

# COMANCHE

## A RESOLUTION ADOPTING OPEN RECORDS CODE

**WHEREAS**, the Comanche Nation is a federally recognized Indian Tribe with a Constitution approved and ratified by the Secretary of the Interior of the United States on January 9, 1967, to safeguard tribal rights, powers, and privileges to improve the economic, moral, educational, and health status of its members; and

**WHEREAS**, the Comanche Nation Constitution, Article VI, Section 7(j) provides that the Comanche Business Committee has the authority to promulgate and enforce ordinances and codes governing law and order to protect the peace, health, safety, and general welfare on land determined to within Comanche tribal jurisdiction; and

**WHEREAS**, the Comanche Nation Constitution, Article X, Section 4 provides that Comanche tribal members have the right to review tribal records; and

**WHEREAS**, to promote the general welfare by avoiding confusion regarding the scope of tribal members' right to access records and provide a clear procedure for requesting such records, the Comanche Business Committee wishes to adopt the Open Records Code attached hereto as Exhibit A with Appendix.

**NOW THEREFORE BE IT RESOLVED**, the Open Records Code attached hereto as Exhibit A with Appendix is hereby adopted as tribal law; and

**BE IT FURTHER RESOLVED**, that the Tribal Administrator is directed to post a copy of the Open Records Code with Appendix on the Comanche Nation website; and

**BE IT FURTHER RESOLVED**, the Comanche Business Committee, acting for and on behalf of the Comanche Nation, does hereby authorize this Resolution for such intent.

### CERTIFICATION

The foregoing resolution was adopted at a regular meeting of the Comanche Business Committee held on the 4<sup>th</sup> day of January, 2025, at the Comanche Tribal Complex, Lawton, Oklahoma, by a majority vote of 6 for, 0 against, and 0 abstaining, a legal quorum being present.

  
\_\_\_\_\_  
Forrest Tahdpoahmippah, Chairman

ATTEST:

  
\_\_\_\_\_  
Robert Tippeconne, Secretary/Treasurer

## **COMANCHE NATION OPEN RECORDS CODE**

### **PURPOSE**

The Comanche Nation Open Records Code ("Code") aims to promote transparency and accountability by providing members of the Comanche Nation with access to tribal records consistent with the Comanche Constitution. This Code ensures that the Comanche Nation governs in an open and transparent manner while protecting the peace, health, safety and general welfare of the Comanche Nation and its citizens.

### **SECTION 1: DEFINITIONS**

- (a) **Tribal Records:** Any document, electronic file, or recording that contains information relating to the conduct of the Comanche Nation government or enterprises operated or funded in its name, as well as such produced or acquired in connection with official business.
- (b) **Requester:** Any citizen of the Comanche Nation who submits a request for access to records under this policy.
- (c) **Individual:** means a natural person.
- (d) **Maintain:** means hold, possess, preserve, retain, store or administratively control.
- (e) **Confidential Information:** Specific categories of records that are not subject to disclosure under this Code due to federal policies regarding privacy, security, privilege, or other concerns.

### **SECTION 2: PUBLIC ACCESS TO TRIBAL RECORDS**

#### **(a) Right to Review Tribal Records**

Comanche Nation citizens shall have the right to inspect and copy tribal records held by the Comanche Nation government or by any enterprise operated or funded in the name of the Comanche Nation, except those records exempted under this Code as Confidential Information. No charge or fee shall be imposed upon any tribal citizen in connection with the right to examine tribal records.<sup>1</sup> Persons who are not citizens of the Comanche Nation have no right to review or access any tribal records.

#### **(b) Procedure for Requesting Non-Gaming, Non-Tax Commission Tribal Records**

- (1) Requests for records must be submitted in writing to the Secretary-Treasurer, and must specify the records sought with reasonable specificity. Requesters must present their official Comanche Nation tribal Identification card so that the

---

<sup>1</sup> See Comanche Nation Const. art. X, §4.

Secretary-Treasurer may verify the identity and enrollment of the requester. Comanche Nation citizens are encouraged to make requests using the form in Appendix A.

- (2) The Comanche Constitution protects the rights of tribal citizens to review tribal records. The Constitution does not require tribal employees to conduct research or analysis upon request. Therefore, unless the information is readily retrievable in the form in which it is requested, the Nation is not required to prepare a compilation or summary of records.<sup>2</sup>
- (3) No later than 7 days after receiving a written request for access which reasonably identifies or describes a tribal record, the Secretary-Treasurer, or his or her designee, shall:
  - (A) make the record available to the requester;
  - (B) inform the requester that the record is in use or that unusual circumstances have delayed or impaired the handling of the request and specify in writing the earliest time and date, not later than 21 days after receipt of the request, when the record will be available;
  - (C) inform the requester that the Comanche Nation does not maintain the requested record and disclose which entity is believed to maintain the requested record, if known; or
  - (D) deny the request.

**(c) Procedure for Requesting Gaming-Related Records**

- (1) Requests for records concerning the Comanche Nation Gaming Commission must be submitted in writing to a Gaming Commissioner at 1915 East Gore Blvd, Lawton, Oklahoma, and must specify the records sought with reasonable specificity. Requesters must present their official Comanche Nation Tribal Identification card to that the Gaming Commissioner may verify the identity and enrollment of the requester. Comanche Nation citizens are encouraged to make requests using the form in Appendix A.
- (2) Requests for records concerning Comanche Nation Entertainment (“CNE”), the Comanche Nation’s gaming facilities, or related operations, must be submitted in writing to the CNE Legal Department at 302 Northwest Rogers Lane, Lawton, Oklahoma, and must specify the records sought with reasonable specificity. Requesters must present their official Comanche Nation Tribal Identification card to that the Legal Department may verify the identity and enrollment of the requester.

---

<sup>2</sup> See “Duties of Agency,” Uniform Information Practices Code § 2-102

- (3) The procedures set forth in subparagraphs (b)(2)-(3) of this Section shall also apply to requests for gaming-related records.

**(d) Procedure for Requesting Records from the Tax Commission**

- (1) Requests for records concerning the Tax Commission must be submitted in writing to the Tax Administrator at 1915 East Gore Blvd, Lawton, Oklahoma, and must specify the records sought with reasonable specificity. Requesters must present their official Comanche Nation Tribal Identification card to that the Gaming Commissioner may verify the identity and enrollment of the requester. Comanche Nation citizens are encouraged to make requests using the form in Appendix A.
- (2) The procedures set forth in subparagraphs (b)(2)-(3) of this Section shall also apply to requests for gaming-related records.

**(e) Procedure for Requesting Other Records**

- (1) The Comanche Constitution provides Comanche Nation citizens with access to records of any entity or organization funded by the Nation. For records in possession of entities or organizations that are funded by the Nation but not under the day-to-day supervision of the Tribal Government, requests for records must be submitted in writing to the chairperson of the governing board or committee of the entity or organization. Such requests must specify the records sought with reasonable specificity. Comanche Nation citizens are encouraged to make requests using the form in Appendix A.
- (2) The procedures set forth in subparagraphs (b)(2)-(3) of this Section shall also apply to requests for records under this paragraph (d).
- (3) By accepting tribal funds, any entity or organization, and their directors, officers, managers, and other controlling persons, consent to the jurisdiction of the Comanche Nation, its laws, and its Tribal Courts. Willful refusal to comply with the provisions of this Code may result in contempt sanctions at the discretion of the Tribal Court.

**(f) Denial of Record Request<sup>3</sup>**

- (1) If a request for access to a tribal record is denied, in whole or in part, the requester shall be notified in writing of the specific reasons for the denial, of the requester's right to seek reconsideration, procedures for reconsideration, and right to judicial review. Such notification may be in the form of Appendix A.

---

<sup>3</sup> *Id.* § 2-102(a)-(f)

- (2) If a request for access to a tribal record is denied, in whole or in part, the requester may request reconsideration of the decision, in writing, to the person to whom the original request was made within 7 business days of receiving the denial.
- (3) A request for reconsideration shall be decided within 10 business days of receipt of the requester's request for reconsideration. If denial is reconsidered, the requester shall be immediately notified and provided with the record available. If the denial of access is upheld, in whole or in part, the requester shall be notified in writing of the decision, of the specific reasons for the decision, and of the requester's right to bring a judicial action under this Policy.

**(g) Judicial Review:**

- (1) Within 45 calendar days of receiving the denial, the requester may seek judicial review in the Comanche Nation District Court to compel the Comanche Nation to disclose the records sought.<sup>4</sup>
- (2) In an action to compel disclosure of a tribal record, the District Court shall hear the matter *de novo*. The District Court may examine the record at issue *in camera* to determine whether it or any part of it may be withheld. The Comanche Nation has the burden of proof to establish justification for non-disclosure.<sup>5</sup>
- (3) This right to judicial review is a limited waiver of the Nation's sovereign immunity. This right does not waive sovereign immunity for any matter beyond the denial of the request at issue. This right does not waive the any official's sovereign immunity.

Except as provided in Section 2(d)(d), this Code does not create any personal liability, and no employee or official of the Comanche Nation shall be held liable in a personal or individual capacity for actions related to the denial of a record request.

**SECTION 3: CONFIDENTIAL INFORMATION**

**(a) Purpose**

Recognizing that all Comanche Nation citizens have a vested privacy interest, that the release of certain records may significantly harm the peace, health, safety, and general welfare of the Comanche Nation and its citizens, and that certain records may not be

---

<sup>4</sup> See Federal Freedom of Information Act, 5 U.S.C.A. § 552(a)(4)(B) (imposing the burden on the agency to sustain its action denying access to requested records).

<sup>5</sup> *Id.*

publicly disclosed under federal law, the following categories of records are considered Confidential Information and are exempted from disclosure.

**(b) Records Relating to Receipt of Social Services**

Applications for services, records relating to eligibility for services, and the program's determination of benefit levels for the following programs are confidential<sup>6</sup>

- ICW
- Social Services
- Emergency Management Direct Services
- Youth Shelter
- Grandparents Raising Grandchildren
- FAC-Women's Shelter
- New Pathways
- Prevention & Recovery
- Vocational Rehabilitation
- Optometry
- Diabetes
- Prescription Assistance
- Podiatry
- Caregivers
- Assisted Living

Records describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history, or creditworthiness are confidential, although the amount of compensation, stipends, and gifts paid to the individual by the Comanche Nation or its enterprises is subject to disclosure.<sup>7</sup>

**(c) Employment Records**

Records relating to an individual's employment applications, performance evaluations,<sup>8</sup> or background check results; provided, however, that the following information is **not** considered Confidential Information:

---

<sup>6</sup> See *Havemann v. Colvin*, 537 F. App'x 142 (4th Cir. 2013) (finding that disclosure of individuals' applications and agency's determination of eligibility for Social Security benefits constitutes an unwarranted invasion of personal privacy under the Federal Privacy Act).

<sup>7</sup> See, e.g., Okla. Stat. Ann. tit. 51, § 24A.5(1)(g) (exempting from public disclosure "personal financial information, credit reports, or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body"); see also *Hill v. U.S. Dep't of Agric.*, 77 F. Supp. 2d 6, 7 (D.D.C. 1999) (holding that "personal financial records" were subject to 5 U.S.C. § 552(b)(6)'s exemption from public disclosure)

<sup>8</sup> Okla. Stat. Ann. tit. 51, § 24A.7(b)(2) ("[A] public body may keep a record confidential . . . [w]here disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body and transcripts from institutions of higher education maintained in the personnel files of certified public

- Employment applications of persons who are hired as tribal employees
- Gross receipts by employees of tribal funds
- Dates of employment, titles, or positions; and
- Any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.

Records relating to an employee's medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, drug test results, or health insurance details are Confidential Information.<sup>9</sup>

#### (d) Security Records

Records may be exempted from disclosure if their disclosure could reasonably be expected to jeopardize the safety or security of individuals or the safety, security, or sovereignty of the Comanche Nation. Such records include, but are not limited to:

- (1) records or information compiled for law enforcement purposes, but only if disclosure
  - (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,
  - (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 or the security of the Comanche Nation;<sup>10</sup>
- (2) records or information compiled for public safety purposes, including emergency response plans, security assessment reports, evacuation procedures for government buildings, details on or vulnerability assessments of key infrastructure, network security configurations and protocols, incident response plans for cyber-attacks, reports on identified vulnerabilities in government IT systems, risk assessments related to potential terrorist activities, threat analyses for large public

---

school employees . . . ."); see also *Church of the Divine Earth v. City of Tacoma*, 466 P.3d 789 (Wash. Ct. App. 2020) (Job performance evaluations of two city employees were not of legitimate public concern to the public, thus supporting city's claimed invasion of privacy exemption under state public records act.).

<sup>9</sup> See *id.*; see also Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-19; see also 45 C.F.R. Parts 160, 164 ("HIPAA Privacy Rule") (creating prohibitions on disclosure of individuals' past, present, and future health conditions, provision of health care, and payment for the provision of health care).

<sup>10</sup> See 5 U.S.C. § 552(b)(7) (exempting from public disclosure records or information compiled for law enforcement purposes and limited to certain enumerated categories).

events, information on identified threats to public safety, security protocols for public transportation systems, and incident response plans for transportation emergencies.<sup>11</sup>

**(e) Internal Deliberations**

Records may be exempted from disclosure if they relate to internal deliberations and communications that are part of the business or government decision-making process of the Comanche Nation and enterprises operated or funded in its name.<sup>12</sup>

**(f) Legal Privilege**

Records may be exempted from public disclosure if they are subject to attorney-client privilege, attorney-work product, or other legal privileges.<sup>13</sup> Privilege may be waived only by a duly approved motion or resolution of the Comanche Business Committee or Tribal Council.

**(g) Commercial Information**

Records may be exempted from public disclosure if they contain proprietary or confidential business information where disclosure would cause competitive harm to the Comanche Nation or its enterprises. Such records include, but are not limited to, trade secrets, intellectual property, financial data, pricing information, market research, business plans, sealed bids, product development, and confidential business agreements.<sup>14</sup> Commercial information includes gaming information considered confidential under the Comanche Nation Gaming Ordinance.

**(h) Personal Information**

Records may be exempted if disclosure to the public would constitute a clearly unwarranted invasion of personal privacy, and the individual does not consent to

---

<sup>11</sup> *Id.*

<sup>12</sup> See 5 U.S.C. § 552(b)(6) (exempting from public disclosure “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested”); see also *Department of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001) (stating that the deliberative process privilege “covers documents reflecting advisory opinions, recommendations, and deliberations that are part of a process by which [g]overnment decisions and policies are formulated[.]”)

<sup>13</sup> See *Rocky Mountain Wild, Inc. v. United States Forest Serv.*, 56 F.4th 913, 929 (10th Cir. 2022) (holding that 5 U.S.C. § 552(b)(6) also prevents documents subject to attorney-client privilege and work-product doctrine from public disclosure); see also Fed. R. Evidence 501 and 502 (incorporating the attorney-client privilege and work product doctrine into the Federal Rules of Evidence); Comanche Nation Formal R. Civ. Proc. 26B(1) (“Parties may obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action . . .”).

<sup>14</sup> See 5 U.S.C. § 552(b)(4) (exempting from public disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential”); see also Federal Trade Secrets Act, 18 U.S.C. § 1905 (authorizing the termination and imprisonment of a federal officer or employee who unlawfully discloses protected trade secrets)



disclosure.<sup>15</sup> Such records include, but are not limited to, records revealing social security numbers, birth certificates, driver's license numbers, home addresses, personal phone numbers, personal email addresses.<sup>16</sup> **However**, to the fullest extent practicable, redacted versions of records containing such information shall be disclosed.

## **SECTION 5: FEDERAL LAWS UNAFFECTED**

Records that are confidential due to federal laws, such as FERPA or HIPAA, are Confidential Information under this Code and are protected from disclosure. For entities that receive tribal funding but are subject to state jurisdiction, such as entities organized under state law, records that are confidential under state law are also considered Confidential Information under this Code and are protected from disclosure.

## **SECTION 4: SEVERABILITY**

### **(a) Severability**

If any provision of this Law or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Law which can be given effect without the invalid provision or application.

5620497.v6

---

<sup>15</sup> See *id.* § 552(b)(6) (stating that disclosure under the Federal Freedom of Information Act is not required for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"); see also Federal Privacy Act, 5 U.S.C. § 552a(b)(2) (disclosure of personal records under the Federal Privacy Act can only occur if the individual consents or it is not exempted under FOIA).

<sup>16</sup> See, e.g., *U. S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 600 (1982) ("Information such as place of birth, date of birth, date of marriage, employment history, and comparable data is not normally regarded as highly personal, and yet ... such information ... would be exempt from any disclosure that would constitute a clearly unwarranted invasion of personal privacy."); *Smith v. Dep't of Lab.*, 798 F. Supp. 2d 274, 284 (D.D.C. 2011) ("Generally, personal identifying information such as a person's name, address, phone number, date of birth, criminal history, medical history, and social security number may be protected under [§ 552(b)(6) of FOIA]."); Okla. Stat. Ann. tit. 51, § 24A.7(D) ("The home addresses, home telephone numbers, Social Security numbers, private email addresses, and private mobile phone numbers of current and former public employees shall not be open to public inspection or disclosure . . .");



## FREEDOM OF INFORMATION REQUEST

1. Person making request:	2. Telephone number:
3. Address:	4. Enrollment number:
5. Records sought (please be as specific as possible):	

OFFICIAL USE ONLY	
Records provided:	
Records denied and reasons:	
Approved by:	Date:
Signature:	