Title 27
Open Meetings and Data Security Act

Section 1. Declaration of Policy and Intent.

(a) Article XIII of the Tribe's Constitution mandates that all Members be afforded "equal opportunities to participate in the economic resources and activities of the Tribe."

(b) In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the Band Assembly declares that it is the policy of this Tribe that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of governmental agencies—shall be conducted as openly as possible. At the same time, it is the responsibility of governmental agencies that create, receive, and maintain records to ensure their safekeeping and availability to the general public of the Tribe. Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Bands of Chippewa Indians, to implement this policy the Band Assembly declares that:
    (1) It is the intent of the Band Assembly that this Act protect the people's right to know;
    (2) The provisions requiring open meetings shall be liberally construed;
    (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings; and
    (4) Tribal agencies that create, receive, and maintain records, electronic records, and data shall ensure their safekeeping and availability to the general public of the Tribe, when appropriate.

Section 2. Definitions. When used in this chapter, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively ascribed to them in this section:

(a) "Agency" means a governmental entity, commission, board, or other department of the Mille Lacs Band of Ojibwe.

(b) "Authority" means the Mille Lacs Band Gaming Regulatory Authority.

(c) "Authority data" mean all information, files, reports, records, correspondence, and other data collected, created, received, maintained, or disseminated by the Authority, regardless of its physical form, storage method, or conditions of use.

(d) "Authority financial information" means any financial accounting records, ledgers, reports, and audits and any profit and loss statements, cash flow projections, tax

returns, invoices, checks, bank records, or other data on revenue, expenditures, or financial obligations of an individual.

(e) "Authorized individual" means a Tribal employee or contractor for whom it is determined to be necessary and appropriate to have access to the nonpublic records held by the Tribe and its information systems.

(f) "Band Assembly" means the Legislative Branch of the Mille Lacs Band of Ojibwe.

(g) "Confidential information" means any nonpublic, sensitive information regarding the Tribal government or its employees. Confidential information regarding the Tribe includes, but is not limited to:

(1) Authority data;
(2) Authority financial information;
(3) Authority license applications and background investigations information and data;
(4) Authority compliance recommendations information;
(5) Authority exclusion list;
(6) Authority security information;
(7) Personnel data and information;
(8) Nonpublic records;
(9) Computer processes, programs, and codes;
(10) Sensitive financial information;
(11) Labor relations strategies;
(12) Marketing strategies;
(13) Pending projects and proposals;
(14) Research and development strategies;
(15) Sensitive scientific data;
(16) Sensitive technological data;
(17) Trade secrets;
(18) Enrollments and blood quantum information; and
(19) Medical or patient data, regardless if otherwise protected by the Health Insurance Portability and Accountability Act, 110 Stat. 1936, or other applicable data privacy laws.

Confidential information does not include publicly available information.

(h) "Cybersecurity event" means an event that results in unauthorized access to and acquisition of, or a disruption or misuse of, an information system or nonpublic records stored on an information system. A cybersecurity event does not include either:

(1) The unauthorized acquisition of encrypted nonpublic records if the encryption, process, or key is not also acquired, released, or used without authorization; or

(2) The unauthorized access of records by a person if the access meets all of the following:
    (i) The person acted in good faith in accessing the records;
    (ii) The access was related to activities within the scope of the person's employment; and
    (iii) The person did not misuse any records or disclose any or information to an unauthorized person.

(i) "Data" means any material upon which written, drawn, spoken, visual, or electromagnetic information or images are recorded or preserved, regardless of physical form or characteristics.

(j) "Deliberation" means communication between or among a quorum of a governmental agency members with respect to any matter within the agency's jurisdiction. Deliberation does not include the distribution of a meeting agenda, scheduling information, or distribution of reports or documents that may be discussed at a meeting where no opinion of a member of the agency is expressed.

(k) "Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. This includes, but is not limited to, actions taken pursuant to Section 108 of Title 22.

(l) "Encrypted" means the transformation of data into a form that results in a low probability of assigning the meaning without the use of a protective process or key.

(m) "Executive session" means any part of a meeting of a branch of Tribal government closed to the general public of the Tribe for deliberation of a matter enumerated in Section 4.

(n) "Expenditure" means any amount of Tribal funds that the Tribe spends, pays out, or disburses, including the payment of cash or cash-equivalent for goods or services or a charge against available funds in settlement of an obligation as evidenced by an invoice, receipt, voucher, or other such document. Expenditure does not include any amounts that merely represent avoided costs or foregone revenue, payment of debt, purchases in investment securities, loans, or agency or private trust transactions.

(o) "Information security program" means the administrative, technical, and physical safeguards that an agency uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle nonpublic records.

(p) "Information system" means a discrete set of electronic record resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of electronic, nonpublic records.

(q) "Interagency data" means data that has substantial value when used across more than one agency.

(r) "Livestream" means a live transmission of an event over the Internet.

(s) "Meeting" means deliberation by an agency with respect to any matter within the agency's jurisdiction. A meeting does not include:
    (1) On-site inspection of a project or program, so long as the members of the agency do not deliberate;
    (2) Attendance by a quorum of an agency at a public or private gathering, including a conference, training program, or a social or other event, so long as the agency members do not deliberate; and
    (3) Attendance by a quorum of agency members at a meeting of another agency, so long as the visiting agency members communicate only by open participation in the meeting and do not deliberate.

(t) "Members" means the enrolled members of the Non-Removable Mille Lacs Bands of Chippewa Indians.

(u) "Multi-factor authentication" means authentication through verification of at least two of the following types of authentication factors:
    (1) Knowledge factors, such as a password;
    (2) Possession factors, such as a token or text message on a mobile phone; or
    (3) Inherence factors, such as a biometric characteristic.

(v) "Nonpublic records" means electronic records or information that is not publicly available and includes any of the following:
    (1) Personal, financial, or medical information or data, including, but not limited to:
        (i) Social security number;
        (ii) Driver's license or nondriver identification card number;
        (iii) Tribal identification number;
        (iv) Financial account or credit card number;
        (v) Any security code, access code, or password that would permit access to an individual's financial account;
        (vi) Biometric records;
        (vii) The past, present, or future physical, mental, or behavioral health or condition of any person or member of a person's family;
        (viii) The provision of healthcare to any individual;
        (ix) The payment for the provision of healthcare;
    (2) Information described as confidential in Mille Lacs Band Statutes Annotated, Title 22, Sections 111 and 212(a);
    (3) Information described as "confidential" in Mille Lacs Band Statutes Annotated, Title 15;

(4) Information described as "confidential" in Mille Lacs Band Statutes Annotated, Title 8;
(5) Meeting minutes, transcripts of proceedings, and information produced during an executive session of an agency; or
(6) Any device, graphics, written information, or information in other tangible or digital form that is deemed by the Mille Lacs Band Assembly, Executive Branch Commissioners, Solicitor General, or the Commissioner of Corporate Affairs to be confidential and is marked as being "Confidential," "Proprietary," or with words of similar import.
    (i) Information disclosed orally or visually and identified at that time as "Confidential" shall be considered nonpublic if it is reduced to tangible or electronic form.
    (ii) Identification of "Confidential" or "Proprietary" electronic records or information should be inferred by encryption, multi-factor authentication, the term "Confidential," "Proprietary," or with words of similar import in the name of the document, or any other means of reasonable identification.

(w) "Personnel data" means data on individuals collected because the individual is or was an associate of, or an applicant for employment with the Tribe.

(x) "Publicly available information" means any information that a person or agency reasonably believes is lawfully made available to the general public of the Tribe from the following sources:
(1) Tribal or Federal government records;
(2) Widely distributed media; or
(3) Disclosures to the general public that are required to be made by Tribal or Federal law.
(4) Examples:
    (i) Reasonable belief.
        (A) A person or agency has a reasonable belief that information is made available to the general public if it has been confirmed that the information is publicly available from a source described in subsections (w)(1)-(3) of this Section;
        (B) A person or entity has a reasonable belief that an individual's telephone number is lawfully made available to the general public if it has been located in the telephone book.
        (C) A person or entity has a reasonable belief that Tribal financial information is lawfully made available to the general public if it has been published in the Ojibwe Inaajimowin.
        (D) A person or entity has a reasonable belief that nonpublic records have been lawfully made available to the general public if the records have been made available by the

Mille Lacs Band Assembly, Executive Branch Commissioners, Solicitor General, or the Commissioner of Corporate Affairs and not marked as being "Confidential," "Proprietary," or with words of similar import, per subsection (u)(6) of this Section.

(E) A person or entity does not have a reasonable belief that information is publicly available solely because that information would normally be recorded with a keeper of Tribal, Federal, State, or local government records that is required by law to make the information publicly available, if the subject of the records has the ability in accordance with applicable law to keep that information nonpublic, such as where a consumer may record a deed in the name of a blind trust.

(ii) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(iii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(y) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

(z) "Trade secret" means Tribal or Authority data, including any formula, pattern, compilation, program, device, method, technique, or process that is not generally known or reasonably ascertainable by others by which the Tribe, Authority, or business can obtain an economic advantage over competitors or customers.

(1) The term includes records or information referring or relating to investments in private equity, hedge funds, and real estate funds.

(2) Where not otherwise explicit, agencies shall consider six factors when determining whether records or information is a trade secret:

(i) The extent to which the information is known outside the agency;

(ii) The extent to which it is known to employees and non-officeholders;

(iii) The extent of measures taken to guard the secrecy of the information;

(iv) The value of the information to the Tribe and its business competitors;

(v) The amount of effort or money expended in developing the information; and

(vi) The ease or difficulty with which the information could properly be acquired or duplicated by others.

(aa) "Third-party service provider" means a person or entity that contracts with the Tribe or Authority to maintain, process, store, or is otherwise permitted access to, nonpublic information through its provision of services to the Tribe.

(bb) "Tribe" means the Mille Lacs Band of Ojibwe.

Section 3. Open Meetings. Except for executive sessions and emergency actions, all Band Assembly meetings are to be open to Members of the Tribe.

(a) Except where expressly stated herein, the Band Assembly shall not adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the general public of the Tribe, and then only at a meeting of which notice has been given according to the provisions of this Section.

(b) Any action taken at (1) a meeting that was to be open to Members of the Tribe under this Section but was not; or (2) a meeting failing to comply with the notice provisions of this Section, shall be null and void.

(1) Notice. Except in cases of calling an emergency meeting, the Speaker of the Band Assembly for a Legislative Branch meeting shall provide Members of the Tribe with written notice of the meeting and an agenda 48 hours in advance of a meeting.

(i) Notice shall be given by posting a copy of the notice in the Band Government Center and the Community Centers in Districts II and III and by delivering a copy of the notice by U.S. mail to the Chief Executive, the Solicitor General, and the Corporate Commissioner. A copy of the notice shall also be posted on website for the Legislative Branch.

(2) Agenda. The Speaker of the Band Assembly for a Legislative Branch meeting shall provide Members of the Tribe with an agenda for the meeting, listing the topics to be discussed, any action to be taken, and any elections for or removal of officials or appointees.

(i) The Agenda shall include a copy of any proposed legislation, resolution, agreement, or contract and a description of the nature and effect of the proposed legislation, resolution, agreement, or contract. The Agenda shall also include if any vote will occur at the meeting.

(ii) The Speaker of the Band Assembly shall provide the agenda by posting a copy of the agenda in the Band Government Center and the Community Centers in Districts II and III and by delivering a copy of the notice by U.S. mail to the Chief Executive, the Solicitor General, and the Corporate Commissioner. A copy of the agenda shall also be posted on website for the Legislative Branch.

(c) Rules of Order for Public Meetings. The following rules are intended to provide a clear framework for the procedure to be followed regarding meetings, in order to establish and maintain order. These rules are to be superseded where inconsistent with other governing law.

(1) The rights of an agency supersede the rights of individual members of the agency.
(2) All agency members are equal and have equal rights to attend meetings, make motions, debate, and vote.
(3) The chair or head of an agency shall preside over meetings.
(4) A quorum must be present to conduct business. A quorum is the number of agency members required to be present to legally conduct business.
(5) The majority rules. The minority has the right to be heard but must abide by the majority's decision.
(6) A two-thirds vote is necessary when limiting or eliminating Tribe Members' rights or when changing a previous decision.
(7) A motion must directly relate to the question under consideration, and once a speaker has been granted the floor, another agency member may not interrupt.
(8) The presiding officer may not put a debatable motion to a vote where agency members wish to debate the motion.
(9) The standard agenda for a meeting shall be:
    (i) Call to order;
    (ii) Roll call;
    (iii) Approval of minutes of last meeting;
    (iv) Administrative and fiscal matters;
    (v) Appearances;
    (vi) Reports;
    (vii) Old business;
    (viii) New business;
    (ix) Public comment; and
    (x) Adjournment

(d) Voting. No vote taken at an open session shall be by secret ballot.

(e) Meeting Minutes. The Band Assembly shall create and maintain accurate minutes of all open meetings, setting forth the date, time and place, the agency members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made, and the actions taken at each meeting, including the record of all votes.

(1) Meeting minutes shall be created and approved within the next two public meetings or within 30 days from the date of the meeting, whichever is later.
(2) Once approved, the meeting minutes shall be made public by the Band Assembly posting the minutes on website of the Legislative Branch.

(f) Livestreaming of Legislative Sessions. Legislative sessions of the Band Assembly are required to be open to the general public of the Tribe under this Section and shall be livestreamed. The Speaker of the Band Assembly shall post the livestream online prior to the commencement of the legislative session.

(g) Recording by the Public. The opportunity to record Band Assembly meetings that are required to be open shall be provided to all persons.

(1) Recordings may be made with hand-held devices or with larger equipment, as space and safety permit. Recording equipment shall not obstruct points or paths of entry or exit.

(2) If recording requires setting up equipment, every effort shall be made to set up the equipment before the meeting begins.

(3) In the event space in a hearing is limited for recording purposes, every effort shall be made to accommodate all persons who wish to record the meeting. In order to minimize disruption, a specific space in the hearing room for placement and use of equipment for recording or broadcasting the proceedings shall be designated.

(4) Recording equipment used by a person other than Tribal personnel shall not interfere with recording equipment operated by the Tribe.

(5) Recording equipment used in hearing rooms may employ additional lighting while recording if the lighting is not disruptive, but meetings shall be recorded without additional lighting when possible.

(6) If recording activity or equipment is disruptive of a meeting, poses a safety risk to attendees of the meeting, or interferes with the ability of other attendees to see or hear the meeting, the individual shall be instructed to cease the disruptive activity or cease recording altogether. If the individual fails to comply, he or she may be removed from the meeting.

(h) The Band Assembly may not circumvent the requirements of this Title by conducting deliberations *via* private messages, whether electronically, in person, over the telephone, or in any other form.

(i) Accessibility of Public Meetings to the Physically Handicapped. Whenever the Band Assembly receives a written request by a physically handicapped person at least 48 hours prior to a scheduled meeting at which official acts are to be taken, that such person wishes to attend the meeting, the agency shall provide a manner by which he or she may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person. If an affected handicapped person objects in the written request, nothing contained in the provisions of this subsection shall be construed or interpreted to permit the use of human physical assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this subsection.

(j) Other Agencies.

(1) This Section shall not apply to the Tribe's Judicial Branch.
(2) This Section shall not apply to the Executive Branch or any other agency of the Tribe, *provided that*:
    (i) If the Executive Branch or any other agency of the Tribe resolves to livestream or hold open meetings, this Section shall be consulted and utilized as model or aspirational guidelines.
    (ii) As to the Executive Branch or any other agency of the Tribe, this Section is intended only to improve the internal management of the agency, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable by a party against the Tribe, its agencies, or any person.

Section 4. Executive Sessions. Executive sessions of the Band Assembly shall not be open to the general public of the Tribe.

(a) The Band Assembly may meet in executive session only for the following purposes:

(1) To discuss matters of Tribal safety or security;
(2) To discuss, use, or display confidential information or data;
(3) To conduct strategy sessions in preparation for negotiations with non-tribal personnel or to conduct collective bargaining sessions or contract negotiations with non-tribal personnel;
(4) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the agency and the chair, officer, or head of the agency so declares;
(5) To discuss information relating to licensing or confidential, proprietary, or other sensitive information or data regarding the Authority;
(6) To discuss the implementing or utilizing security personnel or devices, or to discuss strategies with respect thereto;
(7) To investigate charges of criminal misconduct or to consider the filing of criminal complaints;
(8) To discuss sensitive material related to pending litigation;
(9) To comply with, or act under the authority of federal law;
(10) To discuss trade secrets, nonpublic records or confidential, competitively-sensitive, or other proprietary information;
(11) To negotiate with a vendor pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation;
(12) To discuss the reputation, character, safety or welfare, physical condition, or mental health, rather than professional competence, of a Member, or to discuss the discipline or dismissal of, or complaints or charges brought

against, a tribal government official, tribal employee or staff member. Under these circumstances, the individual to be discussed in such executive session shall be notified in writing by the agency at least 48 hours prior to the proposed executive session. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

i. To be present at the executive session where deliberations involve that individual;
ii. To have counsel or a representative of the individual's choosing present at the executive session for the purpose of advising the individual and not for the purpose of active participation in the executive session; and
iii. To cause an independent record to be created of the executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this subsection are in addition to rights from all other sources, and the exercise or non-exercise of the individual rights under this subsection shall not be construed as a waiver of any rights of the individual; or

(13) To discuss the safety or welfare of a Member who is under the age of eighteen (18). Under these circumstances, the parent or guardian of the individual to be discussed in such executive session shall be notified in writing by the agency at least 48 hours prior to the proposed executive session.

(14) To discuss a Hardship Request or Emergency Application for funds held in trust for a Member that is under the age of twenty-one (21).

(b) The Band Assembly may meet in an executive session for one or more of the purposes enumerated in Subsection (a), provided that:

(1) A majority of Members of the Band Assembly have voted to go into executive session, and the vote of each member is recorded by roll call and entered into the minutes;
(2) Prior to the executive session, the Speaker of the Band Assembly shall state the purpose for the executive session; and
(3) The Speaker of the Band Assembly shall publicly announce whether an open session will reconvene at the conclusion of the executive session, if applicable.

(c) Meeting Minutes. The Band Assembly shall create and maintain accurate minutes of all executive sessions, setting forth the date, time and place, the Band Assembly Members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(1) Documents and other exhibits, such as photographs, recordings, or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.
(2) Neither confidential information nor nonpublic records should be discussed with any detail in the minutes.
(3) Meeting minutes shall be created and approved as soon as possible but no later than by the conclusion of the next executive session or within 30 days from the date of the executive session, whichever is later.

(d) The minutes of any executive session, the notes, recordings, or other materials used in the preparation of such minutes and all documents and exhibits used at the session are confidential, nonpublic records.

(e) Voting. No vote taken at an executive session shall be by secret ballot.

(f) Remote Participation. There shall be no remote participation in executive sessions.

(g) Other Agencies.

(1) This Section shall not apply to the Tribe's Judicial Branch.
(2) This Section shall not apply to the Executive Branch or any other agency of the Tribe, *provided that*:
i. If the Executive Branch or any other agency of the Tribe resolves to livestream or hold open meetings, this Section shall be consulted and utilized as model or aspirational guidelines.
ii. As to the Executive Branch or any other agency of the Tribe, this Section is intended only to improve the internal management of the agency, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable by a party against the Tribe, its agencies, or any person.

Section 5. Destruction of Information. An agency must take all reasonable steps to destroy, or arrange for the destruction of, personal financial and health information and personal identification numbers issued by government entities in an individual's records within its custody or control when the entity is disposing of records that it will no longer retain.

(a) An agency is not liable under this section for records it has relinquished to the custody and control of the individual to whom the records pertain.

(b) This Section does not apply to the disposal of records by a transfer of the records, not otherwise prohibited by law, to another agency, including a transfer to archive or otherwise preserve public records as required by law.

(c) An individual injured by the failure of an agency to comply with this Section may bring a civil action in the District Court of the Non-Removable Mille Lacs Band of Ojibwe. The court may:
    (1) If the failure to comply is due to negligence, award a penalty of two hundred dollars or actual damages, whichever is greater, and costs and reasonable attorneys' fees; and
    (2) If the failure to comply is willful, award a penalty of six hundred dollars or damages equal to three times actual damages, whichever is greater, and costs and reasonable attorneys' fees. However, treble damages may not exceed ten thousand dollars.

(d) An individual having reason to believe that he or she may be injured by an act or failure to act that does not comply with this Section may apply to the District Court of the Non-Removable Mille Lacs Band of Ojibwe to enjoin the act or failure to act. The court may grant an injunction with terms and conditions as the court may deem equitable.

(e) The Solicitor General may bring a civil action in the name of the Tribe for damages, injunctive relief, or both, against a Tribal employee that fails to comply with this Section. The court may award damages consistent with those awarded to individual plaintiffs under subsections (c) and (d) of this Section.

(f) The rights and remedies provided under this Section are in addition to any other rights or remedies provided by law.

Section 6. Use of Records and Information. Any records, documents, materials, or other information in control or possession of the Tribe that is obtained in the course of an investigation or prosecution pursuant to Section 5, subsections (c)-(f), may be used solely to advance an investigation or prosecution and must be utilized in a manner that protects disclosure of records and information to the strictest extent possible (e.g., by filing under seal or *in camera*). Neither the Tribe nor any of its agencies may otherwise make the records, documents, materials, or other information public.

Section 7. Third Party Service Providers. Agencies must exercise due diligence in selecting third-party service providers. Agencies must require a third-party service provider to implement appropriate administrative, technical, and physical measures to protect and secure the information systems and nonpublic information that is accessible to, or held by, the third-party provider.

Section 8. Interagency Data Sharing. Certain data has substantial value when used across Agencies. It is essential to maintain public trust that confidential information is safe and secure via appropriate, strong, and effective safeguards and compliance with applicable privacy rules. Therefore, confidential, proprietary, or sensitive information is only to be shared according to a data sharing agreement drafted specifically for data to be shared under the agreement.

(a) The data sharing agreement shall include:
    (1) Access Provisions. The agreement must define the recipient agency's rights pertaining to its access to data, any rights of that agency to change or modify the data, and what the methods of data access will be.
    (2) Time Limit and Modification Provisions. A time limit shall be specified for the agreement, as well as a method for modifying the agreement.
    (3) Destruction of Records Provisions. Upon the expiration of the agreement, the agency requesting records shall destroy all confidential information associated with actual records as soon as the purposes of the project have been accomplished, and the recipient agency shall notify the providing agency to this effect in writing.

Section 9. Information Security Program. Agencies must manage, maintain, and protect electronic records, including text and email messages, social media, and confidential data in accordance with applicable law and regulations. Each agency shall monitor, evaluate, and adjust, as appropriate, its information security program consistent with any relevant changes in technology, the sensitivity of its nonpublic information, and any internal or external threats to information.

(a) As part of its information security program, each agency shall establish and implement procedures to minimize unauthorized addition, modification, alteration, erasure, or deletion of data, records, and documents. Agencies shall:
    (1) Ensure that only authorized personnel have access to records;
    (2) Ensure systems are in place for backup and recovery of records to protect against information loss; and
    (3) Ensure agency personnel are trained in how to safeguard sensitive or classified electronic records.

(b) As part of its information security program, each agency shall also establish a written incident response plan designed to promptly respond to, and recover from, any cybersecurity event that compromises the confidentiality, integrity, or availability of nonpublic information in its possession, the agency's information systems, or the continuing functionality of any aspect of the agency's operations.

(c) An incident response plan under this subsection must address the following areas:
    (1) The internal process for responding to a cybersecurity event;
    (2) The goals of the incident response plan;
    (3) The definition of clear roles, responsibilities, and levels of decision-making authority;
    (4) External and internal communications and information sharing;
    (5) Identification of requirements for the remediation of any identified weaknesses in information systems and related controls;
    (6) Documentation and reporting regarding cybersecurity events and related incident response activities; and
    (7) The evaluation and revision as necessary of the incident response plan following a cybersecurity event.

(d) Each agency shall notify the Mille Lacs Band Assembly and the Solicitor General as soon as possible but no later than 24 hours after a determination that a cybersecurity event involving nonpublic information has occurred. The agency shall provide the notification in an electronic form (email) and include, to the extent known:

(1) The date of the cybersecurity event;
(2) A description of how the records or information was exposed, lost, stolen, or breached, including the specific roles and responsibilities of third-party service providers, if any;
(3) How the cybersecurity event was discovered;
(4) Whether any lost, stolen, or breached information has been recovered, and if so, how this was done;
(5) The identity of the cybersecurity event;
(6) Whether any law enforcement agency has been notified and if so when notification was provided;
(7) A description of the specific types of information acquired without authorization. As used in this subsection (c) "specific types of information" means particular data elements including, for example, types of medical records, types of financial records, or types of records or information allowing identification of a particular person;
(8) The period during which the records or information system was compromised by the cybersecurity event;
(9) The total number of persons affected by the cybersecurity event, if any. The Agency shall provide the best estimate in the initial report and update the estimate under a subsequent report;
(10) Any information identifying a lapse in automated controls of internal procedures, or confirming that all required automated controls of internal procedures were followed; and
(11) A description of efforts being taken to remediate the situation that permitted the cybersecurity event to occur.

(e) For a cybersecurity event in a system maintained by a third-party service provider, of which the Agency has become aware, the Agency shall treat the event as it would under this Section.

Section 10. Records Requests. All agencies must organize and maintain public records in a manner that meets the agency's duty to respond to records requests at a location readily available to Members.

(a) When it receives a proper records request from a Member or group of Members, and unless part or all of a record is exempt from release as a nonpublic record, an agency must provide inspection of the requested records promptly and at no cost to the Member or provide copies at cost within a reasonable period of time.

(b) A Member does not need to provide a reason for requesting records, provide his or her name, or make the request in writing. However, the request should be clear and specific enough for the agency to reasonably identify what records the requester seeks and where to send them if not requested in person.

(c) An agency is entitled to refuse a request if the request is for nonpublic records, the office no longer keeps the records (pursuant to any applicable records retention schedule or because they are over ten (10) years old), if the request is for documents that are not records of the office, or if the member requesting the records does not revise an ambiguous or overly broad request.

(1) The proper subject of a records request is a record that actually exists at the time of the request, not unrecorded or dispersed information the requester seeks to obtain. For example, if a Member asks an agency for a list of court cases pending against the Member, but the agency does not keep such a list, the agency is under no duty to create a list to respond to the request.

(2) An ambiguous request is one that lacks the clarity that an agency requires to be able to ascertain what the requester is seeking and where to look for responsive records.

(3) A request is overly broad when it is so inclusive that the agency is unable to identify the records sought based on the manner in which the agency routinely organizes and accesses records. Examples of overly broad requests include requests for:

i. All records containing particular names or words;
ii. Duplication of all records having to do with a particular topic, or all records of a particular type;
iii. Every report filed with the agency for a particular time period (if the agency does not organize records in that manner);
iv. All emails sent or received by a particular email address with no subject matter and time limitation;
v. "All e-mails between" two employees (when email not organized by sender and recipient).

(d) When a request for records includes nonpublic records, the agency may only withhold a record or part of a record that is nonpublic and must tell the requester the legal authority on which it relies to withhold the record.

(e) A person aggrieved by the alleged failure of an agency to comply with an obligation of this Section may file a complaint appealing the agency's determination to the District Court of the Non-Removable Mille Lacs Band of Ojibwe.

(1) The requester will have the burden of showing that he or she made a proper records request, and the agency will have the burden of showing the that it complied with the obligation(s) allegedly violated.

(2) If the agency cannot show by a preponderance of the evidence that it complied with the obligation(s) allegedly violated, the court shall order

the agency to provide any improperly withheld record and pay the requester's attorney's fees, if any.

i. Only those attorney fees directly associated with the records appeal may be awarded.
ii. The opportunity to collect attorney's fees does not apply when the Member appears before the court *pro se* (without an attorney), even if the *pro se* Member is an attorney.
iii. Neither the wages of in-house counsel nor contingency fees are recoverable.
iv. The Member is entitled to fees only insofar as the request had merit.
v. Reasonable attorney fees also include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.
vi. A Member may waive a claim for attorney fees (and statutory damages) by not including any argument in support of an award of fees in its merit brief.
vii. The attorney's fee award shall not exceed the fees incurred before the public record was made available to the Member and the reasonable fees incurred to demonstrate entitlement to fees.
viii. Court costs and reasonable attorney fees awarded in records actions are considered remedial rather than punitive.
ix. A court may reduce or deny attorney's fees if it determines that, given the facts of the particular case, alternative means should have been pursued to more effectively and efficiently resolve the records dispute.

(f) Nothing in this Section shall be construed to supersede, enlarge, or diminish the common law exemptions to disclosure related to litigation, such as attorney-client or work-product privileged records or data.

Section 11. Enforcement and Violations. The Solicitor General of the Tribe shall interpret and enforce the Open Meetings and Technology Act. This Section does not apply to Section 5 of this Title, which relates to the destruction of records.

(a) Complaint for violations of the Act. At least 30 days prior to the filing of a complaint with the Solicitor General, the complainant shall give the agency an opportunity to remedy the alleged violation by filing a written complaint with the agency, setting forth the circumstances constituting the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The agency shall, within 14 business days of receipt of a complaint, send a copy of the complaint and a description of any remedial action to be taken to the Solicitor General. Any remedial action taken by the agency in response to a complaint under this subsection shall not be admissible as evidence against the agency that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation.

(b) Upon the receipt of a complaint by any person, the Solicitor General shall determine, in a timely manner, whether there has been a violation of this Act. The Solicitor General may, and before imposing any civil penalty on an agency shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the Solicitor General shall determine whether the agency, one or more of the agency members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, Solicitor General may issue an order to:

(1) Compel immediate and future compliance with this Act;
(2) Compel attendance at a training session authorized by the Solicitor General;
(3) Nullify in whole or in part any action taken at the meeting;
(4) Impose a civil penalty upon the agency of not more than $1,000 for each intentional violation and not more than $500 for each unintentional violation; or
(5) Prescribe other appropriate action.

(c) Any agency or any Member aggrieved by any order issued pursuant to this Section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in the District Court of the Non-Removable Mille Lacs Band of Ojibwe seeking relief in the nature of a *de novo* review within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the agency it shall not implement such action pending judicial review.

(d) It shall be a defense to the imposition of a penalty under this Section that the agency, after full disclosure, acted in good faith compliance with the advice of the agency's legal counsel.

(e) The rights and remedies provided under this Section are in addition to any other rights or remedies provided by law.