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**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

**Question Submitted by:** Charles L. Head, Cherokee Nation Secretary of State

**Opinion Number:** 2012-CNAG-08

**Date Decided:** October 30, 2012

This office has been asked for an opinion answering the following:

***Whether the Registrar can release the tribal citizenship lists to a mail house, with appropriate safeguards to ensure the security of the data, to be used to distribute administration's annual report.***

*Yes, the Registrar can release the tribal citizenship list of name and addresses to a mail house--with the Principal Chief's approval and with appropriate safeguards to ensure the security of the data--to be used solely by the mail house to distribute the administration's annual report, provided that the list is limited to only names and addresses and contains no other identifying information protected by law as outlined below, such as information from a driver's license and/or social security numbers.<sup>1</sup>*

The Cherokee Nation Freedom of Information Act ("FOIA") was enacted pursuant to Legislative Act 25-01 which was signed into law on July 20, 2001.<sup>2</sup> 75 C.N.C.A. §1-17. Under the Cherokee Nation FOIA the Registrar's office is a "Public Body."<sup>3</sup> The lists of tribal citizenship

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<sup>1</sup> *Caveat: The mail house contract should be closely scrutinized to assure that the mail house returns the following directly to Registration: (1) the list provided by Registration and (2) any resulting revised list actually used by the mail house for the mail out of the annual report. The contract should also require that no copy, digital image, or any type of image of the lists or any information is kept by the mail house or shared, shown, given to, or in anyway allowed to be accessed by anyone else.*

<sup>2</sup> The Cherokee Nation FOIA was amended by the following laws cumulative to existing law: (1) Legislative Act 24-04, signed into law on June 17, 2004, which specifically addresses Legislative Conferences between the Principal Chief and the Tribal Council; (2) Legislative Act 25-07, signed into law on June 15, 2007, which specifically addresses written public notice of regular and special meetings by public bodies; and (3) Legislative Act 04-12, signed into law on February 28, 2012, which specifically addresses statement of reasons for a determination of confidentiality.

<sup>3</sup> FOIA, 75 CNCA §1-4 (B), provides: "'Public Body' means any Cherokee Nation board, commission, agency, authority, any public or governmental body or political subdivision of the Nation, including any organization, corporation, or agency supported in whole or in part by public funds under the authority of the Cherokee Nation or expends [sic] public funds under the care of the Nation, including committees, subcommittees, advisory committees,

meet the general definition of “Public Records”<sup>4</sup> in FOIA, § 1-4(b), and as such, are open to inspection by FOIA. However, § 1-4(b) adds the statement that “[r]ecords such as . . . records related to registration . . . are not considered to be made open to the public under the provisions of this act.” The term “related to registration” is ambiguous in that “registration” is not defined in FOIA, and it is also unclear whether records “related to registration” would include a registrant’s mailing address. For instance, “registration” could mean motor vehicle registration, tribal citizenship registration, school or university registration, library registration, or some other type of registration. If the term includes tribal citizenship registration, FOIA prohibits “records related to registration” from being released to the public “under the provisions of *this act*” (i.e., FOIA). In light of this lack of clarity in FOIA, it is necessary to consider other FOIA provisions, as well as the specific confidentiality requirements related to citizenship registration in the Membership Act as discussed below.

The Cherokee Nation FOIA provides that “[a]ny person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 75-1-6,<sup>5</sup> in accordance with reasonable rules concerning time and place of access.” 75 CNCA §1-5 (A). But note, “[p]hotographs, signatures, addresses, and digitized images from a driver’s license or personal identification cards are not public records.” 75 CNCA §1-14. Additionally, FOIA, 75 CNCA §1-15, expressly prohibits release of certain other specific information, including physical characteristics and social security numbers, signature, digitized images, special identification cards, records regarding minors (under fifteen years of age), but not including addresses.

So, on one hand FOIA generally includes the membership information as public records in the possession of a public body subject to release to a third party. On the other hand, if the term “registration” includes “tribal citizenship registration.” FOIA restricts “all records relating to” tribal registration from the public eye. However, FOIA is not the only relevant law for purposes of the present inquiry.

One must also consider the Cherokee Nation Membership Act. The Membership Act was enacted through Legislative Act 6-92 and signed into law on September 12, 1992. Section 17 (c) mandated the Registrar to “develop and maintain a tribal membership database.” Section 18 (d) of the Membership Act also provided that “[l]istings, statistic, and labels from the tribal membership database must be approved by the Principal Chief or designee.” Section 18(d) required such requests to be “routed through the Registrar, who obtains the Chief’s approval, and coordinates with other departments to facilitate the request.”

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and the like of any such body by whatever name know, *and includes any quasi governmental body of the Nation . . .*” (emphasis added).

<sup>4</sup> FOIA, 75 CNCA §1-4 (D), provides, “‘Public record’ includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.”

<sup>5</sup> FOIA, 75 CNCA §1-6 pertains to “Matters exempt from disclosure,” and states a “public body may, but is not required to, exempt from disclosure” thirteen enumerated categories including, “information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses and *information relating to public records which include the name, address, and telephone number*. This provision must not be interpreted to restrict access by the public and press to information contained in public records.” (Emphasis added).

The Membership Act was amended by Legislative Act 2-93 and signed into law on July 12, 1993. The Membership Act was further amended by Legislative Act 16-02 and signed into law on May 13, 2002. Section 33 of the Act was amended by adding subsection “G” which reads in full as follows (emphasis added):

*The status of a person as an enrolled citizen of the Cherokee Nation is hereby deemed to be public information.* In addition to any other Tribal citizenship information that the Registrar is now or may hereafter be authorized to release or otherwise make public under the laws of the Cherokee Nation, the Registrar is authorized to disclose to any person, upon request, the following Tribal citizen information—

1. Whether or not a person is currently enrolled as a citizen of Cherokee Nation and, if so, the date on which the person became enrolled as a Tribal citizen;
2. Whether or not a person has relinquished his or her Tribal citizenship one or more times, and, if so, the date or dates on which the relinquishment of his or her Tribal citizenship became effective under Section 34 of this Title; and
3. Whether or not a person, having relinquished his or her Tribal citizenship one or more times, has re-enrolled as a Tribal citizen, and if so, the date or dates upon which such person re-enrolled as a Tribal citizen.<sup>7</sup>

There is no express authorization to release a citizen’s addresses in either FOIA or the Membership Act. However, there is an implied authorization for tribal use of a registered citizen mailing list in § 18 (f) of LA 2-93,<sup>8</sup> which states:

Release of Tribal Membership Information; (f) Listings, statistics, and labels from the tribal membership database must be approved by the Principal Chief or designee. The receiving of such requests are routed through the Registrar, who obtains the Chief’s approval, and coordinates with other departments to facilitate the request.

The references to “listings” and “labels” associated with the tribal membership database suggest that citizenship mailing labels may be used with the Chief’s approval for governmental purposes.

Canon of statutory construction supports the application of a more recent and specific provision over a more general provision when two statutes may be in conflict or one is ambiguous. Thus, consideration of the general provisions of FOIA in the context of the more specific provisions of the more recent Membership Act supports the following interpretation of those laws and the conclusion as stated on the first page of this opinion.

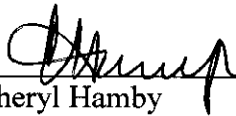
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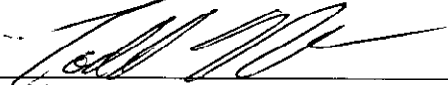
<sup>7</sup> But note, hearings involving minor citizens and Court files associated therewith, “shall be confidential and closed to the public as in other juvenile cases . . . [and] shall not . . . be subject to public disclosure under this or any other law of the Cherokee Nation. The Registrar shall not reproduce, release or disclose the contents of any such order to any person except as expressly authorized by order of the Cherokee Nation District Court or Judicial Appeals Tribunal.” 11 CNCA §34 H.

<sup>8</sup> This provision was contained in §18(d) of LA 6-92 prior to its redesignation as §18(f) in LA 2-93, and was not amended by LA 16-02.

The status of a person as an enrolled citizen of the Cherokee Nation is public information under the Membership Act. Also, whether or not a person has relinquished citizenship and dates of same and whether or not a person has renewed citizenship and dates of same are likewise public information. Additionally we know that any images and information (including address) obtained from a driver's license or identification card is *not* public information. Neither are birth dates, social security numbers, height, weight, age, photographs, and signatures in any form, digitized images contained in compiled application request or special identification cards public information. Furthermore, no court files regarding minor citizens are subject to public disclosure under any law of the Cherokee Nation. A citizen's address is not specifically restricted in any Act unless it comes from a driver's license or other identification card. The Principal Chief or his/her designee must approve release of labels from the citizenship database.

Respectfully submitted by:

  
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