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**CHEROKEE NATION**<sup>®</sup>  
P.O. Box 948 • Tahlequah, OK 74465-0948  
918-453-5000 • www.cherokee.org

Office of the Principal Chief

**Chuck Hoskin Jr.**  
*Principal Chief*  
GP FOP S:SS  
O-EOG:3

**Bryan Warner**  
*Deputy Principal Chief*  
SZ3PV:3  
WFL DL3J O-EOG:3

## **EXECUTIVE ORDER 2022-06-CTH**

### **PROTECTING EMPLOYEE PRIVACY AND REQUIRING NOTICE TO EMPLOYEES WHEN PERSONNEL INFORMATION IS REQUESTED OR PROVIDED**

1. **AUTHORITY:** The Constitution and laws of the Cherokee Nation.
2. **POLICY:** It is in the interest of the Cherokee Nation to safeguard employee personnel information from disclosure that violates the privacy of employees. Current law provides certain legal and technological safeguards against the disclosure of certain employee information, providing a base level of protection. However, it is vital that Cherokee Nation maintain the most effective legal, policy and electronic structures in place to protect Cherokee Nation employees. In that regard, the disclosure of employee personnel information subjects employees to, among other things, harassment, stalking, as well as unsolicited commercial inquiries. Employees have a right to know when their personnel information is being requested by or provided to a third party, who is requesting it, why they are requesting the information. Equally important is the legal basis and purpose for the request and/or disclosure. Accordingly, the Chief of Staff and the Executive Director of Human Resources are ordered to take the actions prescribed herein to further protect the privacy rights of Cherokee Nation employees.
3. **Definitions:**
  - a. **Cherokee Nation Employee:** Any individual employed by Cherokee Nation in a full time or regular part time basis.
  - b. **“Third Party”:** Any person or entity other than Cherokee Nation, employees or officials of the Cherokee Nation working in their official capacity, any entity wholly

owned by the Cherokee Nation or the Housing Authority of the Cherokee Nation, *provided* that notwithstanding the foregoing, any individual seeking information through the Cherokee Nation Freedom of Information Act (“FOIA”) or Cherokee Nation Government Records Act (GRA) is a “third party” within the meaning of this order.

4. **Review and Recommendations with Respect to Extant Laws, Policies and Technologies Protecting Employee Privacy:** The Chief of Staff shall convene an executive branch Work Group on Employee Privacy, composed of at a minimum himself and designees from the Department of Information Technology, Department of Human Resources and Office of Attorney General, the objective which is to:

- a) Examine existing laws, policies and technology in place at Cherokee Nation relating to employee privacy.
- b) Identify any gaps or deficiencies with respect to the aforementioned laws, policies and technology.
- c) Make recommendations to address the aforementioned gaps or deficiencies, including any recommended changes to Cherokee Nation policy, law or use of technology.
- d) Provide a final report to the Principal Chief and the Speaker of the Council of the Cherokee Nation within 90 days of the date of this Order.

5. **Mandatory Notice to Employees:** Cherokee Nation’s Department of Human Resources shall disclose to employees any requests by third parties for information contained in their personnel file or the provision of such information to third parties. More specifically:

6. **Action Triggering Notice:**

- a) Any inquiry, other than inquiries or activities expressly exempt under this Order, trigger the notice requirement in this Order. This includes inquires or requests made under FOIA and GRA, or
- b) The disclosure of information to a third party pursuant to the type of inquiry described above.

7. **Method, Substance of Notice:**

- a) **Method:** The notice shall be direct and in writing to employees by email and/or regular mail at the discretion of the Executive Director of Human Resources.
  - b) **Substance:** The notice shall follow substantially the format set forth in Exhibits A and B of this order, to include:
    - i. Information being requested by (or provided to) a third party
    - ii. Name of the third party person or entity requesting the information along with all contact information submitted by the requestor with the request.
    - iii. A copy of the request for information or, if the request is voluminous in the determination of the Executive Director of Human Resources, a summary of the request.
    - iv. A statement that disclosure of the subject information may be required by law, but that this Order protects the employee's "right to know" and that the employee will be further advised in writing if the information is disclosed.
8. **Exemptions from Notice Requirement:** This Order shall not apply to the following types of inquiries or information disclosures:
- a) Inquiries for information, or information disclosed, pursuant to routine background and reference checks conducted by the Department of Human Resources.
  - b) Inquiries for information, or information disclosed, pursuant to a request from a law enforcement agency with appropriate legal authority to request and receive such information and where notice of disclosure would interfere with a criminal investigation.
  - c) Disclosure of information through the ordinary course of Cherokee Nation public communications through the Department of Communications, such as inclusion of employee names in media releases, notwithstanding that such information may incidentally also be contained in a personnel file.
9. **No Application to Cherokee Nation Entities; Entities Encouraged to Follow Suit:** This Order does not apply to any entity wholly owned by the Cherokee Nation or the Housing

Authority of the Cherokee Nation. However, a copy of this order shall be provided to the executive leadership of those entities as a courtesy advisory. The Principal Chief encourages such entities to undertake a review process comparable to that set forth in paragraph 4 of this order and to consider implementing policies comparable to those found in this order within 90 days of the effective date of this order.

10. **No Cause of Action or Adverse Employment Action:** Nothing herein creates a term or condition of employment. No failure to execute the terms of this Order constitutes an adverse employment action or otherwise creates a cause of action for any individual or entity.
11. **Application to Former Employees:** The Executive Director of Human Resources shall make every effort to apply the provisions of this order to former employees, providing them with relevant notice of information requests and disclosure at their last known address.
12. **Changes (or additions) to FOIA and GRA Forms:** Forms for the submission of information requests pursuant to the Cherokee Nation Freedom of Information Act and Government Records Act shall be updated within 90 days of this Order to include the following language:

*Requests for information or records that may be contained in Cherokee Nation employee personnel records may be subject to the Principal Chief's Executive Order on Employee Privacy. Under this Order a copy of your request and your contact information may be provided to employees whose information is the subject of your request.*
13. **Accountability:** Any Cherokee Nation employee who fails to take actions required by paragraphs 5-8 of this Order, or interferes with such action, may be subject to discipline in accordance with Cherokee Nation Human Resources policies.
14. **Cumulative to Existing Law and Policy:** The provisions in this order are cumulative to existing law and policies.
15. **ORDER:** The Chief of Staff of the Cherokee Nation and the Executive Director of Human Resources shall take the actions prescribed herein in order to further protect the privacy

interests of Cherokee Nation employees and to inform the Administration and Council of the Cherokee Nation of opportunities to strengthen law, policies or use of technology in connection with employee privacy.

16. **EFFECTIVE DATE:** This Order is effective immediately on this 28th day of July 2022. Furthermore, it shall apply to any relevant pending requests for information.



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Chuck Hoskin, Jr.  
Principal Chief  
Cherokee Nation

EXHIBIT A – TEMPLATE NOTICE LETTER FOR INFORMATION REQUEST

[Date]

Dear [Employee Name]:

This is to advise you that a third party has requested information that is contained in your Cherokee Nation personnel file.

The information sought is [attached to this letter / summarized below]

The information request is from the following [person or entity]

Under the law Cherokee Nation may be required to release this information.

Under the Principal Chief's Executive Order on Employee Privacy (2022 06-CTH) this office is required to provide you with this notice as well as a notice in the event we are required to disclose this information.

Wado,

Executive Director of Human Resources

**EXHIBIT B – TEMPLATE NOTICE LETTER FOR DISCLOSED INFORMATION**

[Date]

Dear [Employee Name]:

This office previously advised you that a third party requested information that is contained in your Cherokee Nation personnel file. A copy of that letter is attached.

Under the law Cherokee Nation was required to release this information.

As noted in our earlier letter, the person or entity seeking your information is as follows:

[Name and contact information of record of person or entity to which the information was disclosed]

Under the Principal Chief's Executive Order on Employee Privacy (2022 06-CTH) this office is required to provide you with this notice.

Wado,

Executive Director of Human Resources