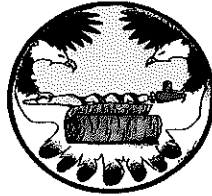


**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
TRIBAL COURT**

Physical Address: 911 Spring Street ~ Petoskey, MI 49770 ~ (231) 242-1462

Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740



Case No. C-257-0822

Plaintiff:

Gregory Shananaquet
1056 Kemp Rd.
Petoskey, MI 49770

Attorney:

In Pro Per

Defendant:

Regina Gasco-Bentley, LTBB Chairperson
7500 Odawa Circle
Harbor Springs, MI 49740

Attorney:

James A. Bransky (P38713)
9393 Lake Leelanau Dr.
Traverse City, MI 49684
Phone: 231-946-5241
jim@jimbransky.com

COURT'S OPINION ON THE MOTION TO DISMISS

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I. SUMMARY

The Plaintiff, Tribal Citizen Gregory Shananaquet, made a formal written request to the Executive for the names of Tribal citizens who received money from the COVID-19 Emergency Homeowner Assistance Program. In response, the Defendant, Chairperson Regina Gasco-Bentley, provided the Plaintiff a spreadsheet showing the amounts of the disbursements made, but she redacted the names of the recipients. The Plaintiff filed this suit to compel the Defendant to produce a list which includes the names of the Tribal citizens who received the funds. This Court holds there is no genuine issue as to any material fact and that the Defendant is entitled to judgment as a matter of law because the Plaintiff has failed to state a claim upon which relief may be granted.

II. QUESTION PRESENTED

This is a case of first impression for the Court. The question before the Court is whether the Little Traverse Bay Bands of Odawa Indians (“LTBB”) Constitution, laws and regulations require the production of the names of LTBB Tribal Citizens who received funds from the COVID-19 Emergency Homeowner Assistance Program when properly requested by another Tribal citizen under the Public Documents Act.

III. FACTS

In 2005, the people of the Little Traverse Bay Bands of Odawa Indians adopted a new Constitution. In that document, it gave Tribal Council the power to establish rules and procedures for providing access to public documents. (*See the LTBB Constitution*, Article VII D (7)). The Constitution states that Tribal records are subject to review by Tribal Citizens unless specifically excluded by the Constitution or applicable law.

Accordingly, the Tribal Council passed the Public Documents Act (the “Act”) which regulates Tribal Citizen access to LTBB government documents. *See Waganakising 2010-009 Public Documents*. The Act required the Executive to write regulations detailing when and how Tribal Citizens may review public LTBB government documents. *Id.* The Constitution, law and regulations are all posted on the Tribe’s website along with a form for requesting to review public documents. *See* <https://ltbbodawa-nsn.gov/public-documents-request/>.

On July 6, 2022, the Plaintiff made a formal written request to the Executive on the appropriate form for the names of Tribal citizens who received money from

the COVID-19 Emergency Homeowner Assistance Program. In response, the Defendant provided the Plaintiff a spreadsheet showing the amounts of the disbursements but redacted the names of the recipients. Oral arguments suggest that the Plaintiff asked the Defendant for the names to be made available to him, but that request was denied. The Plaintiff then filed this lawsuit to compel the Defendant to produce the names of Tribal Citizens who received funds from the COVID-19 Emergency Homeowner Assistance Program.

On September 19, 2022, the Defendant responded and filed a motion for summary disposition under LTBBRCP XVII arguing that the Plaintiff's case should be dismissed because there is no genuine issue as to any material fact, and the Defendant is entitled to judgment as a matter of law. Oral arguments were heard by the Court on October 11, 2022. This opinion follows.

IV. JURISDICTION

The Court's jurisdiction to hear this case comes from the Constitution and the Public Documents Act. Article IX(C) of the Constitution provides Tribal Court jurisdiction over all civil and criminal cases arising under the Tribal Constitution, statutes, regulations or judicial decisions of the Little Traverse Bay Bands of Odawa Indians. This jurisdiction is based upon the Tribe's inherent sovereignty, traditional customs, and Federal law.

The Plaintiff is a Tribal citizen and the Defendant is the Tribal Chair. The documents at issue are Tribal government documents located on property held in trust for the LTBB. This is a civil case arising under the Tribal Constitution,

statutes and regulations. Therein, this Court has proper jurisdiction over all issues and all parties.

V. STANDARD OF REVIEW

The LTBB Rule of Civil Procedure (“LTBBRCP”) applies to these proceedings. A motion under LTBBRCP XVI(b)(6) provides for summary disposition if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law because the Plaintiff has failed to state a claim upon which relief may be granted. The Defendant filed a motion for summary disposition in this case. The facts in this case are not in dispute; survival of the Plaintiff’s complaint is contingent upon whether the Plaintiff has asked the Court for a remedy to which he is entitled.

VI. DISCUSSION

A. The Tribe’s Constitution

The LTBB Constitution directs the Tribal Council to pass laws creating the rules for granting Tribal Citizens access to Tribal government records. *See LTBB Constitution*, Article VII D (7). The fact that the people made access to Tribal government records part of the LTBB Constitution speaks to the importance of governmental transparency and accountability to the people. It is extraordinary for such a rule to be in a constitution which makes the question presented to the Court all the more important. While the Constitution does create an express right for Tribal Citizens to view government documents, it also recognizes a need for that right to have rules for review and exemptions. Consequently, it delegated the authority for limiting access to documents to the Tribal Council:

“Tribal Council...Shall establish rules and procedures to provide access for review by any Tribal member or his/her authorized representative, who is a Tribal member, of the records of the Little Traverse Bay Bands of Odawa Indians. Such review shall be conducted during normal office hours, in accordance with the rules and procedures established by the Tribal Council, and not inconsistent with any other provision of this Constitution. All Tribal records are subject to this review by the membership unless specifically excluded by this Constitution or applicable law.” *Id.*

The Tribal Council fulfilled its duty to regulate the review of Tribal government documents by passing Waganakising 2010-009 Public Documents.

B. The Public Documents Act

The Public Documents Act at first appears pretty straight forward. Section V of the law makes open to Tribal citizens all written records produced by the Tribal government except those specifically exempt by statute. *See Waganakising 2010-009 Public Documents*, Section V (A) and (B).

However, the law provides the following exclusion:

“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.”

Id. at VI. A.

The issue in this case is whether the names of Tribal citizens who received COVID-19 Emergency Homeowner Assistance are “specific personal information affecting an individual’s privacy” contained in “similar records” whose release would constitute a clearly unwarranted invasion of an individual’s privacy.

The Statute has more to say on the matter. Section VI. B. reiterates the exemption outlined above. It states: “The following records are also exempt from

public disclosure....Records that raise significant privacy or confidentiality concerns for the Tribe or a Tribal Citizen.” *Id.* at VI. B. 3.

Certainly, the release of Tribal government records that cause an “unwarranted invasion” of an individual’s privacy or that raise significant privacy concerns for Tribal Citizens are exempt, but the Act does not define what information falls into that category. The Tribe’s companion regulations for the law also fail to answer the question. It states the following records are exempt:

D. Records that raise significant privacy or confidentiality concerns for the Tribe or a Citizen. This exemption includes employment personnel files, social security numbers, counseling and medical records, and similar records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

The Act and regulations leave it to the Court to determine how to define what documents raise a significant privacy or confidentiality concern for the Tribe or a Tribal Citizen and when disclosure would create a clearly unwarranted invasion of personal privacy.

C. The Parties Arguments

As with any case of first impression, the Court starts its analysis looking to Tribal law for an analogous case that might provide guidance. A review of the Tribal Court’s Restatement of Law finds no parallel case law. Without any equivalent Tribal law, law from foreign jurisdictions can serve as persuasive authority. See *The LTBB Restatement of Law*, § 1.04, Effect of Foreign Law on Tribal Court Decisions, (2019). (Although not binding on the Court, the law and opinions of other jurisdictions can serve as persuasive authority.)

The Defendant argues that if Michigan and federal case law are persuasive, then the Court should bar the Plaintiff from viewing the names of Tribal citizens who received COVID-19 Emergency Homeowner Assistance due to significant privacy concerns. The Defendant points out that much like the federal and Michigan Freedom of Information Acts, the LTBB Public Documents Act attempts to balance the important right of the LTBB citizens to access information relating to the actions of their government with the need of the Government to protect individual Tribal citizens' privacy and confidentiality. WOTC §6.1906(B)(3). While the federal and Michigan law have a similar purpose, they are not by any means identical. However, all three do contain an exemption for documents that raise a significant privacy concern.

The federal Freedom of Information Act exemption reads as follows: "(b) This section does not apply to matters that are--(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" U.S.C. 552(b)(6). The Defendant argues that this is similar to the LTBB Act, but the Defendant maintains the LTBB Statute gives greater weight to the privacy and confidentiality of its citizens. The LTBB Statute reads that these records "are exempt" in contrast to the federal FOIA merely stating that the section does not apply and then leaving the decision to the discretion of the agency. The Defendant also argues that even though the federal FOIA sets a higher standard for the privacy exemption, federal case law supports the exemption of the names of individuals requested here. *See* Defendant's Brief, *Shananaquet v Bentley*,

case no. C-257-0822, at *3 (September 19, 2022) (“Defendant’s Brief”). Because the two laws share a similar purpose and both have a privacy exemption, the Defendant asks the Court to find persuasive the test federal courts use to determine when similar documents are exempt.

In deciding whether a privacy exemption applies, federal courts first determine whether the information requested constitutes personnel, medical or a similar file, and then, if so, determine whether public release of the requested information would constitute an unwarranted invasion of personal privacy by balancing the privacy interest that would be compromised by disclosure against any public interest in the requested information. *See* Defendant’s Brief, at 3.

The Defendant points out that similarly, the Michigan FOIA has the following privacy exemption:

“A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.”

MCLA §15.243

The Defendant reasoned that similar to the federal analysis, the Michigan courts “first consider whether the information at issue was of a personal nature. If it is determined that disclosure threatens an invasion of privacy, then this Court must determine whether the invasion would be clearly unwarranted.” *Stone St. Cap., Inc. v. Bureau of State Lottery*, 263 Mich. App. 683,689,689 N.W.2d 541,545 (2004).

At oral argument, the Plaintiff seemed to understand that the Court must balance the Constitutional right of Tribal citizens to have a transparent government

with the right of Tribal citizens to have their significant privacy interests protected. The Court understood the Plaintiff's argument to essentially be that although individual Tribal citizens might have a significant privacy interest here, his request was of such importance that it outweighed their interests. The Plaintiff argued that the need for transparency was more important than Tribal citizen's privacy because the money at issue was public funding, and it was limited. Some Tribal citizens who applied received it and others did not. He indicated that he was one of those people who applied after the money was gone. The Plaintiff thought that Tribal employees may have applied and received the money, but since the Tribal government continued to pay employees during the shutdown, he questioned how they could properly qualify for the funds. He stated that he knew others who also had this experience and this concern. He felt it was his duty as a Tribal citizen to get the answer. Therefore, the Plaintiff contended that the Constitution's mandate that the Tribal Government largely be transparent to its citizens outweighed any individual privacy concern.

In his written response to the motion for summary disposition, the Plaintiff's argument is along the same lines. He writes that he made the request to access the names of individual Tribal citizens who received COVID-19 Emergency Homeowner Assistance because he is concerned whether his government properly administered public monies, and he feels compelled to bring these important constitutional questions before this Court.

D. Balancing the Public's Interest with Privacy Concerns

Under the Federal Freedom of Information Act, personal privacy interests are protected by Exemptions 6. See 5 U.S.C. § 552(b)(6) (2018). Exemption 6 protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." *Id.* Under Exemption 6, privacy includes information which is inherently private. See *DOJ v. Repts. Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989).

In evaluating whether Exemption 6 shields documents from disclosure, Federal courts require that agencies engage in the following four-step analysis:

1. Determine whether the information at issue is "a personnel, medical, or similar" file. See 5 U.S.C. § 552(b)(6);
2. Determine whether there is a substantial privacy interest in the requested information; See *Multi AG Media LLC v. USDA*, 515 F.3d 1224, 1229 (D.C. Cir. 2008) ("The balancing analysis for FOIA Exemption 6 requires that we first determine whether disclosure of the files 'would compromise a substantial, as opposed to de minimis, privacy interest,' because '[i]f no significant privacy interest is implicated . . . FOIA demands disclosure.'" (quoting *Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989)).
3. Identify and assess the public interest in disclosure; See *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U. S. 771-775 (1989) and See also *FOIA Update*, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decision-making"); and
4. If there is a substantial privacy interest in nondisclosure and a FOIA public interest in disclosure, balance those competing interests to determine whether disclosure "would constitute a clearly unwarranted invasion of personal privacy." See 5 U.S.C. § 552(b)(6). See also *Favish*, 541 U.S. at 171 ("The term 'unwarranted' requires us to balance the . . . privacy interest against the public interest in disclosure.

In giving this guidance, Federal courts have found that it is important to remember that under Exemption 6, the presumption in favor of disclosure is strong. See *Laws. Comm. for Civ. Rts. of S.F. Bay Area v. Dep't of the Treasury*, No. 07-2590, 2008 WL

4482855, at *20 (N.D. Cal. Sept. 30, 2008) ("The burden remains on the agency to justify any withholdings under Exemption 6 since the presumption in favor of disclosure under this exemption is as strong as that with other exemptions.").

The strength of the presumption here mirrors the LTBB Constitution. The Court finds that the exemption for records that raise significant privacy or confidentiality concerns for Tribal Citizens in LTBB Public Documents Act at Section VI. B is parallel to the Federal Freedom of Information Act Exemption 6.

This Court believes the test outlined above provides an excellent framework for balancing the important Constitutional interests of transparency and accountability in government with individual privacy interests. Therefore, this Court adopts the four-part test set forth above to determine under what circumstance a privacy exemption to the Tribe's Public Documents Act.

The Court now turns to the case at hand, whether the names of Tribal citizens who received COVID-19 Emergency Homeowner Assistance are exempt from public disclosure under the circumstances stated in the Plaintiff's complaint, response and oral argument.

1. Determine whether the information at issue is a personnel, medical, or similar file.

The Public Documents Act makes open to disclosure all written records produced by the Tribal government except those specifically exempt by statute for Tribal citizens. *See Waganakising 2010-009 Public Documents*, Section V (A) and (B). This exemption includes employment personnel files, social security numbers, counseling and medical records, and similar records the disclosure of which would

constitute a clearly unwarranted invasion of an individual's privacy." See *Waganakising 2010-009 Public Documents*, Section V (B).

The document in question does not directly fall into one of the distinguishable categories. It is not an employment personnel file and it does not contain social security numbers, counseling or medical records. Therefore, the question becomes does it fall into the last exemption, "similar records." To make that finding, the Court must first determine if the names of Tribal citizens who received COVID-19 Emergency Homeowner Assistance are "similar records."

The United States Supreme Court established what constitutes a "similar file" in *United States Department of State v. Washington Post Co.* 456 U.S. 595 at 599-603 (1982). There, the Supreme Court held that the term "similar files" should be interpreted broadly. *Id.* at 599-603. The Court found that the protection of an individual's privacy "surely was not intended to turn upon the label of the file which contains the damaging information." Instead, the Court made clear that all information that "applies to a particular individual" meets the threshold requirement for Exemption 6 protection. *Id.* at 602. Using this analysis to a request for the names and addresses of retired or disabled federal employees the DC Circuit concluded that "disclosure of the requested records 'would result in a clearly unwarranted invasion of personal privacy.'" See *Nat' Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989). In another case, the 6th Circuit held that union authorization cards are exempt from disclosure. See *Howard Johnson Co. v. N. L. R. B.*, 618 F.2d1, (6th Cir. 1980).

Applying this analysis to the document that contains the names of Tribal citizens who received COVID-19 Emergency Homeowner Assistance, these documents certainly contain information that applies and is specific to a particular individual. Therefore, the Court finds that the document that contains the names of Tribal citizens who received COVID-19 Emergency Homeowner Assistance meets the threshold requirement for Exemption 6 protection. The Court has established the document is a "similar document." However, the document could still be subject to public disclosure.

2. Determine whether there is a substantial privacy interest in the requested information.

Since the Court has determined that the document that contains the names of Tribal citizens who received COVID-19 Emergency Homeowner Assistance meets the threshold requirement for Exemption 6 protection, the next step in the Court's analysis is to test whether there is a substantial privacy interest in the requested information. The most influential case on the question is *DOJ v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 763 (1989). In this case, the Supreme Court held that "rap sheets" are shielded and set forth rules that oversee the process by which determinations are made under Exemption 6. From here other Courts have recognized that the concept of privacy "includes the prosaic (e.g., place of birth and date of marriage) as well as the intimate and potentially embarrassing." *Painting & Drywall Work Pres. Fund, Inc. v. HUD*, 936 F.2d 1300, 1302 (D.C. Cir. 1991); see also *Kulkarni v. Dep't of State*, 692 F. App'x 896, 896 (9th

Cir. 2017) (affirming the District Court's finding that documents concerning passport application of plaintiff's son were properly withheld).

A Michigan case is on point with our analysis as it deals specifically with the issue of releasing names. In *Stone*, the requestor wanted the names of people who received more than \$10,000 in lottery winnings. The Lottery Bureau provided detailed information on pay-outs and underlying judgments, but redacted the names of individuals. The Court upheld the decision to the redaction of names "because the names, addresses, and other personal information of private individuals who receive, by assignment or other judgment, lottery winnings in the amounts of more than \$10,000 are exempt from disclosure as information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of an individual's privacy." *Id* at 693, 689 NW 2d at 547.

In this situation, the document contains the names of Tribal citizens who due to financial hardship were asking for mortgage assistance. The application asks if the individual applicant or someone in their household experienced any of the following financial hardships due, directly or indirectly, to the COVID-19 pandemic:

1. A reduction in household income;
2. Loss of employment, temporary layoff or furlough;
3. A reduction in hours or pay;
4. An inability to work or financial hardship due to no childcare or school closure;
5. Underlying medical condition requiring staying home to prevent exposure;
6. Loss of self-employment or business income;
7. Over the age of 50 and enduring increased costs because of the COVID-19 pandemic;
8. Disabled and enduring increased costs because of the COVID-19 pandemic;
9. Incurred significant costs (hospital bills, medication costs, etc);
10. Other financial hardship (which the applicant must list).

Certainly, a number of these inquiries deal with circumstances that a reasonable person could find personal or embarrassing. Simply being on the list tells people that the individuals requested help for at least one of the reasons on the list. Furthermore, anytime people acknowledge financial hardship, it can be seen as damaging to their reputation. Therefore, this Court finds that the information requested by the Plaintiff is personal and potentially embarrassing to the Tribal citizens and therefore meets the threshold of a substantial privacy interest.

3. Assessing the Requester's Stated Public Interest in Disclosure

Although the Court finds that the Tribal citizens whose names are on the list in question have a substantial privacy interest in the information requested by the Plaintiff, if it is in the public's best interest to disclose because of the Constitution's strong mandate that the Tribal government be transparent to its citizens, the Court will order disclosure. Therefore, we move to the next prong of the test which requires an analysis of the public interest in disclosure.

Only if an identified public interest falls within the Act's "core purpose" of "shed[ding] light on an agency's performance of its statutory duties," does it qualify for inclusion in the balancing process. *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 US 749 771-775 (1989). Information that "reveals little or nothing about an agency's own conduct" does not meet this narrowed public interest standard. *Id.* However, information that informs the public about "an agency's performance of its statutory duties falls squarely within that statutory purpose." *Id.* at 773. Here, we are discussing the Tribal government as opposed to

an agency, but the same logic applies. Therefore, if the disclosure of the requested information does not assist in opening to the light of public scrutiny an action of the Tribal government that falls within one of its core duties, then any identified significant privacy interest should be protected under the applicable privacy exemption.

To be clear, the requester need not state a reason for the requested information *Id.* at 773. Rather, the release of the information on its face must shed light on Tribal government activity that Tribal citizens generally have a strong interest in knowing.

As outlined above, the Plaintiff contends that the need for transparency is more important than Tribal citizen's privacy because the money at issue was public funding and it was limited. Some Tribal citizens who applied received it and others did not. He was one of those people who applied after the money was gone and he is concerned that he and others were harmed by fraud. The Plaintiff argues that the Constitution's mandate that the Tribal government largely be transparent to its citizens outweighs any individual privacy concern.

This Court is following the Supreme Court's precedent in *NARA v. Favish*, 541 U.S. 157, 172 (2004) ("*NARA*"). The Supreme Court stated that if "bare allegations" were enough to satisfy the public interest requirement, then the exemption would be "transformed . . . into nothing more than a rule of pleading." *Id.* at 174. The Supreme Court wisely noted that, "allegations of misconduct are 'easy to allege and hard to disprove'" *Id.* at 175 (quoting *Crawford-El v. Britton*, 523 U.S.

574, 585 (1998). The Supreme Court's decision in *NARA* established that the request if granted must establish more than a bare suspicion in order to obtain disclosure.

The Court finds this test persuasive and adopts it here. In order to prevail on a request of this nature, on its face the request must be able to produce evidence that would warrant a belief by a reasonable person that Government impropriety might have occurred.

However, it is not clear to the Court that even if the list were to show several Tribal government employees received the funds, that would necessarily mean the Tribal government did anything wrong. Revealing the names of the people who benefited from COVID-19 Emergency Homeowner Assistance would not alone expose corruption because even if some of the beneficiaries were employees who did not experience financial hardship due to their own loss of income from Tribal employment, they could still have legitimately qualified for the relief based on the qualifications needed under the application. For example, the application states that an individual qualifies if there has been, "a reduction in household income." [Emphasis added.] Reduction in household income can occur if anyone in the household is laid off or loses income due to the pandemic. In an application by a Tribal government employee, the hardship is not limited to the Tribal government employee's loss of income. Therefore, a Tribal government employee could qualify properly for the COVID-19 Emergency Homeowner Assistance if their spouse was laid off or terminated due to the pandemic.

There are other ways the Tribal employee could properly qualify the assistance. If the Tribal government employee had a side business (like selling art work on Etsy or operating a food truck on the weekends at Pow Wows) wherein they lost income due to the pandemic, they might apply and properly qualify for this funding. There is even a box on the application that allows the applicant to qualify if other substantial financial hardships apply. The application does require attaching supporting documents for each hardship. Hence, discovering that some Tribal government employees received COVID-19 Emergency Homeowner Assistance alone will not automatically reveal fraud by anyone, but more importantly, it will not show wrongdoing by the Tribal government. Even if the Court granted the Plaintiff's request, regardless whether Tribal citizen employees received the COVID funding at issue, it would not warrant a belief by a reasonable person that an alleged Government impropriety might have occurred. Thus, the Court must find that there is not a substantial public interest in releasing the requested public document.

4. Balancing Public Interest in Disclosure with Individual Privacy

This Court has already found that releasing the names of individuals who received COVID-19 Emergency Homeowner Assistance is not appropriate in this instance because release of the information requested would not shed light on the Tribal government's performance of its statutory duties. Even if this Court had determined that the release of the requested documents was appropriate, the Court

would then need to balance the public interest in shining a light on government action with a disclosure that would invade personal privacy to see if such an invasion is clearly unwarranted. *See 5 U.S.C. § 552(b)(6)*. *See also Favish*, 541 U.S. at 171 ("The term 'unwarranted' requires us to balance the . . . privacy interest against the public interest in disclosure.) If the privacy interests in contrast to disclosure are greater than the public interests in disclosure, the information should remain confidential. On the other hand, if the balance is in favor of disclosure, the information should be released. *See Ray*, 502 U.S. at 177 ("unless the invasion of privacy is 'clearly unwarranted,' the public interest in disclosure must prevail.") As the case law states, not every invasion of personal privacy should be guarded against, only those that constitute 'clearly unwarranted' invasions of personal privacy." *See Dep't of the Air Force v. Rose*, 425 U.S. 352, 382 (1976).

In balancing these competing interests, "the 'clearly unwarranted' language of Exemption 6 weights the scales in favor of disclosure" and "creates a 'heavy burden' for nondisclosure." *See Morley v. CIA*, 508 F.3d 1108, 1127 (D.C. Cir. 2007) ("Exemption 6's requirement that disclosure be clearly unwarranted instructs us to tilt the balance (of disclosure interests against privacy interests) in favor of disclosure.") (quoting *Wash. Post Co. v. HHS*, 690 F.2d 252, 261 (D.C. Cir. 1982)). At the same time, although the presumption in favor of disclosure is strong, courts have regularly protected personal, intimate details of an individual's life especially when the information impacted the individual's reputation. *See Id.* at 261; *see also*

Rural Hous. All. v. USDA, 498 F.2d 73, 77 (D.C. Cir. 1974), supplemented, 511 F.2d 1347 (D.C. Cir. 1974).

The Court takes notice that the LTBB Constitution, which favors transparency, does expressly recognize limits for transparency in the face of privacy. For example, the Constitution allows Tribal Council to go into closed session for very limited purposes similar to those at issue here. *See* Article VII (J)(9)

Closed Sessions:

“The Tribal Council may meet in closed session only for reasons clearly expressed in the Open Meetings Statute. Closed sessions shall be limited to personnel, litigation, confidential business or legal matters, or other matters that raise significant privacy or confidentiality concerns.”

While the Constitution recognizes the need of Tribal citizens to have transparency from their Tribal government, it balances that need with the matters that raise significant privacy concerns. Thus, adopting the federal case law analysis is supported by the Tribal Constitution.

In this case, the names of the Tribal citizens on the requested document have their names on the list because they were in financial distress. Not only can financial distress be embarrassing, it can harm both a personal and professional reputation. While this Court recognizes that the presumption in favor of disclosure is as strong, other courts have regularly protected personal, intimate details of an individual's life including financial information. The D.C. Circuit has recognized that courts have habitually upheld the nondisclosure of information concerning "marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcoholic consumption, family fights, reputation," and

similarly personal information. *See Rural Hous. All. v. USDA*, 498 F.2d 73, 77 (D.C. Cir. 1974). However, if the release of the names of Tribal citizens who received this funding could reasonably be expected to shed a light on government wrongdoing, the balance would fall in favor of disclosure as it did in *News-Press v. DHS*, 489 F.3d 1173, 1205 (11th Cir. 2007) ("In order to affirm withholding the addresses, we would have to find that the privacy interests against disclosure are greater than the public interest in disclosure."); *see also FOIA Update, Vol. X, No. 2*, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decision-making") (outlining mechanics of balancing process). In *News-Press*, the disclosure of the addresses of buildings that received disaster assistance from FEMA were released by the court but the names of aid recipients were withheld. The court reasoned that the public had a legitimate interest in knowing whether FEMA appropriately handled billions of dollars in disaster relief claims which justified releasing addresses, but withheld the names because the invasion of personal privacy was 'clearly unwarranted' even in light of the public interest in disclosure.

To analogize in this instance, the Plaintiff failed to tie a public interest in disclosure at all, but he certainly could not show one that would override an invasion of personal privacy. Therefore, the Court finds that the receipt of financial assistance from the Tribe raises significant privacy or confidentiality concerns that in this instance is not outweighed by a public interest in disclosure making disclosure a clearly unwarranted invasion of personal privacy. The Court holds there is no genuine issue as to any material fact and that the Defendant is entitled

