

**POKAGON BAND OF POTAWATOMI INDIANS
FREEDOM OF INFORMATION ACT**

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CHAPTER 1
Short Title; Authority; Purpose; Public Policy; Applicability; Severability; Definitions

1.01 Short Title.

This Act shall be known and may be cited as the “Pokagon Band Freedom of Information Act.”

1.02 Authority; Purpose; Public Policy.

- (a) The Tribal Council has the authority to adopt this Pokagon Band Freedom of Information Act (“Act”) pursuant to the powers vested in it by Article VII subsection 1(c) and Article IX subsection 2(a).
- (b) The purpose of this Act is to provide procedures for Band Members to gain access to Records regarding the actions and activities of the Pokagon Band.
- (c) It is the public policy of the Pokagon Band of Potawatomi Indians (“Band”) that all Band Members shall have the right to review any record of the Band, except when tribal or applicable federal law provides for confidentiality or limits access to Records contained therein.

1.03 Applicability.

This Act shall apply to all Records of the Band, including, committees, agencies, enterprises, and other instrumentalities of the Band. This Act does not apply to the Pokagon Band Tribal Court in accordance with the Pokagon Band Constitution.

1.04 Severability.

If any portion of this procedure is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed to be separate, distinct, and independent from the remaining portion of this procedure, which shall not be affected by the judicial decision and shall remain in effect.

1.05 Definitions.

“Reviewing Officer” means the position that determines whether the Department Head’s denial was valid. The Reviewing Officers are listed in subsection 3.02(b) of this Act.

“Band Member” means an enrolled member of the Pokagon Band of Potawatomi Indians or the legal guardian of a Band member if such Band member is a minor or an adult that has been declared legally incompetent by a court of competent jurisdiction.

“Department Head” means the position that receives the request for information under this Act. The Department Heads are listed in subsection 3.01(a) of this Act.

“Petitioner” means the Band Member that challenges the denial of a written request for Records or other information under this Act.

“Public” means Band Members as a group.

“Records” means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, including any electronic media and documents that were made, sent, or received in the course of conducting the governmental business of the Band.

CHAPTER 2

Right to Access; Exceptions; Laws.

2.01 Right to Access.

The Band, upon a written request from any Band Member that (i) reasonably describe the Records sought and (ii) is made in accordance with the requirements of this Act, shall promptly make available for inspection and copying all Band Records, except as provided in 2.02.

2.02 Exemptions.

The following Band Records and information shall be exempt from disclosure:

- (a) Information specifically protected from disclosure by federal or Tribal law, including common law privileges of confidentiality.
- (b) Information described under Art. VII Sec. 1 (e)(i), including personnel, medical, or housing files and other information that, if disclosed, would constitute a clear and unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the duties of employment with the Band shall not be considered an invasion of personal privacy.
- (c) Investigating Records compiled for law enforcement purposes, but only to the extent that disclosure would:
 - 1. Interfere with law enforcement proceedings.
 - 2. Deprive a person of the right to a fair trial.
 - 3. Constitute an unwarranted invasion of personal privacy.

4. 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.
 5. Disclose law enforcement investigative techniques or procedures.
 6. Endanger the life or physical safety of law enforcement personnel.
- (d) Trade secrets and commercial or financial information which, if released, would endanger the economic viability or competitive position of the tribal business.
 - (e) Ongoing negotiations and pending public bids to enter into contracts.
 - (f) The identity of any individual who in good faith makes a complaint or otherwise discloses information that alleges a violation or potential violation of law or regulation by the Band; provided, that if the complaint or information is used in a civil or criminal proceeding, this provision shall not diminish the defendant's due process rights to confront and examine the complainant and witnesses.
 - (g) Information that is part of negotiations in a proposed land purchase by the Band until that purchase is completed.
 - (h) Information that would reveal the location of archeological or culturally significant sites.
 - (i) Information that is submitted upon a promise of confidentiality by the Band.
 - (j) Information that is protected by attorney-client privilege or the attorney work-product doctrine.
 - (k) Information where non-disclosure would protect a significant public interest of the Band, in accordance with Art. VII Sec. 1 (e)(iv).

2.03 Laws of the Pokagon Band.

Laws governing the Pokagon Band and passed by the Tribal Council are not considered Records for purposes of access under this Act but are considered to be public Records that shall be accessible to Band Members. Persons that are not Band Members shall have access to Band laws unless access to a specific law is restricted by the Tribal Council and the lack of access would not adversely affect the rights or substantial interests of such persons.

CHAPTER 3

Request to Inspect or Receive Copy; Denial; Appeals.

3.01 Request to Inspect or Receive Copy of Requested Records.

- (a) Any Band Member that wishes to inspect or receive a copy of a record shall make a written request to the appropriate Department Head that reasonably describes the Records sought. The following positions are the Department Heads for the corresponding tribal entities as listed below:
1. Director of each tribal governmental department.
 2. Executive Director for the Pokagon Gaming Commission.
 3. Chair of each tribal commission, board, and committee.
 4. The President and Chief Executive Officer of the Pokagon Gaming Authority Board of Directors.
 5. Tribal Chairperson for the Tribal Council.
- (b) The request must state the date, name, address, and telephone number of the requesting Band Member, and must bear an original signature. The request may be handwritten and informal but must express the request with sufficient clarity to enable the Band to accurately identify the record sought.
- (c) Upon the receipt of a request from a Band Member for access to Records, the Department Head shall respond to the request within fifteen (15) calendar days by doing one of the following:
1. Granting the request.
 2. Issuing a written notice to the requesting person denying the request and listing the specific reason(s) for the denial.
 3. Granting the request in part and issuing a written notice to the requesting person denying the request in part and listing the specific reason(s) for the partial denial, including any decision to redact portions of the record sought.
 4. Issuing a notice extending for not more than ten (10) calendar days the period during which the Band shall respond to the request. The Band shall not issue more than one extension per request.
- (d) If the Department Head is part of a tribal entity that does not operate on a full-time basis, that Department Head shall not be considered to have notice of the request until the first regularly scheduled meeting of the entity following the date the request was filed.

- (e) Failure to respond with one of the responses under 3.01(c) in a timely manner shall be deemed to be a denial of the request.

3.02 Denial of All or Portion of Documents.

- (a) If a Department Head denies all or a portion of the documents requested, the Petitioner may file a written challenge with the Reviewing Officer.
- (b) Reviewing Officer. The following positions shall serve as the Reviewing Officer for the Band agencies listed below:
 - 1. The Tribal Operations Officer shall serve as Reviewing Officer for all tribal government departments, programs, and offices he or she oversees, including but not limited to, Education, Enrollment, Environment, Housing, Human Resources, Social Services, Resource Development, Information Technology, and Health Services.
 - 2. The Tribal Council Secretary shall serve as Reviewing Officer for the Office of General Counsel, Police Department, Finance Board, Pokagon Band Gaming Authority, Election Office, and all other commissions, boards, and committees.
 - 3. The Chairman of the Gaming Commission shall serve as Reviewing Officer for the Gaming Commission.
- (c) Within ten (10) calendar days of receiving the challenge, the Reviewing Officer shall issue a written decision that:
 - 1. reverses the initial denial and grants the request;
 - 2. reverses the initial denial, in part, and upholds the initial denial, in part, which may include redactions of information that is exempt from disclosure under Section 2.02; or
 - 3. upholds the initial denial.
- (d) Any decision by the Reviewing Officer issued under § 3.02(c)(2) or (3) shall include an explanation of the decision as supported by findings of fact and conclusions of law.
- (e) The Band shall have fifteen (15) calendar days from the date of the Reviewing Officer's written decision under § 3.02(c)(1) or (2) to fulfill the Band Member's request.

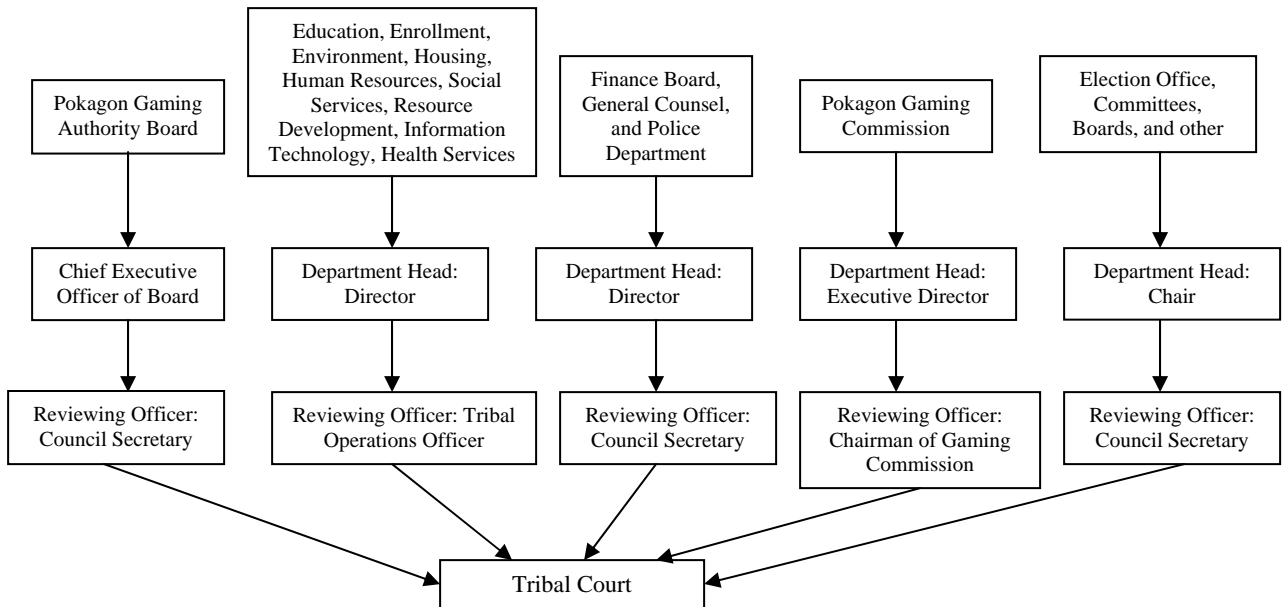
- (f) The Petitioner shall be served with a copy of the Reviewing Officer's decision by personal service or certified mail, return receipt requested, within five (5) business days of the date the decision is issued.

3.03 Right to Appeal Adverse Decisions.

- (a) Any Petitioner whose request under this Act is denied, in whole or in part, by the Reviewing Officer may file an action in Tribal Court challenging the decision of the Reviewing Officer.
- (b) An appeal authorized under this Act must be filed within thirty (30) calendar days from the date that the person entitled to bring the appeal receives notice of the decision.
- (c) Appeal Standards.
 - 1. If the Tribal Court concludes that the necessary findings of fact supporting the Reviewing Officer's decision are not supported by reasonable evidence or that the conclusions of law are incorrect, it shall so declare and return the matter to the Reviewing Officer for further consideration consistent with the decision of the Court.
 - 2. The Tribal Court shall, except for compelling reasons, limit its review to the administrative record.
 - 3. The Tribal Court shall give deference to the reasonable interpretation and application of this Act by the Department Head and Reviewing Officer.

3.04 Graph of Request Procedure.

Request for Records Procedure for the Following Tribal entities:



CHAPTER 4

Non-Band Member Requests; Access to Enrollment Records.

4.01 Non-Band Member Requests.

- (a) Non-Band Members may submit a written request for Records to the appropriate Department Head that reasonably describes the Records sought. The request should provide the name, address, and telephone number of the person requesting the information and shall include an original signature. The request must also identify the specific reason(s) for requesting the Records and shall indicate whether the request is in the interest of the non-Band Member public as determined by whether the principal purpose of the request is for personal or commercial benefit or to access and disseminate information regarding the health, safety, and welfare of the Non-Band Member public or other rights and interests of the Non-Band Member Public.
- (b) Upon the receipt of a request for access to Records the Department Head shall consult with the Tribal Operations Officer and respond to the request within fifteen (15) calendar days.
- (c) All decisions are final. Non-Band Members have no right of appeal.

4.02 Enrollment Records.

All non-Band Members shall be afforded a reasonable opportunity to review the Cadman Roll of 1895, the Shelby Roll of 1896, and the May 2, 1996 Base Roll of the Pokagon Band for the purpose of determining eligibility.

CHAPTER 5

Fees

5.01 Fees.

- (a) **Reimbursement.** The Band shall charge a fee to recoup the direct cost incurred in responding to a request when the cost of carrying out the request exceeds \$20. Each tribal agency shall charge a fee amount reasonably calculated to reimburse it for the actual cost of reproducing the Records, any mailing or shipping costs, and any other direct costs incurred in fulfilling the request.

- (b) **Waiver or Reduction.** If the Department Head or Reviewing Officer determines that fulfilling the request would be in the Public interest, the fee shall be waived or reduced in furtherance of the purposes of this Act. In determining whether the request is in the Public interest, the Department Head or Reviewing Officer shall consider whether the principal purpose of the request is to access and disseminate information regarding the health, safety, and welfare of the Public or other rights and interests of the Public and the principal purpose of the request is not for personal or commercial benefit.

- (c) The Band may require a good faith deposit, not to exceed 50% of the estimated cost, from the requesting person if the fee for the request exceeds \$50.

LEGISLATIVE HISTORY

Freedom of Information Act, enacted February 4, 2008 by Res. No. 08-02-04-03.