

RESOLUTION OF THE
NAVAJO NATION COUNCILAdopting the Navajo Nation Privacy and Access to Information Act

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A) and (B), the Navajo Nation Council is the governing body of the Navajo Nation and all powers not delegated are reserved to the Navajo Nation Council; and
2. Pursuant to 2 N.N.C. §341, the Government Services Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council with the authority to monitor and coordinate the activities of all divisions and departments of the Executive Branch. In addition, pursuant to 2 N.N.C. §343 (B)(5), the Committee is authorized to recommend legislation to the Navajo Nation Council on matters within the Committee's jurisdiction; and
3. The Government Services Committee of the Navajo Nation Council, by Resolution GSCAP-27-99, attached hereto and incorporated herein as Exhibit "B", has recommended that the Navajo Nation Council adopt the Navajo Nation Privacy and Access to Information Act, set forth at 2 N.N.C. Subchapter 4, §§81-91; and
4. Pursuant to 2 N.N.C. §571, the Judiciary Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council with oversight responsibilities for the operation of the Judicial Branch. In addition, pursuant to 2 N.N.C. §574 (E)(2), the Committee is authorized to review legislation and make recommendations regarding any proposed or current laws, procedures and regulations affecting or creating any impact on the Judicial Branch; and
5. The Judiciary Committee of the Navajo Nation Council, by Resolution JCAP-4-99, attached hereto and incorporated herein as Exhibit "C", has recommended that the Navajo Nation Council adopt the Navajo Nation Privacy and Access to Information Act, set forth at 2 N.N.C. Subchapter 4, §§81-91; and
6. The Navajo Nation Council recognizes that a democratic form of government requires that information related to government operations be accessible to the public, while respecting individuals right to privacy. As such, a generally applicable Navajo Nation Privacy and Access to Information Act is necessary to provide the general public with a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.

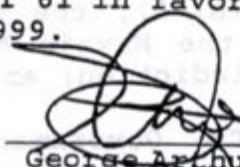
NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Nation Council hereby amends Title 2 of the Navajo Nation Code by adopting the Navajo Nation Privacy and Access to Information Act, as provided in Exhibit "A", attached hereto and incorporated herein.

2. The amendments contained in this resolution shall become effective upon the certification of this resolution by the Speaker of the Navajo Nation Council.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 61 in favor, 0 opposed and 0 abstained, this 23rd day of April 1999.


George Arthur, Speaker Pro Tem
Navajo Nation Council

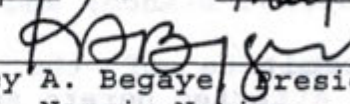
APR 26 1999

Date Signed


Motion: Ralph Bennett
Second: Nelson Gorman, Jr.

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby give notice that I will not veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this 4th day of May 1999.


Kelsey A. Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), this ___ day of _____, 1998 for the reason(s) expressed in the attached letter to the Speaker.


Kelsey A. Begaye, President
Navajo Nation

Title 2. Navajo Nation Government
Chapter 1. Establishment

Subchapter 4. Privacy and Access to Information

§ 81. Short Title

This Act shall be referred to as the "Navajo Nation Privacy Act."

§ 82. Declaration of Public Policy

The Navajo Nation Council finds and declares it the policy of the Navajo Nation that a democratic form of government requires that information related to government operations be accessible to the public, while recognizing that individuals have a right to privacy. It is the intent of the law that the general public be provided a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.

§ 83. Definitions

As used in this subchapter:

A. "Governmental entity" means any administrative, advisory, executive, judicial or legislative office or body of the Navajo Nation or its political subdivisions, including without limitation all commissions, corporations, and other instrumentalities whose boards of directors are appointed or elected by the Navajo Nation or its political subdivisions. Governmental entity includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the Navajo Nation to carry out the public's business.

B. "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

C. "Protected record" means any record containing data on persons or governmental entities that is private or otherwise protected as provided by 2 N.N.C. § 85.

D. "Public record" means any record that is not private or otherwise protected and that is not exempt from disclosure as provided in 2 N.N.C. § 84.

E. "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics which are prepared, owned, received, or retained by a governmental entity and where all of the information in the original is reproducible by photocopy or other mechanical or electronic means. "Record" does not mean:

1. Materials that are legally owned by an individual in his private capacity;
2. Materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity;
3. Junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;

4. Books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public;

5. Daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working;

6. Computer programs that are developed or purchased by or for any governmental entity for its own use; or

7. Notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary or any other body charged by law with performing a quasi-judicial function.

B. "Right to Privacy" means the right of a person to be free from unwarranted intrusion by a governmental entity.

§ 84. Records that must be disclosed

A. The following records are public except to the extent they contain information expressly permitted to be treated as protected as provided for 2 N.N.C. § 85:

1. Laws;

2. Names, gender, job titles, job description, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, relevant education, previous employment, and similar job qualifications of the governmental entity's current and former employees and officers excluding:

a. Undercover law enforcement personnel; and

b. Investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

3. Inter-office memoranda;

4. Final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is protected;

5. Final interpretations of statutes or rules by a governmental entity;

6. Information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting, excluding executive sessions, of a governmental entity, including the records of all votes of each member of the governmental entity;

7. Judicial records unless a court orders the record to be restricted under the rules of civil or criminal procedure or unless the records are protected under this subchapter;

8. Records filed with or maintained by governmental entities that give public notice of:

a. Titles or encumbrances to real property, including homesite permits, land use permits and grazing permits; or

b. Restrictions on the use of real property;

9. Records filed with or maintained by governmental entities that evidence incorporations, name changes, and uniform commercial code filings;

10. Documentation of the compensation that a governmental entity pays to a contractor or private provider; and

11. Data on individuals that would otherwise be protected under this subchapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public.

B. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under 2 N.N.C. § 85:

1. Administrative staff manuals, instructions to staff, and statements of policy;
2. Records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
3. Contracts entered into by a governmental entity;
4. Any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity
5. Correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the Nation, a political subdivision, the public, or any person;
6. Empirical data if contained in drafts if:
 - a. The data is not reasonably available to the requester elsewhere in similar form; and
 - b. The governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
7. Drafts that are circulated to anyone other than a governmental entity, a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program, or a contractor or private provider;
8. Drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
9. Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
10. Search warrants after execution and filing of the return, except that, for good cause, a court may order restricted access to search warrants prior to trial;
11. Records that would disclose information relating to formal charges or disciplinary action against a past or present governmental entity employee if:
 - a. The disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - b. The formal charges were sustained.

C. The list of public records in this section is not exhaustive and should not be used to limit access to records.

§ 85. Protected records

A. The following records are private or otherwise protected and shall not be considered public for purposes of required disclosure:

1. Records concerning an individual's eligibility for social services, welfare benefits, or the determination of benefit levels;
2. Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data, including psychiatric or

psychological data ;

3. Records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

4. Records concerning a current or former employee of, or applicant for employment with, a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under 2 N.N.C. § 84(A)(2) or (B)(11);

5. Records describing an individual's finances, except that the following are public:

a. Records described in 2 N.N.C. § 84(A);

b. Navajo Nation Economic Disclosure Statements filed with the Ethics and Rules Office by elected public officials and candidates for elected public office, pursuant to 2 N.N.C. § 3762;

c. Loan applications for Navajo Nation loans to elected public officials and appointed public officials submitted to the Government Services Committee for approval, pursuant to Section 7(c) of the Personal Loan Operating Policies and Guidelines, approved by Resolution CLO-19-88; or

d. Records that must be disclosed in accordance with another statute or duly adopted rules and regulations of a governmental entity.

6. Attorney-client privileged information, materials, and work-products, including the mental impressions or legal theories of an attorney or other representative of a governmental entity;

7. The negotiating position of the Navajo Nation before a contract, lease, or other agreement is entered into;

8. Records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

9. Information, research, and discussions conducted by the public bodies of the Navajo Nation during executive sessions;

10. Memoranda prepared by staff and used in the decision-making process by a judge or a member of any other body charged by law with performing a quasi-judicial function;

11. Information received in response to an invitation for bids or request for proposals before a contract is awarded. Such information will also remain unavailable to the general public after a contract is entered into provided that the information contained in the bid or proposals is proprietary in nature, or otherwise to remain confidential at the request of the person submitting the bid or proposal;

12. Information contained within or related to a contract, lease or other agreement which is proprietary in nature or otherwise to remain confidential at the request of any party to the contract, lease or other agreement;

13. Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

14. Records which are sealed or otherwise protected by court order due to the sensitive nature of the record in which the privacy interest of the person outweighs the public interest in the information;

15. Records to which access is restricted pursuant to court rule or as a condition of participation in a state or federal program or for receiving state or federal funds;

16. Drafts, unless otherwise classified as public;

17. Information related to the location of an individual member of any threatened or endangered species, such that that individual member could be placed further at risk;

18. Information which cannot be released without interfering with an individual's right to exercise or practice his chosen religion;

19. Information otherwise protected by applicable laws;

20. Other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.

B. Upon request, a governmental entity shall disclose a private or otherwise protected record as provided for in 2 N.N.C. § 86.

§ 86. Access to protected documents

Upon request, protected records will be available for disclosure as follows:

A. Information shall be available for criminal and civil law enforcement for prosecution purposes, internal audit, as a result of a court order, to further an individual's medical treatment, and to address public health needs.

B. Information relating to an individual shall be available to the individual who is the subject of the record, or if a minor, shall be available to the parent or guardian subject to any applicable court order.

C. Individual records may be released to third parties with the written permission, by means of a notarized release, of the individual who is the subject of those records, or his or her parent or legal guardian if a minor.

D. Individual records may be used for statistical and other purposes provided that any information which could be used to identify the individual specifically is removed or withheld.

E. Information about an individual will always be available to other Navajo Nation governmental entities subject to the general restrictions above.

F. Before releasing a protected record, the governmental entity shall obtain evidence of the requester's identity.

G. Before releasing a protected record, the governmental entity shall inform the requester that he or she is prohibited from disclosing or providing a copy of the protected record to any other person and shall obtain the requester's written acknowledgment of this prohibition.

§ 87. Segregation of records

A. Notwithstanding any other provision in this subchapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect, and, if the information the requester is entitled to inspect is intelligible and able to be segregated, the governmental entity:

1. Shall allow access to information in the record that the requester is entitled to inspect under this subchapter; and

2. May deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in 2 N.N.C. § 89.

B. If there is more than one subject of a protected record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

§ 88. Procedures

A. Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to subsection (H).

B. All records are public unless otherwise expressly provided by statute.

C. A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity. The request for information shall be addressed to the governmental entity primarily responsible for compiling such records.

D. A governmental entity is not required to create a record in response to a request. However, upon request, a governmental entity shall provide a record in a particular format if:

1. The governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

2. The requester agrees to pay the governmental entity for its additional costs actually incurred in providing the record in the requested format.

E. Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

F. Within 90 days, the governmental entity shall respond to the request by:

1. Approving the request and providing the record;

2. Denying the request by providing a written explanation of why the record is protected from disclosure. In making such determinations, the governmental entity shall consult with the Department of Justice; or

3. Notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record.

G. In the event that the governmental entity determines that the requested record is protected from disclosure, or fails to respond to the request within the 90 day period, the requesting party may make application to the District Court, as defined at 7 N.N.C. § 253, in accordance with the proper processes of the Court for an order compelling the release of the record.

1. This application must meet the notice and filing requirements of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 et. seq.

2. Any person who may have an interest in maintaining the confidentiality of the record may appear and demonstrate the need for maintaining the confidentiality of such record.

3. In determining the availability of any record requested, the District Court shall

apply the standards set forth in 2 N.N.C. §§ 84 and 85.

H. The Navajo Nation may assess the reasonable costs for photocopying and other activities associated with providing the record against the person requesting the record.

I. The implementation of the Navajo Nation Privacy and Access to Information Act shall be subject to rules and regulations duly adopted by the Government Services Committee. Records released may be subject to reasonable restrictions on use, pursuant to such rules and regulations of the Government Services Committee.

§ 89. Denials

A. If the governmental entity denies the request in whole or in part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.

B. The notice of denial shall contain the following information:

1. A description of the record or portions of the record to which access was denied, provided that the description does not disclose protected information;

2. Citations to the provisions of this subchapter, court rule or order, state or federal statute or regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose protected information;

3. A statement that the requester has the right to make application to the District Court for an order releasing the record and the time limits for filing the application.

C. Unless otherwise required by a court of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process.

§ 90. Ordinances Adopted in Compliance with Subchapter

A. Each governmental entity may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including access, denials, segregation, and appeals.

B. If any governmental entity does not adopt and maintain an ordinance or policy, then that governmental entity is subject to this subchapter.

C. Notwithstanding the adoption of an ordinance or policy, each governmental entity is subject to 2 N.N.C. §§ 83, 84, and 85.

D. Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect or obtain records of the governmental entity, and time limits for appeals.

E. Each ordinance or policy shall establish an appeals process for persons aggrieved by the access decisions, allowing petition for judicial review to the District Court as set forth at 2 N.N.C. § 88(G).

§ 91. Criminal Penalties

A. A public employee or other person who has lawful access to any protected record under this subchapter, who intentionally discloses or provides a copy of a protected record to any other person is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than \$1000 nor more than \$5000.

B. It is a defense to prosecution under subsection (A) that the actor released protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

C. A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any protected record to which he is not legally entitled is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than \$1000 nor more than \$5000. No person shall be guilty who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

D. A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity or a court is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than \$1000 nor more than \$5000.

§ 92. Civil Penalties

A. A non-Indian who has lawful access to any protected record under this subchapter, who intentionally discloses or provides a copy of a protected record to any other person is subject to civil penalties of not less than \$1000 nor more than \$5000.

B. It is a defense to a civil action under subsection (A) that the non-Indian actor released protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

C. A non-Indian person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any protected record to which he is not legally entitled is subject to civil penalties of not less than \$1000 nor more than \$5000. No person shall be subject to civil penalties who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

D. A non-Indian public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity or a court is subject to civil penalties of not less than \$1000 nor more than \$5000.

E. Any non-Navajo person within the Navajo Nation's jurisdiction, as defined at 7 N.N.C. § 254, having been found to be in repeated violation of this subchapter may be subject to the exclusionary provisions of the Navajo Nation, as provided at 17 N.N.C. § 1901 et seq..