

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 Coos, Lower Umpqua and Siuslaw Indians (Tribes) that employment-related records of Tribal employees are confidential and shall not be disclosed to any person, entity, or governmental agency without the consent of the employee involved, or unless specifically permitted under this Chapter or required by Tribal or other applicable law.

9-2-2 Definitions

For purposes of this Chapter 9-2:

- (a) “Employee” means an employee of the Tribes, whether regular full-time, regular part-time, part-time, temporary or otherwise.
- (b) “Employment Records” means any item, collection, or grouping of information that is created or maintained by the Tribes in paper, electronic, or other recorded format which relates to the employment of an employee. Employment records include but are not limited to resumes, warning notices, disciplinary actions, evaluations, recommendations, retirement records, vacation and sick leave, hours, wages, withholding, earnings, dependents, marital status, employment applications, criminal background check records as defined per Tribal policy, and previous Tribal employment and terminations. Employment records do not include medical records, which are governed by other Tribal policy.
- (c) “Custodian” means the employee’s supervisor, the Human Resources Department, and the Accounting (including Payroll) Department.
- (d) “Tribes” means the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, including all agencies, departments, offices, divisions, corporations, instrumentalities or other entities of the Tribes.
- (e) “Disclosure” means 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 or place that it is likely to be obtained by an individual, entity or governmental agency.

9-2-3 Duty Not to Disclose

Employees of the Tribes and Tribal Council Members shall not disclose any employment record of the Tribes without the prior written consent of the employee to whom the record applies, except as otherwise provided under this Chapter.

9-2-4 Exception to the Rule Against Disclosure

It shall be lawful for an employee of the Tribes or a Tribal Council Member to disclose an employment record to the following:

- (a) A "Custodian" as defined in CLUSITC 9-2-2;
- (b) The Tribal Administrator, the Director of Human Resources, or his or her designee, when necessary for the Tribal Administrator, Director of Human Resources, or designee to carry out his or her responsibilities and/or to exercise authorities delegated by the Tribal Council, including but not limited to the hiring, training, supervision or promotion of employees, or the investigation or grievance of an employee, as well as administration of Tribal financial and operational affairs;
- (c) The Tribal Police, in conjunction with an ongoing investigation, when the holder of an employment record is served with a subpoena for the employment record signed by the Tribal Court Judge. In cases where the Tribal Police believe that publicly filing 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 pursuant to an order of the Tribal Court or any other court of competent jurisdiction, or is required by the Tribal Code or other applicable law;
- (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) Legal counsel for the Tribes when acting to advise or represent the Tribes in any capacity, including the delivery of legal advice to the Tribal Council, Tribal Administrator or any department head, supervisor, or manager.

9-2-5 Duty to Notify

- (a) Except as provided in CLUSITC 9-2-5(b), or where an employment record is disclosed in camera as provided in CLUSITC 9-2-4(c), any time that disclosure of an employment record is made pursuant to CLUSITC 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 CLUSITC 9-2-5(a) of this section shall not apply to employment records disclosed pursuant to CLUSITC 9-2-4(a), (b) or (f) or any other disclosures made in the regular course of business in connection with payroll or employee benefits, or to disclosures required by the Internal Revenue Service.

9-2-6 Penalties

(a) Disclosure by Employee. The knowing and intentional disclosure of any employment record in violation of this Chapter by an employee shall be considered a serious offense subjecting the offending employee to discipline as provided in any applicable employment policies of the Tribes, up to and including possible termination of employment.

(b) Disclosure by Tribal Council Member. In addition to any other applicable standards of conduct that might be violated, the knowing and intentional disclosure of any employment record in violation of this Chapter by a member of the Tribal Council shall be deemed to be gross misconduct under CLUSI Const. Art. X, Section 1.

9-2-7 Grievance Procedure

(a) Any current employee who believes that his or her employment records were disclosed in violation of this 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 any conclusion with respect to the alleged improper disclosure and what action, if any, is to be taken. If the employee alleges that the Tribal Administrator made the improper disclosure, the Tribal Council Chair or his or her designee shall undertake the responsibility assigned to the Tribal Administrator under this Section 9-2-7.

(b) The decision pursuant to CLUSITC 9-2-7(a), of the Tribal Administrator, the Tribal Council Chair, or designee, is not appealable under CLUSITC 2-1 by the employee whose records were disclosed. Nothing in this section shall affect the rights provided by tribal law of the offending employee to appeal from any disciplinary decision or sanction imposed under CLUSITC 9-2-6(a).

(c) The procedures set out in this section shall not apply to allegations of improper disclosure by Tribal Council members. Such allegations shall be referred for investigation to the Tribal Council to be resolved pursuant to any applicable provision of the CLUSI Constitution, this Code or Tribal Council rules of conduct.

9-2-8 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 employees, 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 Coos, Lower Umpqua and Siuslaw Indians enacted the revisions to Chapter 9-2 Tribal Employee Records Confidentiality by Ordinance No. 040A at a Tribal Council meeting on August 11, 2013. Vote was 6 (for), 0 (against), 1 (absent), and 0 (abstaining).

The Tribal Council of the Confederated Tribes of 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).

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