



**HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 3 – DISCOVERY ACT**

ENACTED BY LEGISLATURE: JULY 20, 2005

CITE AS: 2 HCC § 3

This Act supersedes the Ho-Chunk Nation Discovery Act enacted by Legislative Resolution 12/12/95A and as amended by Legislative Resolution 1/16/96F.

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1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(f) of the Constitution grants the Legislature the power to set the salaries, terms and conditions of employment for all governmental personnel.

2. Findings.

a. The Nation has an obligation to protect confidential and other essentially private information from public disclosure.

b. Nation has an obligation to protect its members from public scrutiny of private information maintained by the Nation.

c. The Nation has a right to disclose any information maintained by the Nation when required in the best interest of the Nation, the administration of justice, or other applicable law.

3. Purpose and Intent. This Act prescribes procedures for production or disclosure of any material contained in the files of the Nation, any information relating to material contained in the files of the Nation, or any materials or information acquired by any person while such person is or was an employee of the Nation as a part of the performance of that person's official duties or because of that person's official status, in any federal, state and tribal legal proceeding whether or not the Nation is a party, including any proceeding in which the Nation is representing a tribal government or employee, when a subpoena, order, request, or demand of a court or other authority is issued for such material or information.

4. Definitions.

a. "Attorney General" means Attorney General of the Ho-Chunk Nation.

b. "Confidential" means any statement, document, or process of the Nation, which arises either from a fiduciary or privileged communication or is protected as a matter of applicable law.

c. "Demand" means any order, subpoena, or request of any court, grand jury, or administrative body acting in an adjudicatory capacity in any federal, state, or tribal forum.

d. "Nation" means the Ho-Chunk Nation, its departments, commissions, agencies, and political subdivisions, including any corporation owned or controlled by the Nation.

e. "Official" means a person invested with the authority of an office of the Nation.

f. "Trade Secret" means any formula, pattern, device or compilation of information which is used in one's business, and which gives a person or persons, including the Nation, an opportunity to obtain an advantage over competitors who do not know or use it.

5. General Access to Public Information. Records or documents of the Nation maintained by the Nation for public purposes shall be available for inspection and dissemination to any Member of the Nation in accordance with this Act and any other applicable law.

6. General Prohibition of Production or Disclosure in Proceedings in which Nation is Not a Party.

a. In any proceeding in which the Nation is not a party, no past or present official or employee of the Nation shall, by oral or written testimony or any other means, in response to a request or demand, produce or disclose any material contained in the files of the Nation, produce or disclose any information relative to or based upon such material, or produce or disclose any information or any material acquired because of the

performance of that person's employment or official status, without the prior written approval of the Attorney General.

b. Whenever a demand for production or disclosure is made upon a past or present official or employee under this Section, the official or employee shall immediately notify the Attorney General. The Attorney General shall request a copy of the request or demand, a summary of material, information, or testimony sought, and its relevance to the proceeding. The Attorney General shall not approve production or disclosure without such request. The Attorney General shall not approve any request beyond the scope of the demand.

c. The Attorney General may approve any request for production or disclosure within the scope of this Section and subject to Section 8 of this Act; provided, that:

(1) any production or disclosure shall be limited to the scope of the demand or the request; and

(2) Attorney General shall not approve production or disclosure to any proceeding without such demand or request.

7. General Production or Disclosure in Proceedings in which the Nation is a Party.

a. In any proceeding in which the Nation is a party, no past or present official or employee of the Nation shall, by oral or written testimony or any other means, in response to a request or demand, produce or disclose any material contained in the files of the Nation, produce or disclose any information relative to or based upon such material, or produce or disclose any information or any material acquired because of the performance of that person's employment or official status, without the prior written approval of the Attorney General. This Act shall not be deemed to apply to those cases brought between or among the Legislative, Executive, or Judicial Branches of the Ho-Chunk Nation in the Ho-Chunk Trial Court.

b. Whenever a demand for production or disclosure is made upon a past or present official or employee under this Section, the official or employee shall immediately notify the Attorney General. The Attorney General shall request a copy of the request or demand, a summary of the material, information, or testimony sought, and its relevance to the proceeding.

c. The Attorney General may approve any request for production or disclosure within the scope of this Section and subject to Section 8 of this Act; provided, that:

(1) any production or disclosure shall be limited to the scope of the demand or the request; and

(2) the Attorney General shall not approve production or disclosure to any proceeding without such demand or request.

8. Non-Disclosure of Certain Information.

a. The Attorney General shall not approve disclosure, production, or testimony regarding any material or information by any past or present Nation official or employee with respect to any request or demand if:

- (1) disclosure would violate federal or tribal law or regulation;
- (2) disclosure would reveal confidential information maintained by the Nation as confidential, including but not limited to medical and personnel files;
- (3) disclosure would be contrary to the best interests of the Nation; or
- (4) disclosure would reveal confidential communication between an attorney and client.

b. The Attorney General shall not approve disclosure, production, or testimony, unless an appropriate court finds a substantial showing of need for such information, if:

- (1) disclosure would reveal attorney work-product prepared in anticipation of proceedings; or
- (2) disclosure would reveal intra-governmental communications regarding business matters or inter-governmental communications.

c. The Attorney General shall not approve disclosure, production, or testimony, unless the Attorney General determines that the administration of justice requires disclosure of such information, if:

- (1) disclosure would reveal the identity of a confidential source or informant, unless the investigative agency and the source or informant have no objection;
- (2) disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired; or
- (3) disclosure would improperly reveal trade secrets without the owner's consent.

9. Savings Clause.

a. Nothing in this Act is intended to create any right or benefit, substantive or procedural, enforceable at law, against the Nation.

b. Nothing in this Act is intended to waive the sovereign immunity of the Nation or any of its officials or employees.

Legislative History:

12/12/95 Ratified by Legislative Resolution 12/12/95A.
1/16/96 Amended by Legislative Resolution 1/16/96F affecting Section 7(a).
11/24/04 Legislature places Discovery Act out for Executive Review and Coordination as a Proposed Bill.
5/17/05 Legislature places Draft Discovery Act out for 45-Day Public Review.
7/8/05 45-Day Public Review period ends without comments.
7/20/05 Enacted by Legislative Resolution 7/20/05K.