



**RESOLUTION OF THE GOVERNING BODY  
OF THE  
THREE AFFILIATED TRIBES  
OF THE  
FORT BERTHOLD INDIAN RESERVATION**

***A Resolution entitled, "Adoption of Mandan, Hidatsa and Arikara Nation Public 101-630 Background Investigations Policy and Procedure***

**WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

**WHEREAS,** pursuant to Article III, Section 1 of the Constitution of the Three Affiliated Tribes the Tribal Business Council is the governing body of the Tribe; and

**WHEREAS,** The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the best interest of the welfare and the benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article VI, Section 5 (1) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies and Tribal officials on the Reservation; and

**WHEREAS,** Public 101-630, 25 U.S.C. 3201, 3211 and 25 CFR Part 63 requires that Indian Tribes employing individuals under Indian Self Determination Contracts conduct background investigations on individuals employed in positions when the duties of such positions require regular contact with or control over Indian children; and

**WHEREAS,** 25 CFR 63.17 (c) requires that Indian Tribes appoint an adjudicating official to determine suitability for employment who shall be subject to a favorable background investigation; and

**WHEREAS,** The Tribal Business Council has determined that in order to comply with federal law and ensure uniform and fair decision making in employment decision, a policy and procedure for conducting background investigations should be adopted; and

**WHEREAS,** the Three Affiliated Tribes Legal Department, in consultation with the Human Resources Department, has drafted the attached *Mandan, Hidatsa and Arikara Nation Public 101-630 Background Investigations Policy and Procedure*.

**NOW THEREFORE BE IT RESOLVED** that the Tribal Business Council hereby adopts the attached *Mandan, Hidatsa and Arikara Nation Public 101-630 Background Investigations Policy and Procedure*.

**MANDAN, HIDATSA & ARIKARA NATION**  
**PUBLIC LAW 101-630**  
**BACKGROUND INVESTIGATIONS**  
**Policy and Procedure**

**I. PURPOSE**

The Purpose of this Policy and Procedure is to ensure compliance with the Indian Child Welfare and Family Prevention Act and the Tribes' various Indian Self Determination and Education Assistance Act 638 Contracts with the federal government by conducting background investigations on applicants for employment and employees whose duties and responsibilities allow them regular contact with and control over children. This Policy prescribes the minimum standards of character and suitability for individuals employed in such positions. This Policy is adopted by the Three Affiliated Tribes Tribal Business Council in accordance with the Article VI, § 5 (I) of the Constitution of the Three Affiliated Tribes and in accordance with 25 U.S.C. 3201, 3211 and the implementing regulations at 25 CFR Part 63.

**II. POLICY**

The Mandan, Hidatsa and Arikara Nation shall not employ any individual in a position where the duties and responsibilities for such position allows the individual regular contact with or control over children if the individual has been determined unsuitable for employment according to the terms of this Policy.

A covered employee shall be required to undergo a background investigation upon selection for hire, which shall include at a minimum a criminal history records check and an investigation into the individual's previous employment. An offer for employment to a covered employee shall be conditioned upon meeting the requirements for suitability set out in this Policy. Additional background requirements shall also be required for certain positions as required by the Tribe's I.S.D.E.A 638 Contracts with the federal government.

Investigations and adjudications shall be completed in accordance with this Policy, 25 U.S.C. 3201 and 25 CFR Part 63. In the event this Policy shall in anyway conflict with the federal regulations, the federal regulations will control.

Covered employees shall be required to undergo an updated background investigation every five years.

**III. COVERED EMPLOYEES**

A covered employee is any applicant for employment, volunteer or employee employed in a position whose duties and responsibilities require or allow regular contact with or control over children.

The Human Resources Department shall compile a list of all positions within the Tribe who meet the definition of a covered employee. The Human Resources Department shall regularly update the list to include new positions within the Tribe that meet the definition of a covered employee. The Human Resource Department shall ensure that each position included on the list has undergone the background investigation and has been determined suitable for employment.

#### **IV. APPLICATIONS FOR EMPLOYMENT/RELEASE OF INFORMATION**

Employment applications for covered employees shall contain a question asking whether the individual has ever been arrested for or charged under tribal, federal or state law with any one or more of the following:

1. A crime involving a child;
2. A sex crime, including but not limited to, rape, sexual assault, molestation, exploitation, sexual contact or prostitution;
3. A crime involving violence, including but not limited to, assault in any degree, homicide or manslaughter, domestic or family violence, robbery, kidnapping, and arson;
4. Any crime against another person;
5. Any drug felony.
6. Any crime which constitutes a felony.

The application shall require that if the applicant responds positively to the above question that the applicant provide a description of the disposition of the arrest or charge. The application shall also ask whether the applicant has ever been terminated or disciplined by a former employer for misconduct involving a child or an offense against another individual.

The application shall include a statement verifying the truth of all information provided in the application and a statement that it is being signed under penalty of perjury with the applicable tribal punishment for perjury stated on the application.

The application shall inform the applicant that a criminal history record check is a condition of employment and that any offer of employment is contingent upon passing the background investigation and being determined suitable in accordance with this Policy.

The applicant shall be required to complete and execute a release of information and comply with all procedures necessary to conduct a criminal records check including providing fingerprints to the authorized law enforcement agency.

## **V. PROCEDURE FOR CONDUCTING BACKGROUND INVESTIGATION**

The Tribe's Criminal Investigator shall conduct the criminal history background investigation. Other background investigative information may be obtained by either Criminal Investigator or the Human Resources Department. The background investigation shall include at a minimum an investigation into the applicant's employment history and a criminal history record check. The investigation may cover other matters if there is any information regarding the applicant indicating that the applicant may be unsuitable for employment according to the terms of this Policy.

The criminal history check shall be based on a set of the applicant's fingerprints obtained by a law enforcement officer and other identifying information. The investigation shall be conducted through the Identification Division of the Federal Bureau of Investigation and through the State criminal history repository or the National Crime Information Center.

The applicant shall sign a release of information that includes the following information:

1. Acknowledgment that the applicant has been notified of the Tribe's obligation to require a record check as a condition of employment;
2. Notification of the applicants right to obtain a copy of the criminal history report provided to the Tribe; and
3. Notification of the right to challenge the accuracy and completeness of any information contained in the report.

The Criminal Investigator shall also complete a local background investigation that includes a search of local tribal court records for any disqualifying convictions. If a covered employee previously resided on another Indian Reservation the Criminal Investigator shall conduct a local background investigation through the tribal court of that Reservation.

## **VI. SUITABILITY DETERMINATION**

Upon completion of the background investigation a suitability determination shall be made on all covered employees. The suitability determination shall be conducted through an adjudication process. The adjudication process provides a uniform evaluation to ensure fair and consistent judgment. The Tribal Business Council designates the Tribe's Human Resources Department to act as the adjudicating official. The adjudicating official shall be responsible for making the suitability determination. The adjudicating official must be qualified and trained to make determinations and must be thoroughly familiar with all laws, regulations, and criteria involved with making a suitability determination.

Upon completion of the background investigation, the designated investigator shall provide a written report to the adjudicating official. If the results of the background investigation reveal information that may result in a determination of unsuitability, the adjudicating official shall first provide written notice to the individual of the right to explain, deny or refute any unfavorable or incorrect information gathered through the investigation. The individual shall be given five working days from the date of receipt of the notice to provide a written response explaining, denying or refuting any unfavorable or incorrect information. The notice shall include the written summary required by Section VII of this Policy. If the individual is currently employed in a covered position, the individual may be placed on administrative leave pending a final adjudication or if possible detailed or reassigned to other duties that do not involve contact with or control over children.

When conducting a suitability determination on a covered employee of the Tribes' Adult and Juvenile Detention Center, the adjudicating official shall, in addition to the requirements set out in this Policy, ensure compliance with Section 2, Part K.(1) (2) & (6). Personnel Standards, of the Tribes PL 93-638 Contract with the Bureau of Indian Affairs, Law Enforcement Services, Contract No. CTAO4T30166.

The adjudicating official shall make a final determination according to the following rules:

- A. A covered employee shall be determined suitable if the background investigation report does not include any information that may result in a determination of unsuitability as provided in this Section.
- B. A covered employee shall be determined unsuitable and disqualified for employment in a covered position if the background investigation report reveals that the individual has ever been convicted, found guilty of or entered a plea of nolo contendere or guilty to any of the following crimes or types of crimes:
  - 1. A crime involving a child;
  - 2. A sex crime including but not limited to rape, sexual assault, molestation, exploitation, sexual contact or prostitution;
  - 3. A crime involving violence including but not limited to assault in any degree, homicide or manslaughter, domestic or family violence, robbery, kidnapping and arson;
  - 4. A crime against another person;
  - 5. Any drug or narcotics felony.
- C. A covered employee may also be determined unsuitable and disqualified from employment in a covered position if the background investigation report reveals that:

1. The individual has a prior record of misconduct in previous job positions that would indicate that the individual poses a danger or an immediate or long term risk to children; or
2. The individual has a prior record supported by documented evidence of child abuse or sexual abuse that did not result in a criminal conviction; or
3. The individual has a record or history of alcohol or substance abuse of a nature or duration that suggests the individual cannot perform the duties of the position or would directly threaten the safety of children; or
4. The individual has illegally used narcotics, drugs, or other controlled substances without evidence of rehabilitation.

The adjudicating official shall make a suitability determination if one or more of the above reasons exists and shall make a final determination based on the response of the individual and on any of the following applicable criteria:

1. The nature and seriousness of the conduct in question;
2. The recency and circumstances surrounding the conduct in question;
3. The age of the individual at the time of incident(s)
4. Societal conditions that may have contributed to the nature of the conduct;
5. The probability that the individual will continue the type of behavior in question;
6. The individual's commitment to rehabilitation and a change in the behavior in question; and
7. The likelihood that the individual will pose an immediate or long-term risk to children.

The Human Resources Department shall notify the individual of the results of the suitability determination and shall also notify the Department or Program Director for which the individual is employed or is being considered for hire.

A covered employee is not entitled to file a grievance under the procedures set out in the Tribes' Personnel Policies and Procedures Manual for a suitability determination and resulting employment termination made under this Policy.

## **VII. COVERED EMPLOYEES RIGHTS**

Covered employees have the right to receive notice of any unfavorable information as set out in Section VI of this Policy and shall have the right to explain, deny, or refute unfavorable or incorrect information gathered in an investigation prior to making a final determination. The individual shall receive a written summary of all derogatory information and be advised of the process for explaining, denying or refuting unfavorable information. The individual shall not be given the actual background investigative report and may only request a copy from the originating agency (federal, state or tribal) and challenge the accuracy and completeness of any information maintained by that agency with that agency.

The results of the investigation cannot be used for any purpose other than to determine suitability.

### **VIII. CONFIDENTIALITY**

Investigative reports contain highly confidential information and shall be maintained confidentially in secured locked files. Investigative reports and information contained in background investigation shall only be reviewed by individuals who have a need for the information to perform their duties under this Policy. Any individual who has access to information contained in a background investigation or investigative report shall maintain that information in a confidential manner and shall not reveal or disclose such information in any manner to any individual except as provided for in this Policy. Violation of this provision shall result in disciplinary action up to and including termination.



*Mandan, Hidatsa, & Arikara Nation*  
**TRIBAL BUSINESS COUNCIL**  
**AGENDA ITEM REQUEST**

DATE OF MEETING: November 22, 2004

*All agenda items must be reviewed through TAT Legal/Secretary's Office prior to submitting agenda request. Refer to Resolution 03-173-DSB.*

**AGENDA ITEM(S):**

1. ~~Legal~~ Legal Department - Policy + Procedure
2. for conducting Background investigations
3. \_\_\_\_\_
4. \_\_\_\_\_

COMMITTEE APPROVAL: \_\_\_\_\_ DATE: \_\_\_\_\_

SUBMITTED BY: Jennifer Lyten TELEPHONE: 8210 DATE: 11/16/04

RECEIVED BY SECRETARY'S OFFICE: \_\_\_\_\_ DATE: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

**PLEASE SUBMIT 1 ORIGINAL HARD COPY, 10 PHOTOCOPIES AND A DISKETTE THREE DAYS PRIOR TO THE REGULARLY SCHEDULED MEETING. *THIS PROCESS WILL ALLOW TIME FOR THE PREPARATION AND THE DISTRIBUTION OF THE MEETING MATERIALS TO THE TRIBAL BUSINESS COUNCIL FOR REVIEW PRIOR TO THE MEETING.***

**NOTE:** Failure to submit documentation with diskette copy will result in omission from the agenda. All diskettes will be returned after the meeting.

**FOR FURTHER ASSISTANCE, PLEASE CONTACT JEAN BAKER, RECORDING SECRETARY AT 627-4781 EXT. 8060.**

THANK YOU,





**BE IT FURTHER RESOLVED** that the Tribal Business Council hereby appoints Paula Danks, Human Resources Department, to act as the adjudicating official under said Policy, provided that adjudication determinations shall be subject to the final review of the Personnel Rating Team which consists of the Tribal CEO, Federal Programs Manager, the Human Resources Director and the applicable supervisor for the position.

**CERTIFICATION**

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 9 day of December, 2004, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting. [ ] Not Voting.

Dated this 9 day of December, 2004.

Nathan Hale  
Secretary, Nathan Hale  
Tribal Business Council

ATTEST:  
Tex G. Hall  
Chairman, Tex G. Hall  
Tribal Business Council