than one (1) year.

19  
20 **§ 9-109. Independent Information Officer**

21  
22 A. The Attorney General shall either employ or designate an employee within  
23 the Office of the Attorney General as an Information Officer who will be responsible for  
24 facilitating, gathering, tracking and responding to FOIA requests pursuant to the  
25 requirements herein. The Information Officer shall also serve as a liaison to citizens  
26 seeking information and all other related duties, as assigned. The Information Officer  
27 will be independent in his/her duties and will be free of political or undue influence and  
28 shall be terminated only for cause.

29  
30 B. No part of the section shall be construed such that the Information Officer  
31 is responsible for fulfilling FOIA requests, as each public body shall designate an  
32 employee or employees to fulfill said requests. It shall be incumbent upon the public  
33 body to which the request is addressed to fulfill the requirements of the request.

34  
35 C. The Information Officer shall:

- 36 1. promulgate a standardized form for requesting public records, which  
37 shall be available in every public office of the Nation;
- 38 2. publish and disseminate, by any means, digital and printed materials in  
39 order to educate public bodies and the public about the FOIA and its  
40 compliance requirements; and
- 41 3. deliver monthly reports to the National Council regarding the number  
42 of FOIA requests and other statistical information.

43  
44 **§ 9-110. Denial of record request**

1 Any citizen receiving a notice of denial of a record request may challenge the denial by  
2 making a claim for record access in Court within ninety (90) days from the denial date.

3 **§ 9-111. Claims in the Court**

4  
5 A. The Claimant shall follow the Tribal Court Proceedings of the Court for  
6 filing a claim.

7  
8 B. The Court, upon de novo review and without a jury, shall determine  
9 whether a public record is exempt from disclosure. Only the Court has jurisdiction for  
10 such determination.

11  
12 C. The Court, on its own motion, may view the public record in controversy in  
13 private before reaching decision.

14  
15 D. If the Court determines that decision to deny disclosure in whole or part  
16 was clearly erroneous, arbitrary or capricious, the Court shall order disclosure of the  
17 public record only to the extent the Court determines the public record to be not exempt.

18  
19 E. An action commenced under this section shall be assigned for hearing  
20 and trial or for argument at the earliest practicable date and expedited in every way.

21  
22 F. If a citizen asserting the right to inspect, copy or receive a copy of all or a  
23 portion of a public record prevails, in whole or part, in an action commenced under the  
24 this section, the Court may determine an award of an appropriate portion of attorney  
25 fees not to exceed actual expenses.

26  
27 **§ 9-112. Civil Penalties**

28  
29 A. A public employee who has lawful access to any protected record under  
30 this Act, who intentionally discloses or provides a copy of a protected record to any  
31 other person not entitled to lawful access is subject to civil penalties of not less than  
32 One Thousand Dollars (\$1,000.00) or more than Five Thousand Dollars (\$5,000.00).

33  
34 B. A public employee who has lawful access to any public or protected  
35 record under this Act, who intentionally destroys a record or intentionally causes a  
36 record to be lost without authorization in accordance with the retention policy of the  
37 public body is subject to civil penalties of not less than One Thousand Dollars  
38 (\$1,000.00) or more than Five Thousand Dollars (\$5,000.00).

39  
40 C. It is a defense to a civil action under subsection A. of this section that the  
41 public employee released protected information in the reasonable belief that the  
42 disclosure of the information was necessary to expose a violation of law involving  
43 government corruption, abuse of office or misappropriation of public funds or property.

44  
45 D. A public employee who by false pretenses, bribery or theft gains access to  
46 or obtains a copy of any protected record to which he or she is not legally entitled to is

1 subject to civil penalties of not less than One Thousand Dollars (\$1,000.00) or more  
2 than Five Thousand Dollars (\$5,000.00). No public employee or person shall be subject  
3 to civil penalties who received the record, information or copy after the fact and without  
4 prior knowledge or participation in the false pretenses, bribery or theft of the record.  
5

6 E. Any public employee who intentionally refuses to release a record  
7 knowing its disclosure is required by final order of the Court, or if appealed by the order  
8 of the Nation's Supreme Court, it is subject to civil penalties of not less than One  
9 Thousand Dollars (\$1,000.00) and not more than Five Thousand Dollars (\$5,000.00)  
10

11 F. Any public employee who fails to comply with the provisions of § 9-108. D.  
12 of this chapter shall be subject to a fine up to Fifty Dollars (\$50.00) per business day  
13 after the response or document delivery is due, and ending the day of the document(s)  
14 or response is delivered. It is a defense to a civil action under this subsection that failure  
15 to comply with § 9-108.D. was a direct result of written communication from a person  
16 serving in, or representing a position of supervisory or administrative authority over the  
17 public employee.  
18

19 G. Any elected or appointed official, or any exempt employee who orders or  
20 otherwise directs an employee of the Nation to violate the provisions of this Act shall be  
21 subject to a fine of up to One Hundred Dollars (\$100.00) per business day beginning the  
22 day after the response or document delivery is due, and ending the day the  
23 document(s) or response is delivered.  
24

25 H. It is prohibited, as misuse of public funds, for any person, public  
26 employee, elected official or appointed official to use the Nation's resources to pay  
27 fines, attorney fees, costs or expenses awarded by the Court against the person in their  
28 individual capacity, an employee in their capacity or an official in their individual capacity  
29 pursuant to this Act.  
30

### 31 **§ 9-113. Disclosure of protected records** 32

33 A. Upon request, protected records will be available for disclosure, as  
34 follows:  
35

- 36 1. Information shall be available for criminal and civil law enforcement for  
37 prosecution purposes, internal audit and as a result of court order for  
38 Congressional subpoena;
- 39 2. Information relating to an individual shall be available to the individual  
40 who is the subject of the record, or if the subject of the record is a  
41 minor, the information shall be available to the parent or legal  
42 guardian, or if the subject of the record is mentally incompetent, the  
43 information shall be available to the legal guardian subject to  
44 verification of any applicable court order;
- 45 3. Individual records may be released to third parties with written prior  
46 consent, by means of a notarized release of the individual who is

1 subject of the records, or his or her legal guardian if a minor or  
2 deemed mentally incompetent in a court of competent jurisdiction;

3 4. Individual records may be used for statistical and other purposes;  
4 provided that any information which could be used to identify specific  
5 individuals is removed or withheld;

6 5. Protected records may be disclosed to law enforcement agencies, an  
7 agency of the United States with authority over the subject matter, or if  
8 applicable, the State of Oklahoma or if authorized by agency rule, a  
9 regulatory agency of the Nation.

10  
11 B. Before releasing a protected record, the public body shall obtain evidence  
12 of the requester's identity by government-issued photo identification.

13  
14 C. Before releasing a protected record, the public body shall inform the  
15 requester that he or she is prohibited from disclosing or providing a copy of the  
16 protected record to any other person and shall obtain the requester's written  
17 acknowledgment of this prohibition.

18  
19 **§ 9-114. Privacy of driver's license information**

20  
21 A. A public body may not sell, provide or furnish to a member a person's  
22 height, weight, race, social security number, photograph or signature in any form that  
23 has been compiled for the purpose of issuing special identification cards or completing  
24 an application for specific program requirements.

25  
26 B. A person's height, weight, race, photograph, signature and digitized image  
27 contained in an application request or special identification card are not public records.

28  
29 C. Notwithstanding another provision of law, private person or private entity  
30 may not use an electronically-stored version of a person's photograph, social security  
31 number, height, weight, race or signature for any purpose, when the electronically-  
32 stored information was obtained from a program application, special identification card  
33 or driver's license record.

34  
35 **§ 9-115. Use of information for commercial solicitation prohibited**

36  
37 A public record and any information in a public record may not be used for commercial  
38 solicitation except as approved by the National Council by Tribal Resolution. Any  
39 person or entity who used public records or information therein for commercial  
40 solicitation without the National Council's approval, and any person who assists such  
41 person knowing of their intent to use the record information for commercial, may be  
42 fined in an amount not to exceed Five Thousand Dollars (\$5,000.00) per violation  
43 provided, however, this provision must not be interpreted to restrict access by members  
44 to information contained in public records.

45  
46 **§ 9-116. Record requests between public bodies**

1  
2 This Act shall not restrict or limit the exchange of the Nation's government documents  
3 by interbranch document request or department-to-department requests for information.  
4 Public record requests apply to requests made by the citizens as defined in this Act, but  
5 do not apply to the exchange of government documents between the public bodies.

6  
7 **SECTION THREE. RETENTION POLICY.** In the event a public body does not have a  
8 retention policy, that public body shall establish a retention policy within ninety (90) days  
9 of enactment of this law.

10  
11 **SECTION FOUR. EFFECTIVE DATE.** This Act shall become effective immediately  
12 upon proper approval and execution in accordance with the requirements of the  
13 Muscogee (Creek) Nation Constitution.

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