

## CHAPTER 10-2 TRIBAL EMPLOYEE RECORDS CONFIDENTIALITY

### 10-2-1 Policy

It is the policy of the Confederated Tribes of the Colville Reservation that all records relating to an individual when employed by the Confederated Tribes as a full-time, part-time or temporary employee shall be confidential and not disclosed to any person, entity, or governmental agency without the consent of the employee involved, or unless specifically allowed by tribal law.

It is the purpose of this Chapter to implement this policy by providing specific procedures for the disclosure of information relating to tribal employees and penalties for the violation of this Chapter and the privacy rights of affected employees.

### 10-2-2 Definitions

(a) "Employee" means any person working for the Confederated Tribes in any capacity which is covered by the Tribes' plan of operations including as a volunteer, whether full time, part time or temporary, and Tribal Council members.

(b) "Employment records" mean any writing, tape, copy, or other memorialization of whatever kind or nature maintained, obtained or generated while an employee is working for the Confederated Tribes and that relates to the employment of the employee and which includes but is not limited to resumes, health records, warning notices, disciplinary actions, evaluations, recommendations, retirement records, per capita holds, garnishments, vacation and sick leave, hours, wages, withholding, earnings, dependents, marital status, employment applications, previous tribal employment and terminations.

(c) "Custodian" means the employee's supervisor, the personnel, and accounting (including payroll) departments.

(d) "Colville Tribes" or "Confederated Tribes" means the Confederated Tribes of the Colville Reservation.

(e) "Disclosure" or "to disclose" 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.

### 10-2-3 Duty Not to Disclose

No employee of the Confederated Tribes shall disclose any employment record relating to a present or past employee of the Confederated Tribes without the prior written consent of the employee to whom the record applies, unless otherwise allowed under this Chapter.

### 10-2-4 Exception to the Rule Against Disclosure

It shall be lawful for an employee of the Confederated Tribes to disclose an employment record to the following:

(a) A custodian, as defined herein;

(b) The executive director when necessary for the executive director to carry out his or her responsibilities including but not limited to the duty of supervisor, discipline, investigation of violations of the plan of operations, grievance matters, and financial and grant accountability;

(c) The Colville Tribal Police when in conjunction with an ongoing criminal investigation and the holder of an employment record is served with a subpoena signed by the Tribal Court judge requiring the transmittal of the employment record. In cases where the Colville Tribal Police believe that public filing of a request for a subpoena would compromise an ongoing investigation, the police may request that the Tribal Court consider the requested subpoena in camera, without public filing;

(d) Any other individual, entity or governmental agency when the disclosure is allowed by an order of the Colville Tribal Court;

(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;

(f) The Office of the Reservation Attorney when acting to advise the Colville Business Council, executive director, or any department head or supervisor, or when acting on other legal or administrative matters associated with the employment records. The Office of the Reservation Attorney may also disclose employment records for any of the purposes in this provision.

(Amended 11/21/2019, Resolution 2019-731) (Certified 11/26/2019)

(g) The Colville Business Council Ethics Committee when meeting in official session on matters brought before the committee requiring access to records governed by this Chapter.

(Amended 12/7/89, Resolution 1989-852) (Certified 12/12/89)

(h) The Colville Business Council when meeting in an official committee session that is closed to the public on matters brought before the committee requiring access to records governed by this Chapter.

(Amended 11/21/2019, Resolution 2019-731) (Certified 11/26/2019)

(i) The Colville Tribal Child Support Enforcement office and the Colville Tribal Court and the Administrative Law Judge to facilitate their duties under federal and tribal laws and regulations in establishing and enforcing child support orders.

(Amended 7/19/07, Resolution 2007-413, Certified 8/1/07)

#### **10-2-5 Duty to Notify**

(a) Except as provided in subsection (b) or (c) of this section, any time that disclosure is made pursuant to section 10-2-4 the person making the disclosure shall within five (5) working days notify the employee whose records were disclosed of the disclosure, identifying the person to whom the disclosure was made, and the justification for the disclosure.

(b) The notification requirement set out in subsection (a) of this section shall not apply to certain disclosures made in the regular course of business in order to facilitate the preparation of payroll, the computation of employee benefits, or routinely required by the Internal Revenue Service.

(c) The notification requirement set out in subsection (a) of this section shall not apply to disclosures made by or to any attorney in the Office of the Reservation Attorney.

(Amended 11/21/2019, Resolution 2019-731) (Certified 11/26/2019)

#### **10-2-6 Penalties**

(a) The knowing and intentional disclosure of any employment record in violation of this Chapter by an employee other than a Tribal Council person shall be considered a serious offense under the tribal plan of operations, subjecting the offending employee to those sanctions set out therein.

(b) The knowing and intentional disclosure of any employment record by a member of the Colville Business Council shall be deemed to be a major violation of the Council Code of Professional Responsibility and gross misconduct under Section 2 of Article IV of the Colville Tribal Constitution, and shall subject the offending Council person to the sanctions and procedures set out in the Code of Professional Responsibility.

#### **10-2-7 Grievance Procedure**

(a) Any current or past employee of the Confederated Tribes who believes that employment records relating to him or her were disclosed in violation of this Chapter may request that the executive director investigate the allegation of improper disclosure. At the close of the investigation the executive director shall report in writing to the employee, or former employee, any conclusion with respect to the alleged improper disclosure, and what action, if any, is to be taken. Provided, when the alleged improper disclosure is against

the executive director, the Office of the Reservation Attorney shall undertake this investigation.

(b) There shall be no appeal from the decision of the executive director or the Office of the Reservation Attorney, as the case may be. Provided, nothing herein shall affect whatever legal or equitable rights might be available under tribal law, if any, to the person who alleges the improper disclosure.

(c) The procedures set out in this section shall not apply to allegations of improper disclosure by Tribal Council persons. Such allegations shall be referred for investigation to the Council Ethics Committee to be resolved pursuant to the Council Code of Professional Responsibility.

**10-2-8 Required Disclosure**

(a) When not otherwise allowed under section 10-2-4 of this Chapter an employee may be required to disclose employment records in conjunction with a grievance, or disciplinary action filed by or against an employee, new employment at the Confederated Tribes, or promotion.

(b) To the extent that an employee fails to consent to the disclosure of employment records, the Confederated Tribes may deny the grievance, affirm the disciplinary action, or refuse to hire, promote or transfer the employee. Provided, the employee shall retain all rights otherwise available, if any, to challenge the action of the Confederated Tribes under tribal law, and may there prove by clear and convincing evidence that the required disclosure was not reasonably related to the action then being considered by the Confederated Tribes.

**10-2-9 Sovereign Immunity**

Nothing in this Chapter shall waive the sovereign immunity of the Confederated Tribes, or the immunity of any employee, agent, attorney or council person 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 Confederated 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.

(Chapter 10-2 Adopted 7/7/88, Resolution 1987-364, Certified 7/20/88)