

TITLE 9 – EMPLOYMENT AND CONTRACTING

CHAPTER 9-2 TRIBAL EMPLOYEE RECORDS CONFIDENTIALITY

9-2-1 Policy

It is the policy of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians (Tribes) that all records relating to an individual when employed by the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians as a full-time, part-time or temporary employee shall be confidential and shall not be disclosed to any person, entity, or governmental agency without the consent of the employee involved, or unless specifically allowed by Tribal law.

9-2-2 Definitions

- (a) Employee as used in this Chapter, shall mean any person working for the Tribes in any capacity, including as a volunteer, whether full time, part time or temporary, and Tribal Council members.
- (b) Employment Records shall mean any writing, tape, copy or other memorialization of whatever kind or nature maintained, obtained or generated while an employee is working for the Tribes and that relates to the employment of the employee and which includes but is not limited to resumes, health records, warning notices, disciplinary actions, evaluations, recommendations, retirement records, garnishments, vacation and sick leave, hours, wages, withholding, earnings, dependents, marital status, employment applications, previous Tribal employment and terminations.
- (c) Custodian shall mean the employee's supervisor, Personnel, and Accounting (including Payroll) departments.
- (d) Tribes shall mean the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians hereafter Tribes.
- (e) Disclosure shall mean the intentional transmittal of any employment record or part thereof to any individual, entity or governmental entity, or the intentional leaving of any employment record or part thereof in such a manner of place that it is likely to be obtained by an individual, entity or governmental agency.
- (f) Gender (singular or plural). Reference to persons by terms denoting one sex shall be taken as referring to either sex. Reference to persons is a term denoting the singular shall include the plural.

9-2-3 Duty Not to Disclose

No employee of the Tribes shall disclose any employment record relating to a present or past employee of the Tribes without the prior written consent of the employee to whom the record applies or unless otherwise allowed under this Chapter.

9-2-4 Exception to the Rule Against Disclosure

It shall be lawful for an employee of the Tribes to disclose an employment record to the following:

- (a) A custodian as defined herein;
- (b) The Tribal Administrator when necessary for the Tribal Administrator to carry out his responsibilities including but not limited to the duty of supervisor, discipline, investigations of alleged violations, grievance matters and financial and grant accountability;
- (c) The Tribal Police, once established, when in conjunction with an ongoing investigation and the holder of an employment record is served with a subpoena signed by the Tribal Court Judge requiring the transmittal of the employment record. In cases where the Tribal Police believe that public filing of a request for a subpoena would compromise an ongoing investigation, the Tribal Police may request that the Tribal Court consider the requested subpoena in camera, without a public filing;
- (d) Any other individual, entity or governmental agency when the disclosure is allowed by an order of the Tribal Court;
- (e) The United States when required by the Internal Revenue Code, the specific requirements of a grant or grant application, or other specific federal law made applicable to Indian tribes; or
- (f) The Tribal Attorney when acting to advise the Tribal Administrator or any department head or supervisor.

9-2-5 Duty to Notify

(a) Except as provided in subsection (b) of this section, any time that disclosure is made pursuant to section 9-2-4, the person making the disclosure shall within five (5) working days notify the employee whose records were disclosed of the disclosure, identify the person to whom the disclosure was made and the justification for the disclosure.

(b) The notification requirement set out in subsection (a) of this section shall not apply to certain disclosures made in the regular course of business in order to facilitate the preparation of payroll, the computation of employee benefits, or routinely required by the Internal Revenue Service.

9-2-6 Penalties

(a) The knowing and intentional disclosure of any employment record in violation of this Chapter by an employee other than a Tribal Council person shall be considered a serious offense subjecting the offending employee to the sanctions set out in the Tribes Personnel Manual.

(b) The knowing and intentional disclosure of any employment record by a member of the Tribal Council shall be deemed to be a violation of the Tribal Council (CODE OF PROFESSIONAL RESPONSIBILITY) and gross misconduct under (SECTION ** OF ARTICLE ** OF THE TRIBES CONSTITUTION) and shall subject the offending Tribal Council person to the sanctions and procedures set out in the (CODE OF PROFESSIONAL RESPONSIBILITY).

9-2-7 Grievance Procedure

(a) Any current or past employee of the Tribes who believes that employment records relating to him or her were disclosed in violation of the Chapter may request that the Tribal Administrator investigate the allegation of improper disclosure. At the close of the investigation, the Tribal Administrator shall report in writing to the employee, or former employee, any conclusion with respect to the alleged improper disclosure and what action, if any, is to be taken. Provided that when the alleged improper disclosure is against the Tribal Administrator, the Tribal Attorney shall undertake this investigation.

(b) There shall be no appeal from the decision of the Tribal Administrator or the Tribal Attorney, as the case may be. Provided that nothing herein shall affect whatever legal or equitable rights might be available under Tribal law, if any, to the person who alleges the improper disclosure.

(c) The procedures set out in this section shall not apply to allegations of improper disclosure by Tribal Councilpersons. Such allegations shall be referred for investigation to the (COUNCIL ETHICS COMMITTEE) to be resolved pursuant to the (COUNCIL CODE OF PROFESSIONAL RESPONSIBILITY).

9-2-8 Required Disclosure

(a) When not otherwise allowed under section 9-2-4 of this Chapter, an employee may be required to disclose employment records in conjunction with a grievance or disciplinary action filed by or against an employee, new employment at the Tribes, or promotion.

(b) To the extent that an employee fails to consent to the disclosure of employment records, the Tribes may deny the grievance, affirm the disciplinary action, or refuse to hire, promote or transfer the employee. Provided that the employee shall retain all rights otherwise available, if any, to challenge the action of the Tribes under Tribal law, and may there prove by clear and convincing evidence that the required disclosure was not reasonably related to the action then being considered by the Tribes.

9-2-9 Sovereign Immunity

Nothing in this Chapter shall waive the sovereign immunity of the Tribes or the immunity of any employee, agent, attorney or councilperson from suit or the imposition of any judgment. Provided that to the extent any separate Tribal law has, or may in the future waive the sovereign immunity of the Tribes or any of its employee, agents or attorneys, nothing in this section shall modify or limit any waiver found in such separate Tribal law.

APPENDIX A
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

TRIBAL EMPLOYEE RECORDS CONFIDENTIALITY

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians enacted the "Tribal Employee Records Confidentiality" Code, Resolution No. 02-013, Ordinance No. 040, in a regular Tribal Council meeting on January 13, 2002. Vote was 7 (for), 0 (against) and 0 (abstaining).