

UCHUCKLESAHT TRIBE GOVERNMENT

**FREEDOM OF INFORMATION AND
PROTECTION OF PRIVACY ACT**

UTS 11/2011



This law enacted on April 1, 2011

Signed

A handwritten signature in black ink, appearing to read "Charlie Cootes", is written over a horizontal line.

Charlie Cootes, Chief Councillor of the
Uchucklesaht Tribe

DEPOSITED IN THE
REGISTRY OF LAWS

ON 04/01/11
A handwritten signature in blue ink, appearing to read "C. G. Mar", is written over a horizontal line.
Signature of Law Clerk

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PREAMBLE

Through the act of governing and as a treaty first nation, the Uchucklesaht Tribe assumes the responsibility of providing responsible, transparent and accountable government, blending hereditary and modern-day governing systems. In doing so, we honour our past and embrace the future ensuring the continued existence of the Uchucklesaht Tribe as a strong political, social and cultural community that aspires to grow as an organized, determined, successful and self-reliant peoples.

It is the desire of the Uchucklesaht Tribe to govern in an open and transparent manner and to promote the principles of openness and transparency by providing a right of access to all records in the custody or under the control of a Uchucklesaht institution, subject to certainty necessary, specific and limited exceptions. The Uchucklesaht Tribe also acknowledges the need to balance the right of access with the right to personal privacy and pledges to balance those rights in a manner which is respectful to both the person requesting the information and the person the information is about.

The Uchucklesaht Tribe adopts this Act based on these values.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Freedom of Information and Protection of Privacy Act.

Executive oversight

1.2 The member of the Executive holding the human services portfolio is responsible for the executive oversight of this Act.

Application

1.3 This Act governs

- (a) access to information in the custody or under the control of a Uchucklesaht institution, and
- (b) the collection, use and disclosure of personal information by a Uchucklesaht institution.

Definitions

1.4 In this Act,

“applicant” means, in relation to a request under section 2.2 or 3.4, the person who made the request;

“business contact information” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email and business fax number of the individual;

“law enforcement” means

- (a) policing,
- (b) investigations that lead or could lead to a penalty or sanction being imposed, or
- (c) proceedings that lead or could lead to a penalty or sanction being imposed;

“personal information” means recorded information about an identifiable individual other than business contact information;

“third party” means, in relation to a request under section 2.2 or 3.4, any person other than

- (a) the applicant, or

(b) a Uchucklesaht institution.

Conflict between this Act and other Uchucklesaht laws

1.5 In the event of an inconsistency or conflict between this Act and any other Uchucklesaht law, this Act prevails to the extent of the inconsistency or conflict unless the other Uchucklesaht law expressly provides that it, or a provision of it, applies despite this Act.

PART 2 - FREEDOM OF INFORMATION

Right of access

- 2.1** (a) A person who makes a request under section 2.2 has a right of access to any record in the custody or under the control of a Uchucklesaht institution.
- (b) The right of access under subsection (a) does not extend to information excepted from disclosure under section 2.8, but if that information can reasonably be severed from a record, the applicant has a right of access to the remainder of the record.

Request for access

- 2.2** (a) To obtain access to a record in the custody or under the control of a Uchucklesaht institution, a person must submit a written request to the chief administrative officer that
- (i) provides sufficient detail to enable the chief administrative officer, with reasonable effort, to identify the record sought, and
- (ii) if the applicant is acting on behalf of another person, provides written proof of the applicant's authority to make the request.
- (b) The applicant may
- (i) ask for a copy of the record, or
- (ii) ask to examine the record.

Duty to assist applicants

- 2.3** (a) The chief administrative officer must make every reasonable effort to assist an applicant and to respond without delay to each applicant openly, accurately and completely.
- (b) The chief administrative officer must create a record for an applicant if
- (i) the record can be created from a machine readable record in the custody or under the control of a Uchucklesaht institution using its normal computer hardware and software and technical expertise, and
- (ii) creating the record would not unreasonably interfere with the operations of the Uchucklesaht institution.

Time limit for response

- 2.4** (a) The chief administrative officer must respond to each request under section 2.2 not later than 45 days after receiving the request.
- (b) The chief administrative officer is not required to comply with the time limit in subsection (a) if the time limit is extended under section 2.7.

Contents of response

- 2.5** (a) In a response under section 2.4, the chief administrative officer must tell the applicant
- (i) whether or not the applicant is entitled to access the record or part of the record,
 - (ii) if the applicant is entitled to access the record or part of the record, where, when and how access will be given, and
 - (iii) if access to the record or part of the record is refused,
 - (A) the reasons for the refusal and the provision of this Act on which the refusal is based, and
 - (B) that the applicant may request a review of the refusal under section 4.1.
- (b) Despite subsection (a)(iii)(A), the chief administrative officer may refuse to confirm or deny the existence of a record if that record contains
- (i) information described in section 2.8(a)(ii), or
 - (ii) personal information of a third party if disclosure of the existence of that information would be an unreasonable invasion of the third party's personal privacy.

Form of access

- 2.6** (a) If
- (i) an applicant is told in a response under section 2.4 that access to the record or part of the record will be given.
 - (ii) the applicant has asked for a copy under section 2.2(b) and
 - (iii) the record can reasonably be reproduced,

then

- (iv) a copy of the record or part of the record must be provided with the response, or
 - (v) the applicant must be given reasons for the delay in providing the record.
- (b) If an applicant is told in a response under section 2.4 that access to the record or part of the record will be given, and
- (i) the applicant has asked to examine the record under section 2.2(b), or
 - (ii) the record cannot reasonably be reproduced,

then the applicant must be permitted to examine the record at the Uchucklesaht administrative office during normal business hours.

Extending the time limit for response

- 2.7** (a) The chief administrative officer may extend the time limit for responding to a request for
- (i) a period of up to 45 days, or
 - (ii) upon the approval of the Executive, a period of longer than 45 days
- if one or more of the following apply:
- (iii) the applicant does not give enough detail to enable the chief administrative officer to identify a requested record;
 - (iv) a large number of records are requested or an extensive search is required to locate a requested record and meeting the time limit would unreasonably interfere with the operations of the Uchucklesaht institution; or
 - (v) more time is needed to consult with a third party before the chief administrative officer can decide whether or not to give the applicant access to a requested record.
- (b) If the time for responding to a request is extended under this section, the chief administrative officer must tell the applicant
- (i) the reason for the extension,
 - (ii) when a response can be expected, and

- (iii) that the applicant may request a review of the extension under section 4.1.

Exceptions to disclosure

- 2.8** (a) The chief administrative officer may refuse to disclose information to an applicant if that disclosure would, or could reasonably be expected to,
- (i) harm the deliberative processes of a Uchucklesaht institution,
 - (ii) harm a law enforcement matter,
 - (iii) reveal information that is subject to solicitor-client privilege,
 - (iv) harm intergovernmental relations or negotiations,
 - (v) harm the financial or economic interests of a Uchucklesaht institution,
 - (vi) harm Uchucklesaht language, culture or heritage,
 - (vii) harm individual or public safety, or
 - (viii) harm the financial or economic interests of a third party.
- (b) The chief administrative officer must refuse to disclose information to an applicant if that disclosure would be an unreasonable invasion of a third party's personal privacy, including the personal privacy of a deceased individual.

Information must be disclosed if in the public interest

- 2.9** (a) Despite any other provision of this Act, the chief administrative officer must, without delay, disclose information in the custody or under the control of a Uchucklesaht institution to
- (i) the public,
 - (ii) an affected group of people, or
 - (iii) an applicant
- if that disclosure is clearly in the public interest.
- (b) Subject to subsection (c), before disclosing information under subsection (a), the chief administrative officer must notify any third party to whom the information relates.

- (c) If it is not practicable to comply with subsection (b), the chief administrative officer must mail notice of the disclosure to the last known address of the third party.

PART 3 - PROTECTION OF PRIVACY

Purposes for which personal information may be collected

- 3.1** No personal information may be collected by or for a Uchucklesaht institution unless the collection of that information is
- (a) necessary for a program, service or activity of a Uchucklesaht institution
 - (b) for the purpose of law enforcement, or
 - (c) expressly authorized under another Uchucklesaht enactment.

How personal information must be collected

- 3.2** (a) A Uchucklesaht institution must collect personal information or cause personal information to be collected directly from the individual the information is about unless
- (i) another method of collection is authorized by
 - (A) that individual, or
 - (B) another Uchucklesaht enactment,
 - (ii) the collection of the information is necessary for the medical treatment of an individual and it is not possible to
 - (A) collect the information directly from that individual, or
 - (B) obtain authority under paragraph (i)(A) for another method of collection,
 - (iii) the information is collected for the purpose of
 - (A) determining the suitability of an individual for an honour or award, including an honorary degree, scholarship, prize or bursary,
 - (B) a proceeding before a court or a judicial or quasi-judicial tribunal,
 - (C) collecting a debt or fine,
 - (D) making a payment, or
 - (E) law enforcement.

- (b) A Uchucklesaht institution must ensure that an individual from whom it collects personal information or causes personal information to be collected is told
 - (i) the purpose for collecting it,
 - (ii) the legal authority for collecting it, and
 - (iii) who can answer any questions the individual may have about its collection.
- (c) A Uchucklesaht institution is not required to comply with subsection (b) if
 - (i) the information is for the purpose of law enforcement, or
 - (ii) the Executive, by resolution, excuses the Uchucklesaht institution from complying with that subsection because doing so would
 - (A) result in the collection of inaccurate information, or
 - (B) defeat the purpose or prejudice the use for which the information is collected, or
 - (C) the information
 - (I) is not required, under subsection (a), to be collected directly from the individual the information is about, and
 - (II) is not collected directly from the individual the information is about.

Accuracy of personal information

- 3.3** If an individual's personal information is in the custody or under the control of a Uchucklesaht institution, the Uchucklesaht institution must make reasonable efforts to ensure the information is accurate and complete.

Right to request correction of personal information

- 3.4** (a) An individual who believes there is an error or omission in his or her personal information may, by submitting a written request to the chief administrative officer, request that such information be corrected.
- (b) Upon receiving a request under subsection (a), the chief administrative officer must correct the individual's personal information if, in the chief administrative officer's reasonable opinion, there is an error or omission in such information.

- (c) The chief administrative officer must respond to each request under subsection (a) not later than 60 days after receiving the request.
- (d) In a response under section (c), the chief administrative officer must tell the applicant
 - (i) whether or not the applicant's personal information has been changed, and
 - (ii) if the chief administrative officer refuses to change the applicant's personal information,
 - (A) the reasons for the refusal, and
 - (B) that the applicant may request a review of the refusal under section 4.1.

Use of personal information

- 3.5** A Uchucklesaht institution must ensure that personal information in its custody or under its control is used only
- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose, or
 - (b) if the individual the information is about has verified the information and has consented to the use.

Disclosure of personal information

- 3.6** (a) A Uchucklesaht institution must ensure that personal information in its custody or under its control is disclosed only as permitted under subsection (b).
- (b) A Uchucklesaht institution may disclose personal information in its custody or under its control as follows:
- (i) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose;
 - (ii) if the individual the information is about has consented in writing to the disclosure;
 - (iii) in accordance with
 - (A) Part 2,
 - (B) another Uchucklesaht enactment, or

- (C) an enactment of British Columbia or Canada;
 - (iv) in accordance with a provision of a treaty, arrangement or agreement that
 - (A) authorizes or requires its disclosure, and
 - (B) is ratified under a Uchucklesaht enactment or an enactment of British Columbia or Canada;
 - (v) to comply with a subpoena, warrant or order issued or made by a court, person or body in Canada with jurisdiction to compel production of information;
 - (vi) to another Uchucklesaht institution or a law enforcement agency in Canada to assist in a specific investigation
 - (A) undertaken with a view to a law enforcement proceeding, or
 - (B) from which a law enforcement proceeding is likely to result;
 - (vii) to a Uchucklesaht official, if the information is necessary for the performance of the duties or exercise of the powers of that Uchucklesaht official.
- (c) Despite subsection (a), upon the approval of the Executive, by resolution, a Uchucklesaht institution may disclose personal information in its custody or under its control if
- (i) the disclosure is for a research purpose, including statistical research,
 - (ii) the disclosure is clearly in the interest of the Uchucklesaht Tribe, and
 - (iii) there is no alternative to disclosing the information in individually identifiable form.

Definition of consistent purpose

- 3.7** For the purposes of sections 3.5(a) and 3.6(b)(i), the use of personal information is consistent with the purpose for which the information was obtained or compiled if the use
- (a) has a reasonable and direct connection to that purpose, and
 - (b) is necessary for carrying out the statutory duties of the Uchucklesaht institution that uses or discloses the information or causes the information to be used or disclosed.

PART 4 - ENFORCEMENT

Review request

- 4.1** A person who makes a request under section 2.2 or 3.4 may request a review of any decision, act or omission of the chief administrative officer related to that request by the Administrative Decisions Review Board.

PART 5 - GENERAL PROVISIONS

Regulations

- 5.1** (a) The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.
- (b) Without limiting subsection (a), the Executive may make regulations in relation to
- (i) the retention of records, and
 - (ii) fees for copies and other services provided in relation to records.

Limitation on actions

- 5.2** (a) For certainty and pursuant to 13.35.1 and 13.35.4 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against any Uchucklesaht official or former Uchucklesaht official for anything done or omitted to be done under this Act.
- (b) Despite 13.35.2, 13.35.3, 13.35.5 and 13.35.6 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against a Uchucklesaht institution, Uchucklesaht official or former Uchucklesaht official for anything done or omitted to be done under this Act if they acted in good faith in the performance of their duties or the exercise of their powers.

Offences

- 5.3** (a) A person must not willfully do any of the following:
- (i) make a false statement to, or mislead or attempt to mislead, the Executive, the chief administrative officer or any other individual in the performance of his or her duties or the exercise of his or her powers under this Act;
 - (ii) obstruct the Executive, the chief administrative officer or any other individual in the performance of his or her duties or the exercise of his or her powers under this Act.
- (b) A person who contravenes subsection (a) commits an offence and is liable, on summary conviction, to a fine of up to \$5,000.

Commencement

- 5.4** This Act comes into force on the Maa-nulth Treaty effective date.