WAGANAKISING ODAWAK

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
LEGISLATIVE BRANCH
7500 ODAWA CIRCLE
HARBOR SPRINGS, MI 49740

EFFECTIVE DATE

According to LTBB Constitution – Article VII, (D) 1. They (Statutes) shall be deemed enacted if not expressly vetoed by the Executive within thirty (30) days of submission.

The Executive failed to expressly veto the following Statute: *Public Documents # 2010-009* within 30 days from submission to the Executive Branch thus deemed enacted on August 26, 2010 per LTBB Constitution.

Date: 08/30/10
Michael Smith

Michael Smith

Administrative Assistant
Legislative Branch/Tribal Council
Little Traverse Bay Bands of Odawa Indians
7500 Odawa Circle
Harbor Springs, MI 49740

WAGANAKISING ODAWAK STATUTE 2010-009
PUBLIC DOCUMENTS

SECTION I. PURPOSE

This Statute defines and qualifies public documents by the Tribe and provides for particular exempt documents from public disclosure regarding the records of Little Traverse Bay Bands of Odawa Indians as mandated by the Tribal Constitution, Article VII D (7) and acknowledges the rights of Tribal Citizens to have access to public documents.

SECTION II. REPEAL OF PREVIOUS LAW and REGULATIONS

This Statute repeals and replaces Waganakising Odawak Statute 2009-025 Disclosure of Public Documents, Waganakising Odawak Statute 2008-010 *Disclosure of Public Documents* and Waganakising Odawak Statute 2006-024 *Disclosure of Public Documents Act* and any other previously enacted laws, amendments, approved rules or regulations.

SECTION III. DEFINITIONS

A. *"Appropriate Authority"* means the officials, individual employees and/or managers who possesses the authority to make the decision regarding public documents within their respected government branch or division, department, agencies, entity, enterprise or office.

B. *"Malice"* means the intent, without just cause or reason, to commit a wrongful act that will result in harm to another.

C. *"Public"* means any Tribal Citizen or an authorized representative of a Tribal Citizen who has a signed notarized statement of authority.

D. *"Public Documents"* means a writing prepared, owned, used, in the possession of, or retained by a government branch or division, department, agency, commission, board,

committee, entity, enterprise or office in the performance of an official function, from the time it was created.

E. *"Reckless indifference"* means conscious or reckless disregard of the consequences of one's acts or omissions.

F. *"Tribe"* means the Little Traverse Bay Bands of Odawa Indians.

SECTION IV. RIGHTS OF TRIBAL CITIZENS

A. Tribal Citizens have a right to review public documents unless exempted.

B. Only Tribal Citizens have a right to review public documents.

SECTION V. OPEN TO DISCLOSURE

A. All records except those specifically cited as exemptions are considered public documents by Statute and must be disclosed unless exempt by Statute.

B. All writings, applies to any handwriting, typewriting, printing, Photostatting, photographing, photocopying and every other means of recording. It includes letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. It does not include computer software.

SECTION VI. DOCUMENTS EXEMPT FROM PUBLIC DISCLOSURE

A. Documents that contain specific personal information affecting an individual's privacy are exempt from disclosure. This exemption would include employment personnel files, social security numbers, medical records and similar records that constitute a clearly unwarranted invasion of an individual's privacy. This exemption does not include withholding information pertaining to the Tribal Citizen who is requesting the record except for the following:

1. Sealed adoption records within the Tribal Citizen's enrollment file that have been sealed under a court order.

2. Records covered by attorney client privilege.

3. Records specifically exempt by other Statutes.

B. The following records are also exempt from public disclosure:

1. Records that contain confidential business, or potential business dealings

2. Records that contain legal matter to the Tribe or a Tribal Citizen.

3. Records that rise significant privacy or confidentiality concerns for the Tribe or a Tribal Citizen.

4. Records within a pending investigation either before an administrative or judicial proceeding involving the Tribe or a Tribal Citizen.

5. Records that could impair a criminal investigation.

6. Records specifically exempt by other statutes.

SECTION VII. ACCESS FOR REVIEW

The appropriate authorities within the following governmental divisions shall make available for review all public documents, unless exempt by applicable law:

1. Executive

2. Legislative

3. Judiciary

4. Prosecutor

5. Election Board

SECTION VIII. REVIEW OF DOCUMENTS

A. Any request for review of documents must be made by a Tribal Citizen or an authorized representative who is also a Tribal Citizen.

B. Request for review may be made in person or in writing and must be accompanied with a copy of a Tribal identification card.

C. Each request must be specific in nature as to what documents are being requested for review.

D. Requests for review may be limited to normal office hours. Such office hours shall be posted by the appropriate authority.

E Whenever possible the appropriate authority shall make the documents available immediately for review, or as soon as possible thereafter.

F. If the request is made by an employee or former employee who wishes to review his or her own personnel file shall complete the personnel file request form with the Human Resources Department. Employees or former employees may review or obtain a copy of their own personnel file without cost.

G. Copies should be provided upon request unless the document contains sensitive matters that may restrict the document to viewing only and no copies shall be provided.

H. If copies are provided, the appropriate authority may charge a reasonable fee for cost of copies. Such cost shall be determined and made known to the Tribal Citizen prior to the incurrence of cost.

SECTION IX. REQUIRED REGULATIONS

A. The Tribal Executive shall develop regulations to implement this Statute establishing:

1. A method for defining classifications of documents.

2. A method for redacting portions of documents.

3. A method for marking, controlling, keeping and releasing document.

4. A schedule for reasonable cost for release of documents.

B. Such regulations shall be submitted to Tribal Council for approval.

SECTION X. LIMITED WAIVER OF SOVEREIGN IMMUNITY

A. The Tribe clearly and expressly waives its sovereign immunity to the remedies set forth in this Statute for officials, individual employees and/or managers who act beyond the scope of their duties and authority in which the actions include either acting with malice or with reckless indifference to the rights afforded under this Statute to Tribal Citizens.

B. The Tribe clearly and expressly waives its sovereign immunity to the remedies set forth in this Statue for officials, individual employees and/or managers acting with malice or reckless indifference in an effort to use or disclose exempt public information or allowing the improper use of such information.

SECTION XI. REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS

A. Any charge of violation must be filed with the Tribal Court within thirty (30) days of the alleged violation.

B. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations as follows:

1. *Equitable Remedies.* If the Tribal Court finds that a violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:

a) An order to release the information or portions of the information;

b) An order to cease and desist from the unlawful action specified in the order;

2. *Damages.* A complainant may recover damages against officials, individual employees and/or managers if the complainant demonstrates that the officials, individual employees and/or managers violated this Statute with malice or with reckless indifference to the complainant. Such damages may include actual costs, inconvenience, mental anguish and other non-pecuniary losses.

C. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.

D. The total sum of damages received by the Complainant may not exceed $500.00, excluding the amount for actual costs or attorney fees, if awarded.

E. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems appropriate.

SECTION XII. SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of Disclosure of Public Documents Statute is found by a court of competent jurisdiction to violate the Constitution, laws or Statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be

deleted from these Rules and Procedures, the entirety of the balance of these Rule and Procedures remain in full and binding force and effect.

SECTION XIII. EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on July 25, 2010 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 2 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Marvin Mulholland	X			
Belinda Bardwell	X			
Melvin L. Kiogima				X
Gerald V. Chingwa	X			
Rita Shananaquet				X
Aaron Otto	X			
John Bott	X			
Regina Gasco Bentley	X			
Julie Shananaquet	X			

Date: 7-25-10

Julie A. Shananaquet, Legislative Leader

Date: 7-25-10

Regina Gasco Bentley, Secretary

Received by the Executive Office on 7-26-10 by

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date:

Ken Harrington, Tribal Chairperson