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for purposes of identification.*

Chief Bill John Baker
Council Speaker Tina Glory-Jordan
Attorney General Todd Hembree
Cherokee Tribe

Via e-mail message

May 28, 2014

Re: Proposed changes to the Cherokee Freedom of Information Act

Dear Chief Baker, Councilwoman Glory-Jordan and Attorney General Hembree:

As an organization committed to protecting the rights of journalists and members of the public to fully understand their government, we write to express our concern with the proposed changes to the Cherokee Nation's freedom of information law and our full support for the May 15, 2014, statement of the *Cherokee Phoenix* editorial board.

The Cherokee Nation has been a leader among Native American tribes in recognizing the importance of a free and independent press. One of the biggest steps toward that goal was the passage of the Freedom of Information and Rights of Privacy Act, in 2001. That law made the Cherokees the first tribe to have a freedom of information law, and acknowledged "that it is vital in a democratic society that public business be performed in an open and public manner." Such a positive step toward transparency and open government should not be undone or undercut.

Of particular concern in the proposed changes to the Cherokee FOIA was the idea of giving tribal agencies 60 days to reply to a request, rather than the 15 currently allowed under the law. That kind of delay between request and response is longer than any jurisdiction in the United States allows and frustrates the public's ability to learn about and respond to government activities as they happen. The Reporters Committee was pleased to see that the latest version of the proposed amendments introduces a 20-day response time and urge the Council not to go beyond that 20-day marker.

At the federal and state level in the United States, the vast majority of jurisdictions have set time limits for responding to freedom of information requests. The federal government has a particularly long response period, set statutorily at 20 days. Only Maryland allows for a longer response time (30 days). Twenty-one U.S. jurisdictions set time limits of less than 10 days to

respond to freedom of information requests; 10 set 10-day limits. Ten other states say the government must respond within a reasonable time, and courts have viewed those requirements in terms of days, not in terms of weeks or months. A 60-day statutory response time would, therefore, be a disturbing outlier in North American freedom of information laws and would enable the tribal government to keep information secret from its constituents.

In addition to the problems presented by a longer response time, the Reporters Committee is concerned about the proposed change to the FOIA that would put the responsibility for responding to all information requests on one individual or central office. A move toward that structure would create a bottleneck effect, backlogging requests and creating inefficiencies in government administration by requiring more back-and-forth between the central office and each agency before information is released. Those delays would not only cost the public in terms of knowledge – by delaying the release of information – but would also cost members of the tribe in terms of dollars by building inefficiencies into the tribe’s governance structure. No other jurisdiction in North America uses that type of central-responder structure. If the Council is concerned about centralizing any aspect of the FOIA process, we would urge it to instead consider an independent ombudsman’s office (much like the U.S. government’s Office of Government Information Services), or a central office to which requesters can direct appeals.

The Reporters Committee urges you to continue discussions with the *Cherokee Phoenix* and other stakeholders to craft policies that best support the Cherokee Nation’s freedom of information act’s goals of openness and access.

Respectfully,

A handwritten signature in black ink that reads "Gregg P. Leslie". The signature is written in a cursive, flowing style.

Gregg P. Leslie
Legal Defense Director
The Reporters Committee for
Freedom of the Press

Cc: Bryan Pollard, Executive Editor, *Cherokee Phoenix*