

LUMBEE TRIBE OF NORTH CAROLINA

CLLO-2010-0318-01

MARCH 18, 2010

“AN ACT TO GOVERN THE LUMBEE TRIBE DISCLOSURE ORDINANCE”

WHEREAS, The Lumbee Tribe of North Carolina, a recognized Indian Tribe of the State of North Carolina, subject to the Constitution of the Lumbee Tribe of North Carolina and its inherent powers of self-government;

WHEREAS, Article VII, Section 1 of the Constitution of the Lumbee Tribe of North Carolina delegates legislative power to enact ordinances to the Tribal Council; and

WHEREAS, The Preamble to the Constitution of the Lumbee Tribe of North Carolina states in part that its purpose is for “securing justice and freedom for the Lumbee People, and

WHEREAS, Transparency of government process requires a systematic and consistent procedure for the release of information controlled by the government of the Lumbee Tribe of North Carolina, its departments and entities, and

WHEREAS, In the interest of establishing a fair and non-political procedure for the release of certain information and for establishing a process to safeguard certain other information, the Tribal Council has directed that a procedure for access to public records is necessary;

THEREFORE, Be it enacted by the Tribal Council of the Lumbee Tribe of North Carolina that this Ordinance shall be cited as “**THE LUMBEE TRIBE DISCLOSURE ORDINANCE.**”

SECTION 1: PURPOSES

The purpose of this Ordinance is to establish a procedure for disclosure of tribal government records. Access to tribal government documents, shall not interfere with tribal government operations or compromise the reasonable confidentiality expectations of tribal members and tribal government in their records and activities. Access to tribal government documents shall not jeopardize the government, business or legal activities of the Tribe. Further, access to tribal government records will not be allowed where access is otherwise restricted by applicable tribal, federal or state law. The policy that will guide application and interpretation of the Ordinance is that tribal members generally have an interest in access to tribal documents that affect them, or that involve general tribal government activities, nothing in this ordinance shall be interpreted to prevent the lawful enforcement of other Tribal laws or to authorize the withholding of information from the Tribal Council. Non-members have an interest in access to tribal documents and records only as required by law, or as delineated in Section 8 of this Ordinance.

SECTION 2: DEFINITIONS:

- (a) The term “direct costs” means expenditures that the Tribe actually incurs in searching for and duplicating documents to respond to a request. Direct cost include, for example, the salary of the employee performing the work and the cost of operating duplicating machinery;
- (b) The term “search” includes 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;

- (c) The term “duplication” refers to the process of making a copy of the document necessary to respond to a request;
- (d) The term “review” refers to 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;
- (e) The term “active member” shall mean any Indian person actively enrolled in the Lumbee Tribe, or holder of a certificate of eligibility for enrollment;
- (f) The term “inactive member” shall mean any member whose voting rights have been suspended and/or deemed ineligible for services.
- (g) The term “non-member” Indian” shall mean any Indian person who is not enrolled and not eligible for enrollment in the Lumbee Tribe, but is a direct descendant of a tribal member;
- (h) The term “non-member” shall mean any person who is not enrolled and not eligible for enrollment in the Lumbee Tribe;
- (i) The term “non-tribal” shall mean any agency, organization or office other than the Lumbee Tribe;
- (j) The term “Tribal Administrator”, as defined by the Constitution of the Lumbee Tribe of North Carolina, receives the request for information listed in Section 5.2 under this Ordinance;
- (k) The term “requestor” means the Tribal Member that challenges the denial of a written request for records or the information under this ordinance;
- (l) The term “Public” means Tribal Members as a group;
- (l) “Records” means all books, papers, maps, photographs, or other documentary materials, regardless of the 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 Lumbee Tribe.

SECTION 3: ACCESS TO TRIBAL RECORDS

1. This Ordinance shall apply to all operation and activities of the Lumbee Tribe of North Carolina, including, without limitation, all entities, committees, agencies, enterprises, and associations established or otherwise authorized under the Lumbee Constitution or by Tribal Ordinance.
2. The Tribe, in accordance with its published procedures, shall make available for inspection, review, and copying Tribal records in any form, including:
 - a. final opinions made in the adjudication of cases;
 - b. those resolutions, enactments and statements of policy and final actions which have been adopted by the Tribe;
 - C. administrative tribal manuals that affect a member of the public;

3. To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Tribe may delete identifying details when it makes available or publishes any record.
4. Each department or entity, upon a written request for records which describes the requested records in a reasonably specific manner and upon compliance of the requestor within Section 3G, (concerning the fees and established procedure), shall make records available to any tribal member.
5. A tribal member may review any of the following items from the Tribe or from any tribal program:
 - a. Any audit, business record, financial report, or monthly expenditure report which has been prepared by the Tribe or by any tribal program.
 - b. Progress reports or letters which are submitted to the Tribe or by the Tribe to any State or Federal agency.
 - c. Any report or letter which has been received by the Tribal Council and which describes the financial condition or the status of any tribal program.
 - d. Any employment contract between the Tribe, tribal program, and any person.
 - e. Any consulting contract between the Tribe and any consultant or attorney.
 - f. All drafts, proposed documents, or other documents yet to be enacted may be reviewed in the appropriate tribal office.
 - g. Completed reports or final actions may be copied at a rate of \$1.00 per page.

SECTION 4: LUMBEE TRIBAL ORDINANCES

1. Tribal ordinances governing the Lumbee Tribe are not considered records for purposes of access under this Ordinance but are considered to be public records that shall be accessible to Lumbee Tribal enrolled members. Persons that are not Lumbee Tribal enrolled members shall have access to Lumbee Tribal Ordinances unless access to a specific ordinance is restricted by the Tribal Council and the lack of access would not adversely affect the rights or substantial interest of such persons.

SECTION 5: REQUEST PROCEDURES

1. All requests to review information must be submitted to the Tribal Administrator in writing or, in the absence of the Tribal Administrator, to a representative designated by the Tribal Administrator. Requests must articulate with specificity the information being sought.
2. The Tribal Administrator shall confirm that the person requesting the information is a tribal member.
 - a. The Tribal Administrator shall within three (3) business days send a written request to the Tribal Clerk for a certification that the requesting party is an active member in good standing with the Lumbee Tribe of North Carolina.
 - b. Within two (2) business days, the Tribal Clerk shall provide a written certification of the requesting party's enrollment status.
3. Within two (2) business days of receipt of the certification from the Tribal Clerk, the Tribal Administrator shall consult with the program director prior to making a determination on the requested information. Within five (5) business days the Tribal Administrator shall issue a written determination on the request.
4. In reaching his/her determination, the Tribal Administrator shall favor disclosure.
5. In the event that the Tribal Administrator determines, within the scope of this ordinance, that some or all of the requested information should be released the Tribal Administrator shall direct, in writing, the requests to the appropriate program director with instructions concerning which information is to be released. Copies of the determination shall be provided to the requesting tribal member.

6. In the event that the Tribal Administrator determines that the information should not be released then, within five (5) business days, the Tribal Administrator shall inform the requesting tribal member in writing that their request is denied and shall state the basis for the denial.
7. Information may be viewed during regular business hours. Appointments to view information shall be made with the approval of the program director. Opportunities to view the requested information shall be made within fifteen (15) business days of the date that the Tribal Administrator makes a determination on a request. Tribal members may not be accompanied by a non-tribal member when viewing documents, except in the case where the non-tribal person is legal counsel representing the tribal member in a legal matter making the requested document relevant to that action.
8. Copies of requested information shall be provided within fifteen (15) days of the date of the requesting party's appointment to view and inspect the documents.
9. The Tribal Administrator has the authority to waive the recertification procedures outlined in sub-section 2 of this section upon proof of enrollment.
10. Issuing notice of extension in a timely manner not to exceed six (6) months which the Tribe shall respond to the request. In unusual circumstances, the Tribe will set forth the reason for such extension. As used in this sub-paragraph, an unusual circumstance means, but is not limited to:
 - a. The need to search for and collect the requested records from facilities or other location established that are separated from the office processing the request;
 - b. The need to search for , collect, or appropriately examine a voluminous amount of records which is demanded in a single request; or
 - c. The need for consultation among two or more components of the Tribe having a substantial interest in the determination of the request.

SECTION 6: EXCEPTIONS

1. This Ordinance shall not directly or indirectly apply to records that are:
 - a. Related solely to internal rules and practices of the Tribe and tribal divisions;
 - b. Trade secrets of the Tribe, including active business documents; financial statements and bid packages, which could jeopardize the competition position of the Tribe or Tribal Contractor;
 - c. Records of investigation compiled for law enforcement purposes performed by any agent of the Tribe, State or Federal Government, except when non-disclosure of such information would deprive a person of a fair trial;
 - d. Personnel, medical enrollment, and any other similar records, which would constitute a clearly unwarranted invasion of personal privacy;
 - e. Intertribal memos, internal records, letters or draft materials not yet final and not approved for public release;
 - f. Disclosed to only those officers, employees and agents of the Tribe who have a need for the record in the performance of their duties;
 - g. Materials created by, or at the request of legal counsel, in preparation for, or in anticipation of, litigation or otherwise protected by the attorney-client privilege or attorney work product doctrine;
 - h. Created or governed by a confidentiality agreement entered into by a representative or agent of the Lumbee Tribe; or
 - i. Disclosed pursuant to a valid court order.
 - j. Protected by confidentiality that is created and mandated by tribal, federal or state law.

SECTION 7: APPEALS STANDARD

1. On complaint, by the requestor, or the tribal program director to whom the request is directed, the Administrative Court shall have jurisdiction to decide the lawfulness of withholding a properly requested

record. The Court shall also have jurisdiction to order the production of any record improperly withheld from the requesting party, or deny the production in whole or in part on the complaint of the program director. In such cases the court shall apply a *de novo* standard of review in determining the matter, and may examine the contents of the record *in camera* to determine whether such records shall be withheld or produced.

2. If the Administrative Court concludes that the necessary findings of fact supporting the Tribal Administrator's decision are not supported by reasonable evidence or that the conclusions of law are incorrect, it shall so declare and remand the matter to the Tribal Administrator with instructions from the Court.
3. The Administrative Court shall give deference to the reasonable interpretation and application of this ordinance by the Tribal Administrator.

SECTION 8: NON-MEMBER(S) REQUEST(S)

1. Non-members may submit a written request for records to the Tribal Administrator 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-member public as determined by whether the principal purpose of the request is personal or commercial benefit or to access and disseminate information regarding the health, safety, and welfare of the Non-member public or other rights and interests of the Non-member public. Non-members shall sign an agreement with the Tribe, executable in a court of competent jurisdiction that if the produced documents are used for a purpose other than that described in the request, the Non-member Requestor shall pay to the Lumbee Tribe incidental and consequential damages of not less than One Hundred Thousand and No/100 Dollars (\$100,000.00). The Non-member Requestor must further agree to pay the legal fees incurred by the Tribe in the enforcement of this agreement of not less than fifteen percent (15%) of damages awarded, as well as any applicable court costs.
2. Upon the receipt of a request for access to records the Tribal Administrator shall consult with the Tribal Chairperson and Tribal Council and respond to the request within fifteen (15) business days.
3. All decisions are final. Non-Members have no right of appeal.
4. Enrollment Records of all Inactive Members shall be afforded a reasonable opportunity to review the Lumbee Tribe's SOURCE DOCUMENTS, 1900 Base Roll, for the purpose of determining eligibility.

SECTION 9: PRESS REQUESTS

1. Press members may submit a written request for records to the Tribal Administrator 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 Tribe. The request must also identify the specific reason(s) for requesting the records and whether the principal purpose of the request is personal or commercial benefit. Members of the Press shall sign an agreement with the Tribe, executable in a court of competent jurisdiction that if the produced documents are used for a purpose other than that described in the request, the Member of the Press shall pay to the Lumbee Tribe incidental and consequential damages of not less than One Hundred Thousand and No/100 Dollars (\$100,000.00). The Member of the Press must further agree to pay the legal fees incurred by the Tribe in the enforcement of this agreement of not less than fifteen percent (15%) of damages awarded, as well as any applicable court costs.

SECTION 10: FEES TO BE CHARGED

1. The Tribe will charge fees that recoup the full allowable direct costs it incurs in responding to non-member or non-tribal requests, unless otherwise provided by the Tribal Council or Tribal Council approved regulations. Such fees may be as follows:
 - a. Manual search for records. The Tribe will charge at the salary rate of the employee(s) making the search;
 - b. Computer search for records. The Tribe will charge the actual direct cost of providing the service;
 - c. Review of Records - The Tribe will charge at the salary rate of the employee(s) conducting the review of records to determine if any of the records may be withheld;
 - d. Duplication of Records - The Tribe will charge for duplication of records per page at the rate set by the Tribal Chairperson and Tribal Council; provided, that minimal duplication charges may be waived upon a showing of good cause. This rate shall be \$2.00 per page until such time as an ordinance is passed by the Tribe setting the rate. The rate shall continue year to year if the rate is not addressed annually by the Tribe.
 - e. Waiver or Reduction - The Tribe will determine that fulfilling the request would be in the public interest, the fee shall be waived or reduced in the furtherance of the purpose of this Ordinance. In determining whether the request is in the public interest the Tribal Chairperson and Tribal Council 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.
2. All fees generated by the implementation of this ordinance shall be set aside in the annual budget in a line item designated for an academic scholarship program.

CERTIFICATION

THIS CLLO-2010-0318-01 "AN ACT TO GOVERN THE LUMBEE TRIBE DISCLOSURE ORDINANCE", ADOPTED AT A MEETING OF THE 21-MEMBER TRIBAL COUNCIL OF THE LUMBEE TRIBE OF NORTH CAROLINA WHERE 21 MEMBERS WERE PRESENT, CONSTITUTING A QUORUM, THIS THE 18TH DAY OF MARCH, 2010 BY A VOTE OF 21 FOR, 0 AGAINST, 0 ABSTENTION(S).

Ricky Burnett

3-18-10

ATTEST: RICKY BURNETT
Speaker, Tribal Council of the Lumbee Tribe of North Carolina

Date

Linda Revels

3-18-10

ATTEST: LINDA REVELS
Secretary, Tribal Council of the Lumbee Tribe of North Carolina

Date

Purnell Swett

4-21-10

Purnell Swett
Chairman, Lumbee Tribe of North Carolina

Date

POSTING

This CLLO-2010-0318-01 "AN ACT TO GOVERN THE LUMBEE TRIBE DISCLOSURE ORDINANCE", duly posted on this the 24th day of March, 2010.

Ruth B. Locklear

3-24-2010

ATTEST: RUTH B. LOCKLEAR
Tribal Clerk, Lumbee Tribe of North Carolina

Date

Ordinance rec'd 3/24/10 by Ruth B. Locklear

ROLL CALL VOTE RESULTS TO ADOPT

CLLO-2010-0318-01

“AN ACT TO GOVERN THE LUMBEE TRIBE DISCLOSURE ORDINANCE”

21 FOR, 0 AGAINST, 0 ABSTENTION(S)

District 1:	Audrey Revels Hunt	YES
District 2:	Sharon Hunt	YES
	Larmari Louise Mitchell	YES
District 3:	Laura B. Sampson	YES
	Pam Spaulding	YES
District 4:	Helen H. Locklear	YES
District 5:	Kernice Lee Locklear	YES
	Charles Bullard	YES
District 6:	James Deese	YES
	Larry Anthony Chavis	YES
District 7:	Robert Chavis	YES
	James Harold Locklear	YES
	Terry Campbell	YES
District 8:	Steve Sampson	YES
District 9:	James Taft Smith	YES
District 10:	Terry Collins	YES
District 11:	Linda Revels	YES
District 12:	Furnie Lambert Jr.	YES
	Shelley Strickland	YES
District 13:	Ricky Burnett	YES
District 14:	Homer Fields	YES