

BISHOP PAIUTE TRIBE
AMENDED BISHOP TRIBAL RECORDS ORDINANCE
ADOPTED APRIL 18, 2004
NO. T2004-01

Sec. 101. Purpose

The Bishop Paiute Tribe ("Tribe"), in the exercise of its federal right of self-government, hereby establishes the procedures under which the Tribe will process requests for Tribal records that are made either by a party to a criminal proceeding in any state court, or by a state or local government prosecutor or law enforcement agency in connection with a criminal investigation or proceeding, in a manner that authorizes the release of such records consistent with the Tribe's need to protect the confidentiality of certain records and information essential to tribal governmental operations, which includes the operation of tribal services, programs and enterprises.

Sec. 102. Scope of Ordinance

(a) The procedures set out in this Ordinance shall apply to any request for tribal records that are made by any party to a criminal proceeding in a state court, or any request for tribal records made by a state or local government prosecutor or law enforcement agency in connection with a criminal investigation or proceeding.

(b) For purposes of this Ordinance a request for records shall include any request, whether made in the form of a subpoena, search warrant, order, or other demand seeking tribal records.

(c) "Tribal records" means any writing containing information relating to the conduct of the Tribe's governmental operations prepared, owned, used, or retained by the Tribe regardless of physical form or characteristics, including information about any individual that is retained by the Tribe, including, but not limited to information about his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or a number, symbol, or other particular that identifies the individual, such as a finger or voice print or a photograph;

(d) "Writing" means handwriting, typewriting, printing, photostating, photographing, computerized, graphic and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, computer data, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

Sec. 103. Procedures for Processing Requests for Records

(a) Upon receipt of any request for tribal records covered by this Ordinance, the tribal employee or official receiving such request shall immediately forward the request to the Tribal Court and transmit a copy of the request to the Tribal Attorney.

(b) Within 48 hours of receipt of a request for tribal records, the Tribal Court shall review the request and issue an order regarding that request.

(c) The Tribal Court shall review the request for records to determine (1) whether the request for records is being made by either a party to a criminal proceeding in state court, or by a state or local government law enforcement agency or official for purposes of a criminal investigation, and (2) whether any of the records requested are confidential as defined in Section 103(d) of this Ordinance. The Tribal Court's review of the records request shall not include any examination of questions regarding probable cause or the merits of the underlying proceedings, but shall be limited to determining whether the records are being requested in connection with a criminal proceeding or investigation and whether any of the records requested are confidential.

(d) For purposes of this Ordinance, a tribal record is confidential if it is:

(1) specifically exempted from disclosure by federal law or regulation;

(2) related solely to the internal personnel rules and practices of the Tribe;

(3) trade secrets and commercial or financial information about the Tribe, any tribal department, agency or enterprise owned in whole or part by the Tribe;

(4) inter-agency or intra-agency communications of the Tribe, including but not limited to advice, recommendations, and subjective evaluations that pertain to the Tribe's governmental decision-making process;

(5) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy except:

(A) with the prior written consent of the individual to whom the record pertains;

(B) for a purpose which is compatible with the purpose for which it was Collected; or

(C) as required by other federal or tribal law.

For purposes of this Section 103(d)(5)(A), with respect to tribal records related to a tribal employee sought in connection with a welfare fraud investigation, a redacted copy of the employee's welfare application authorizing law enforcement to review the applicant's employment records shall be deemed evidence of consent to the disclosure of records for purposes of this subsection.

(6) information compiled for law enforcement purposes, where the production of such law enforcement records or information: (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, and, in the case of a

record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful security investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(7) pertaining to the nature or location of cultural resources, including cultural items as defined in the Native American Graves Protection and Repatriation Act, historic properties eligible for listing on the National Register under the National Historic Preservation Act and archeological resources protected by the Archeological Resources Protection Act, and geological and geophysical information and data, including maps, concerning wells;

(8) protected by legal privilege, including but not limited to attorney -- client communication and attorney work product; physician - patient, clergy - penitent, marital communications, sexual assault victim - counselor, domestic violence victim - counselor and psychotherapist -- patient.

(9) gathered and maintained by the Tribal Gaming Commission in connection with its regulatory duties with respect to gaming on the Reservation, including the

issuance, denial or revocation of gaming licenses, except to the extent permitted or required by tribal and federal law and a tribal-state gaming compact in effect.

(e) If the records requested fall within any of the provisions of subsection 103(d), the Tribal Court may nevertheless order their disclosure if (1) the records may be produced in redacted or summary form or under the other terms or conditions that protect the confidentiality of the records without violating the privacy interests or other tribal interests that non-disclosure advances, or, (2) the Court determines that the requesting party has made a substantial showing of need for the information based on consideration of the following factors:

- (A) the extent to which the records or information may be available through other sources;
- (B) the potential impact that release of the information on the operation of the tribal government;
- (C) the extent to which the imposition of conditions on the release of the information, such as redacting portions of the records or allowing in camera review of the records, or prohibiting further dissemination of the records, would mitigate any adverse impacts on the tribal government resulting from the release of such information; and
- (D) Other matters brought to the attention of the Court.

Sec. 104. Tribal Court Order

(a) Following review of the request for tribal records under the provisions of Section 103, the Tribal Court shall issue an order stating its decision regarding the demand for records. The Tribal Court order shall indicate whether records are authorized for release in response to the request, identify what records are to be released and the terms and conditions on any such release.

(b) If the Tribal Court determines that some of the records requested are confidential but can be released subject to conditions as provided by Section 103(e), the Tribal Court order shall state what portion of the records requested are confidential and the conditions imposed on their release. The Tribal Court order may state that release of the records is conditioned upon a commitment from the requesting party that it will not further disclose the records except to the extent necessary for the purposes for which they were produced. Such commitment may be set forth in the initial request for tribal records, or may be submitted as an amendment thereto in response to the Tribal Court order.

(c) When requested by a district attorney, any orders for the disclosure of tribal records to law enforcement shall include provisions limiting the release of information about requests made by the district attorney so as to avoid interference with the criminal investigation.

(d) If requested, the Tribal Court shall ensure the proper tribal authorities certify the authenticity and accuracy of copies of tribal records made available for inspection and copying, and a representative of the Tribe shall, upon request and if necessary, appear in court and testify

thereto. Under no circumstances shall the Court authorize the surrender of possession of any original of any surveillance videotape or other regulatory records.

(e) If the Tribal Court determines that some or all of the records are to be released, the tribal employee(s) or official(s) having custody of such records shall release the records in accordance with the Tribal Court Order, including any terms and conditions set forth therein, upon receipt of said order. If the Tribal Court determines that some or all of the records are not to be released the Tribal Court order shall so state, and provide the reasons that the records will not be released.

Sec. 105. Exigent Circumstances

The requirements of this Ordinance shall not apply to law enforcement officials of state or local governments if, in the reasonable judgment of the district attorney or other authorized law enforcement official, there exist exigent circumstances which make obtaining approval from the Tribal Court impracticable. For purposes of this subsection "exigent circumstances" are defined as those circumstances which create an imminent threat: 1) to public health or safety, 2) of bodily injury to a person, 3) of loss or destruction of evidence, or 4) of the escape of a suspected or known criminal.

Sec. 201. Tribal Administrator Duties

On the date of enactment of this Amended Ordinance, the Tribal Court is not operational. Until the Tribal Court is operating ("interim period"), the Tribal Administrator shall carry out the duties of the Tribal Court in this Ordinance except as provided in Section 202. During the

interim period, any requests filed pursuant to Section 103 shall be submitted to the Tribal Administrator, and the Tribal Administrator shall undertake the review and make the determinations to be made by the Tribal Court under Sections 104 through 105, except as provided in Section 202. When the Tribal Court becomes operational, the Tribal Court shall assume its duties and authority under this Ordinance, and the duties and authority conferred on the Tribal Administrator under this Section shall terminate.

Sec. 202. Tribal Council

During the interim period, if the Tribal Administrator determines that records sought in a demand raise one or more of the concerns set forth in Section 103, the Tribal Administrator shall immediately refer the matter with respect to those tribal records to the Tribal Council. The Tribal Council shall make the determination regarding disclosure.

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BISHOP TRIBAL COUNCIL

RESOLUTION T2004-13

SUBJECT: Adoption and Approving of Amended Tribal Records Ordinance as of April 18, 2004

WHEREAS: The Bishop Tribal Council is the federally recognized governing body of the Bishop Paiute Tribe; and

WHEREAS: The Bishop Paiute Tribe has been involved in litigation with Inyo County in excess of three years over the issues of what procedures, policies and regulations govern the obtaining of Tribal records by State of California political subdivisions and, in particular, Inyo County; and

WHEREAS: This litigation has cost the Tribe and County of Inyo hundreds of thousands dollars in time and expenses and has created, in some instances, a polarization of relations between the Tribe and Inyo County; and

WHEREAS: In recognizing the need to create an atmosphere of mutual respect and trust between the two sovereign entities in particular, and other state, federal and tribal political entities in general, the Bishop Tribal Council, on behalf of the Bishop Paiute Tribe, proposes to adopt an amended Tribal Records Ordinance that will provide an unobstructed access on a government-to-government basis to Tribal records in criminal proceedings and investigations.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

That the Bishop Paiute Tribal Council go on records as approving and adopting the amended Tribal Records Ordinance for the Bishop Paiute Tribe, which shall be identified as adopted as: "Adopted April 18, 2004". It is further resolved that this Amended Ordinance shall be forwarded to County of Inyo governmental entities and offices, including the County of Inyo Superior Court.

CERTIFICATION

We, the undersigned, as the Chairman and Secretary of the Bishop Tribal Council, hereby certify the Bishop Tribal Council, at a duly called meeting which was convened and held on the

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