

Saint Regis Mohawk Tribe Open Records Policy



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Tribal Sovereignty and the Freedom of Information Act (FOIA)

Federally recognized Tribes including the Saint Regis Mohawk Tribe are exempt from the Federal Freedom of Information Act and the state's open records and meeting laws. The Tribe cannot be subpoenaed to produce documents without the express written approval of Tribal Council.

The following Open Records Policy is the Tribes Freedom of Information Law.

Open Records Policy

Section 1: Purpose and Policy

1.1-1. *Purpose.* The Saint Regis Mohawk Tribe hereby affirms that members of the Tribe are entitled to information pertaining to governmental business, with exceptions, subject to privacy rights, laws, Policy and administrative guidelines.

1.1-2. *Policy.* This Policy shall only apply to requests made by Tribal Members; non-Tribal members shall not be entitled to inspect or otherwise have access to records. In some instances, certain records are deemed “public” by means of publications, postings and websites; however, the “public” cannot make any requests for records.

Section 2: Scope and Applicability

1.2-1. *Scope.* This Policy governs the handling of information and records open for inspection, review and dissemination to Tribal Members.

1.2-2. This Policy applies to all records of the Saint Regis Mohawk Tribe regardless of medium. They include but are not limited to all documents, papers, forms, letters, maps, books, tapes, photographs, films, sound recordings, magnetic, digital or other tapes, electronic data processing records, computer stored data, electronic mail messages, that are created, collected, processed, used, stored, and/or disposed by Tribal employees, elected officials, appointed personnel, as well as those acting as its agents, such as contractors, or grantees.

Section 3: Adoption

1.3-1. This Policy was adopted by the Saint Regis Mohawk Tribal Council by resolution 2012-41 .

Section 4: Amendments

1.4-1. This Open Records Policy and procedures may be altered, amended or repealed and new policy and procedures may be adopted by the vote of two out of three chiefs.

Section 5: Conflicts

1.5-1. Any ordinance, policy, regulation, act, resolution or motion, or portion thereof, which directly conflicts with the provisions of this Policy is hereby repealed to the extent that it is inconsistent with or is contrary to this Policy.

Section 6: Definitions

1.6-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Appointed Officials” means personnel selected by, through, or as a result of an appointment; i.e. commissioners, board members, committee members tribunal members who act with delegated authority.
- (b) “Authority” means, right or power to enforce rule or give orders, somebody with official power, power to act on behalf of somebody else, or official permission to do something.
- (c) “Elected Official” means any person who is an official by virtue of an election.
- (d) “Employee” means an individual employed by the Saint Regis Mohawk Tribe, or one of its subsidiary companies or enterprises.
- (e) “General Public” means Non-Tribal Members.
- (f) “Government” or “Tribal Government” means the Saint Regis Mohawk Tribal Council and any department, division, board, committee, commission or judicial body of the Saint Regis Mohawk Tribe.
- (g) “Member” or “Tribal Member” means a person who is officially enrolled as a member of the Saint Regis Mohawk Tribe.
- (h) “Personally Identifiable Information” means information that can be associated with a particular individual through one or more identifiers such

as social security number, credit card number, unlisted telephone number or driver's license number.

- (i) "Privileged Attorney-Client Information" means records pertaining to communications between attorneys and their clients, which is not in any circumstance subject to the disclosure provisions provided by this Policy.

Section 7: Records Management Officer

1.7-1. The duties of Records Management Officer shall be to organize and maintain all public records so that they are readily available for inspection and copying in accordance with this Policy. Duties shall also include making the determination for the Tribe whether or not to grant access to the requested records. The officer shall have the additional duty of recommending to Tribal Council regulations to assist the office in the fulfillment of its duties.

Section 8: Access to Records, Records Deemed Open to Tribal Members

1.8-1. Without limiting the amount or kind of information that is open for inspection under this Policy, the following categories of information are "open" and available to Tribal members:

- a) The names and titles of employees of the Tribe;
- b) Job postings;
- c) Census data regarding population (not membership);
- d) Salary, bonuses and benefits received by elected or appointed officials of the Tribe;
- e) Human resource policy manuals;
- f) Court opinions or court decisions (subject to redaction of confidential or minor information);
- g) Tribal ordinances, acts, policies, resolutions and amendments thereto;
- h) Publicly filed organizing documents of any Saint Regis Mohawk entity (i.e. charters);
- i) Annual financial audits, all financial disclosures that have been deemed open to Tribal Members;
- j) Minutes of Tribal Council open meetings, as per TCR 2011-55;
- k) List of eligible voters (can only be viewed in the clerk's office from Caucus to election and only for purposes of verifying voter eligibility);

- l) Statistical data of Tribal members (numbers only); and
- m) Election candidate lists, voting results.

1.8-2. The following information is deemed “Public” and is available to the general public.

- a) Laws and Policies
- b) Company and/or business names
- c) Newsletters
- d) Policies and procedures such as personnel policy and court procedures.
- e) Sex offender registry
- f) Media Releases and publications

Section 9: Exceptions and Limitations

1.9-1. Tribal government business often includes matters relating to Tribal business enterprises. The purpose of these exceptions is to address the non-disclosure of certain business records, records of a sensitive nature, or situations where the Tribal members’ right to access is outweighed by the Tribe’s interest in keeping such records confidential.

1.9-2. The following shall be exempt from disclosure and inspection shall not be granted:

- a) Proposals and bids for any contract or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contract or agreement with the Tribe, until an award or final selection is made and after deletion of the portions which are exempt from disclosure under this law. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made;
- b) Contracts or other agreements which specifically prohibit disclosure of the content of the contract or agreement to third parties;
- c) Any and all records related to: contracts containing a confidentiality or nondisclosure provision; any proposed contracts or employment related contracts;
- d) Any personally identifiable information including medical, financial, personnel records or similar files or information, including but not limited to Tribal enrollment numbers, social security numbers.

- e) Privileged attorney-client information or attorney work product and all related records.
- f) Records of law enforcement agencies, prosecution, or regulatory agencies that deal with detection and investigation of crimes.
- g) Matters specifically exempted from disclosure by applicable federal, state, or tribal statute or law.
- h) Any records containing proprietary information, trade secrets or information that would be deemed privileged in litigation;
- i) Drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated;
- j) Inter-office communications relating to proposals or matters which have not been introduced for consideration in an open meeting. This includes: Inter-office memorandums, personal notes, drafts, communications with staff and other records which relate to ongoing matters or works in progress currently being performed;
- k) Records that would reveal the exact location of archaeological sites;
- l) Records related to security and community safety;
- m) Any court records that would otherwise not be disclosed by the court, any records that have been sealed, any documents or records protected by attorney client privilege;
- n) Records or information for which disclosure would jeopardize the functioning of the Tribal government or an entity partly or wholly owned by the Tribe;
- o) Geological and geophysical information and data, including maps, concerning wells;
- p) Any information related to higher education and student records; and
- q) Value of rare books or collections

Persons who are committed or incarcerated shall not have access to any records of the Tribe, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children and the record is otherwise accessible to the person by law.

Section 10: Open Records Procedures

1.10-1. Open Records may be inspected and/or copies may be obtained under the following procedures.

- a) A request for open records must be directed to the Records Management Officer.
- b) To view documents at the Saint Regis Mohawk Tribe, members must show their Tribal ID cards to verify their enrollment.
- c) A request for open records “open records request form” shall be made in writing upon a standard form provided by the Records Management Officer which shall be made available at the Tribe’s main corridor, or at each of the department’s main receptions, and on-line at: www.srmt-nsn.gov, and must include the following information:
 - 1. The requester's name, enrollment number, telephone, address and signature;
 - 2. The date of the request;
 - 3. Whether the request is to inspect the open records or for copies of open records, or both;
 - 4. Describe, with specificity, the nature of the record(s) being requested so that the office or department having custody of the record will be able to make a determination as to whether or not access should be granted; and
- d) A request for open records must be delivered during normal business hours, M-F 8:00 am – 5:00 pm or sent regular mail to the Open Records Office.
- e) Electronic mail requests for open records are not permitted.
- f) The Open Records Office, to the extent practicable, assist requesters in identifying the open records sought.
- g) Requests for inspection or copying of open records maintained by the Tribe will be subject to that the Tribe’s rules and regulations, including required forms and fees.
- h) List of available records. A current list of all records available for inspection and copying shall be maintained by the Records Management Officer and such list shall be available for public inspection and copying.
- i) All available records shall be located at 412 State Route 37, Akwesasne, NY 13655.

Section 11: Response to Open Records Requests

1.11-1. Response to open records shall be made within ten (10) business days of the records request.

1.11-2. Each determination shall be provided in writing or in person to the requester.

1.11-3. The Records Management Officer shall make one or more of the following responses:

- a) The request for inspection of open records is approved and whether an appointment for inspection needs to be scheduled by the requester;
- b) The request for copies of open records is approved and the copies of all requested records are enclosed with the response;
- c) The request has been forwarded to the Executive Director, that additional time is needed to respond to the request, and stating a reasonable estimate of the time required to respond;
- d) The request has been received and the records shall be provided on a partial or installment basis as the records are identified, located, assembled and/or made ready for inspection or copying; or
- e) The request is denied, in whole or in part, whether by withholding a requested record or redacting a requested record, stating the specific exemption(s) prohibiting disclosure and a brief explanation of how the exemption applies to each withheld and redacted record.

1.11-4. The Records Management Officer will make a good faith effort to provide the requested open records as promptly as feasible.

1.11.5. Tribal employees will cooperate with those requesting to review and/or duplicate original Tribal documents while taking reasonable measures to protect documents from the possibility of theft and/or modification. In all cases, the custodian will respond as soon as possible, but no later than ten (10) business days after a determination is made.

1.11-6. Prior to allowing access to any Tribal record, the Records Management Officer shall redact from that record any information which discloses the social security number, tribal enrollment number, credit card number, telephone number, or driver's license number of any person, or any other personally identifiable information that would violate a person's privacy.

1.11-7. Determinations will be mailed following the decision. Each determination shall notify the requester of their right for an administrative review, if they disagree with the final determination made by the Records Management Officer.

1.11-8. If an elected official or department maintains indexed records specifically for open inspection and copying, the Records Management Officer may permit inspection and copying in response to an oral request.

1.11-9. There is no obligation to allow inspection or provide a copy of an open record on demand.

1.11-10. Additional time to respond to a request may be based upon the Tribe's need

- a) Clarify the intent of the request;
- b) Identify, locate, assemble and/or make the records ready for inspection or disclosure;
- c) Notify third persons or agencies affected by the request; or
- d) Determine whether any of the records requested are exempt from disclosure; and
- e) Whether a denial should be made as to all or part of the request.

1.11-11. If a requester fails to clarify the intent of their request the Records Management Officer need not respond further to the request.

Section 12: Inspection of Open Records

1.12-1. Open records shall be inspected at the Tribal Clerks or Records office.

1.12-2. Open Records shall be available for inspection by appointment only between the hours of 9:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding Tribal holidays.

1.12-2. Open records shall not be allowed inspection on demand.

Section 13: Protection of Records

1.13-1. No person shall knowingly alter, deface or destroy records of the Tribe.

1.13-2. Original records shall not be removed from Tribal offices.

1.13-3. Treatment of records. No marks of any kind shall be made on any record provided for inspection.

1.13-4. Area restriction. Inspection or copying of records shall be permitted only

in the area designated by the Records Management Officer for such purpose.

1.13-5. Employees are responsible for ensuring records furnished for inspection or copying are returned in good condition and in the same file sequence or organization as when furnished to ensure that records are not misplaced or misfiled.

1.13-6. Boisterous or otherwise disruptive conduct by those requesting records of the Tribe shall not be permitted and Law Enforcement Officials will be called.

1.13-7. If an open record request is made at a time when a record exists, but the record is scheduled for destruction in the near future, the Records Management Officer shall direct that the record be retained until the request is resolved.

1.13-8. No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record until after the request is granted or until at least sixty (60) days after the date the request is denied.

1.13-9. No record subject to pending litigation shall be destroyed until the litigation is resolved and the time limit for an appeal has expired.

Section 14: Copies of Policy Available to Public

1.14-1. Copies of this Policy and Open Records request forms shall be available to and provided to Tribal Members, without cost, at each Tribal office. Electronic copies shall be made available on the Tribe's website.

Section 15: Enforcement

1.15-1. A requester may file a written appeal to the Executive Director - clearly identifying what records are being sought within five (5) business days after being denied a record by the Records Management Officer.

1.15-2. The Records Management Officer must give reason for denying the request and submit their reason in writing to the Executive Director within five (5) business days after receiving the appeal from the Executive Director.

1.15-3. Within ten (10) business days the Executive Director must submit their decision in writing to the requestor, and that decision is final.

Section 16: Violations of This Policy

1.16-1. An employee may be subject to disciplinary action including suspension or termination for violation of this Policy in accordance with the Saint Regis Mohawk Tribal Personnel Policies. Including but not limited to the following:

- (a) Releasing records barred from release under section 9
- (b) Does not observe the Records Management Policy TCR # 2010-29
- (c) Including but limiting items listed in section 13

1.16-2. An elected official may be prosecuted under the Ethics Ordinance, and an appointed official subject to termination of the appointment, if he or she releases a record which is barred from release under section 9 or for not observing the Records Management Policy TCR# 2010-29.

Copying and Delivery Fees

1) Disallowed Charges

- a) No fee will be charged for the inspection of an open record.
- b) No fee will be charged for locating open records in response to a request and making the records available for inspection or copying.
- c) No fee will be charged for searching for open records or redacting portions of a record which are exempt from disclosure.

2) Allowed Charges - Generally.

- a) A reasonable fee will be charged to reimburse the Tribe for the costs of providing copies.
- b) A reasonable fee shall be charged to reimburse the Tribe for the cost of delivering copies of open records to a requester, including the cost of packaging the copies for delivery and the cost of postage or delivery service.
- c) Any request for which the response will be more than 100 pages of documents, oversized documents, color photographs or reproductions, may be sent to a private copying service for copying, in which case the copying fee shall be the actual charge imposed for copying, plus applicable taxes and shipping costs.

3) The open records officer may require that all copying and delivery fees be paid in advance of the release of the copies.

Fee Schedule

8.5"by14" page, or less	\$0.10 per page
11" X 17"	\$1.00 per page
Greenbar computer printouts	\$1.00 per page
Maps B/W 12" X 12"	\$2.50
B/W 22" X 34"	\$4.50
B/W 34" X 44"	\$6.50
Maps Color 12" x 12"	\$5.00
Color 22" X 34"	\$7.00
Color 34 X 44	\$9.00
Audio Tapes	\$20.00 per cassette tape
Videotape or digital video	Actual expense
Photographs, DVD, CD	Actual expense
Fax (8.5" by 11" only)	\$1.00 per page
Postage	Actual expense
Boxes	Actual expense
Envelopes	\$.50 each
Copying Service	Actual expense
Electronic Records	Actual expense – See Section 14

The open records office may require a deposit in an amount not to exceed ten percent of the estimated cost of providing requested open records. If the open records officer responds to a request on a partial or installment basis, the requester shall be charged for each part or installment responding to the request. If a partial or installment response is not claimed or reviewed by the requester, the Open Records Officer is not obligated to fulfill the balance of the request.

Records Request Form

Date: _____ Request Submitted By: U.S. Mail / IN-PERSON

Name of Requestor: _____ Tribal Enrollment#: _____

Street Address: _____

City: _____ State: ____ County: _____ Telephone No.: _____

Records Requested: _____

Do you want to inspect the records? YES or NO

Do you want copies of the records? YES or NO

SIGNATURE: _____

To Be Completed By Records Officer

Date request received: _____ Ten (10) day response due: _____

Approved: _____ Denied _____

Explanation: _____

Records Officer Name (Print): _____

Records Officer Signature: _____