



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Eastern Area Office

Suite 260

3701 North Fairfax Drive

Arlington, Virginia 22203

IN REPLY REFER TO:

Tribal Relations

BCCO 1793

Ms. Cynthia A. Walsh
408 West Winterhaven Drive
Pueblo West, Colorado 81007

Dear Ms. Walsh:

NOTICE

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This is a decision responding to your request under the Freedom of Information Act (FOIA) dated May 22, 1997. Following are responses to your requests in the order in which they were presented in your letter of May 22:

1. Copy of the "Catawba Rules to Appeal" under the Catawba Settlement Act of 1993, section 7, Base Membership Roll, to appeal names included/excluded on the Proposed Final Membership Roll (and date [Bureau of Indian Affairs] approved).

Response: A copy of the appeal rules is enclosed. The appeal rules have not been approved by the Bureau of Indian Affairs at this writing.

2. Two reports created by Elizabeth [Colliflower] (1) on or about April 1995 and (2) on or about February 1997, both relating to the Catawba enrollment process and her visits and or contact with the Catawba [Tribe].

Response: It is determined that a portion of the information that you seek can be released. Enclosed is a copy of Ms. Colliflower's report of May 11, 1995, with a copy of the cover letter transmitting the report to the Catawba Tribal Chairman.

The Department of the Interior's federal regulations implementing the FOIA, 5 U.S.C. 552, are at 43 CFR Part 2. We are withholding release of Ms. Colliflower's report developed as a member of the team which conducted a site visit to the Catawba Tribe in February 1997. The report is exempted from mandatory release pursuant to exemption No. 5 as "...intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 43 CFR Part 2, 2.13(c)(5). Ms. Colliflower's report has not been thoroughly analyzed by supervisory personnel within the agency and, at this point, is not reflective of the agency's final determination with regard to matters discussed in the report. The report is intended to be considered in conjunction with future reviews and is a preliminary opinion of one staffer at this point in time. The report has not been distributed outside the agency.

3. Documentation from the Eastern Area [Bureau of Indian Affairs] Office in which the Eastern Area [Office] advised and guided the Catawba Executive Committee Members to “recreate” the lost criteria for Catawba enrollment. I am seeking information to include but not limited to: dates of communications, letters exchanges, and date of acceptance of the May 17, 1996, Catawba Executive Committee Resolution “recreating” enrollment criteria.

Response: It is unclear what you have reference to here. There is no need for the Executive Committee to create or “recreate” enrollment criteria. The enrollment criteria are set forth in the federal statute, 25 U.S.C. 941e. An individual is eligible for inclusion on the base membership roll if that individual was living on October 27, 1993 and (1) is listed on the “termination roll” dated February 25, 1961, or (2) should have been included on the 1961 roll as determined by the Executive Committee utilizing the same criteria used to compile the 1961 roll, or (3) is a lineal descendant of a member whose name appeared or should have appeared on the 1961 roll.

The criteria for enrollment are not subject to change as it is mandated by Congress in the 1993 Settlement Act. No advice or guidance was offered the Executive Committee by this office which was contrary to or in conflict with the terms of the Settlement Act. Therefore, there is no document in this office which conforms to your description.

4. A complete list of and dates of employment of the [Bureau of Indian Affairs] Acting/Interim/Permanent Area Directors involved in the Catawba Settlement Act of 1993 membership process. I believe that there are at least 7-8 individuals.

Response: Mr. Bill D. Ott--1985 to October 30, 1994
 Mr. Ralph Gonzales--October 31, 1994 to January 15, 1995
 Mr. Franklin Keel--January 16, 1995 to September 11, 1995
 Ms. Nancy Jenuson--September 12, 1995 to March 22, 1996
 Mr. Mitchell Chouteau--March 23, 1996 to May 1996
 Mr. Franklin Keel--May 1996 to present

5. The [Bureau of Indian Affairs] criteria used to create the 1943 Catawba membership roll (including the date that this criteria was approved). If lost then a statement stipulating to that fact.

Response: There is no information on file in this office showing the criteria for development of the 1943 roll upon which the 1961 “termination roll” was based. Such information, if it exists, has long since been archived. Each individual named on the 1961 roll was shown to be either listed on the 1943 roll or was a direct lineal descendant of a person or persons listed on the 1943 roll. There were no appeals filed with the Secretary contesting the inclusion or omission of the name of any person on or from the roll of the Catawba Tribe that was published in the Federal Register of February 26, 1961. If any person in 1961 wished to contest the criteria utilized for development of the 1961 roll, he or she was free to do so, but again, there were no contests or appeals filed. The time to question the 1943 roll was in 1961, when the 1943 roll was used as the basis for

development of the 1961 roll.

6. The [Bureau of Indian Affairs] criteria used to create the 1961 Catawba membership roll (including the date that this criteria was approved). If lost then a statement stipulating to that fact.

Response: The criteria used to create the 1961 Catawba membership roll are apparent on the face of the roll itself. On the extreme right of the roll is a column captioned: "Remarks--Name and roll No. of parent on 1943 roll." Each name entered on the roll at the extreme left of the list has the name of his or her parent indicated in the "Remarks" column at the extreme right, except where that person was himself or herself listed on the 1943 roll--in which case his or her 1943 roll number is indicated in the column adjacent to his or her name. In other words, the criteria used to compile the 1961 roll is whether an individual was either listed on the 1943 roll or was a direct lineal descendant of a person listed on the 1943 roll.

7. Referencing locations in the Congressional Records for Mr. Franklin Keel's recent claims that there is a "Congressional intent standard for Catawba Enrollment," provide a copy of Mr. Keel's research efforts to support this position and cite reference locations within the Congressional Records as to where this information can be found.

Response: The most competent source for ascertaining Congressional intent is in the plain meaning of language used in statutes enacted by Congress. In the case of the Settlement Act, no extraordinary research was undertaken by the Eastern Area Office, Bureau of Indian Affairs, because the meaning of the language of the Act is clear. Therefore, the documents that you request in item number 7 of your request do not exist.

8. List dates of receipt of all Catawba Rolls received since 1993.

Response: This office received a roll in November 1994, which was a current roll of Catawba members as prepared by the Executive Committee and approved by the General Council. This roll was published in the Federal Register of November 22, 1994, along with the "termination roll" of 1961. Other rolls have been forwarded to this office by the interim tribal government since that time, but were not considered for publication in the Federal Register because no site review had been conducted to ensure that all listed persons had documented proof that they were either listed on the 1961 roll or were direct lineal descendants of persons listed on the 1961 roll. In addition, the Executive Committee had not finalized its tribal resolution setting forth the criteria for determining whether an individual should have been listed on the 1961 roll or was a direct lineal descendant of a person who should have been listed on the 1961 roll but was not.

Therefore, any and all membership rolls submitted to this office since November 1994 were not at any time under consideration for publication, review and/or approval by this office since, as discussed above, they lacked (1) on-site review by this office and, (2) were not supported by a final tribal resolution setting forth the criteria for determining whether an individual should have been listed on the 1961 roll but was not and whether an individual was a direct lineal descendant

of a person who should have been listed on the 1961 roll but was not. The only roll that has been submitted to this office since November 1994 that was afforded consideration for publication as mandated by the Settlement Act was the roll submitted in mid-1996, which was taken by a team of federal reviewers to Rock Hill, South Carolina, in February 1997, in order to inspect its accuracy against the proofs on file in the tribal administrative offices.

You indicate that you sent a check for seventy-ave dollars (\$75.00) to reimburse the Bureau of Indian Affairs for fees pursuant to the Freedom of Information Act. It is unclear as to the whereabouts of the check; however, on your assurance that fees as stipulated by the FOIA have, in fact, been tendered, no further costs are herewith attached.

Under 43 CFR Part 2.18, you have the right to appeal this decision to:

Freedom of Information Act Appeals Officer
Office of the Assistant Secretary-
Policy, Management and Budget
U. S. Department of the Interior
Mailstop: 2242-MIB
Washington, DC 20240

Your appeal must be in writing and must be received no later than 20 workdays from the date of this letter. The appeal must be accompanied by a coy [copy] of your original request and this letter containing a partial denial of your request. To expedite the appellante process and to ensure full consideration of your appeal, your letter should contain a brief statement of the reasons why you believe this decision is in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

If you have questions concerning this matter, the office telephone number is: 703-235-2571. In addition to the undersigned, Elizabeth Colliflower, Tribal Relations Specialist, and Kaye Armstrong, Tribal Relations Specialist, participated in or substantially contributed to development of this decision.

Sincerely,

/s/

Franklin Keel

Franklin Keel
Eastern Area Director

Enclosures