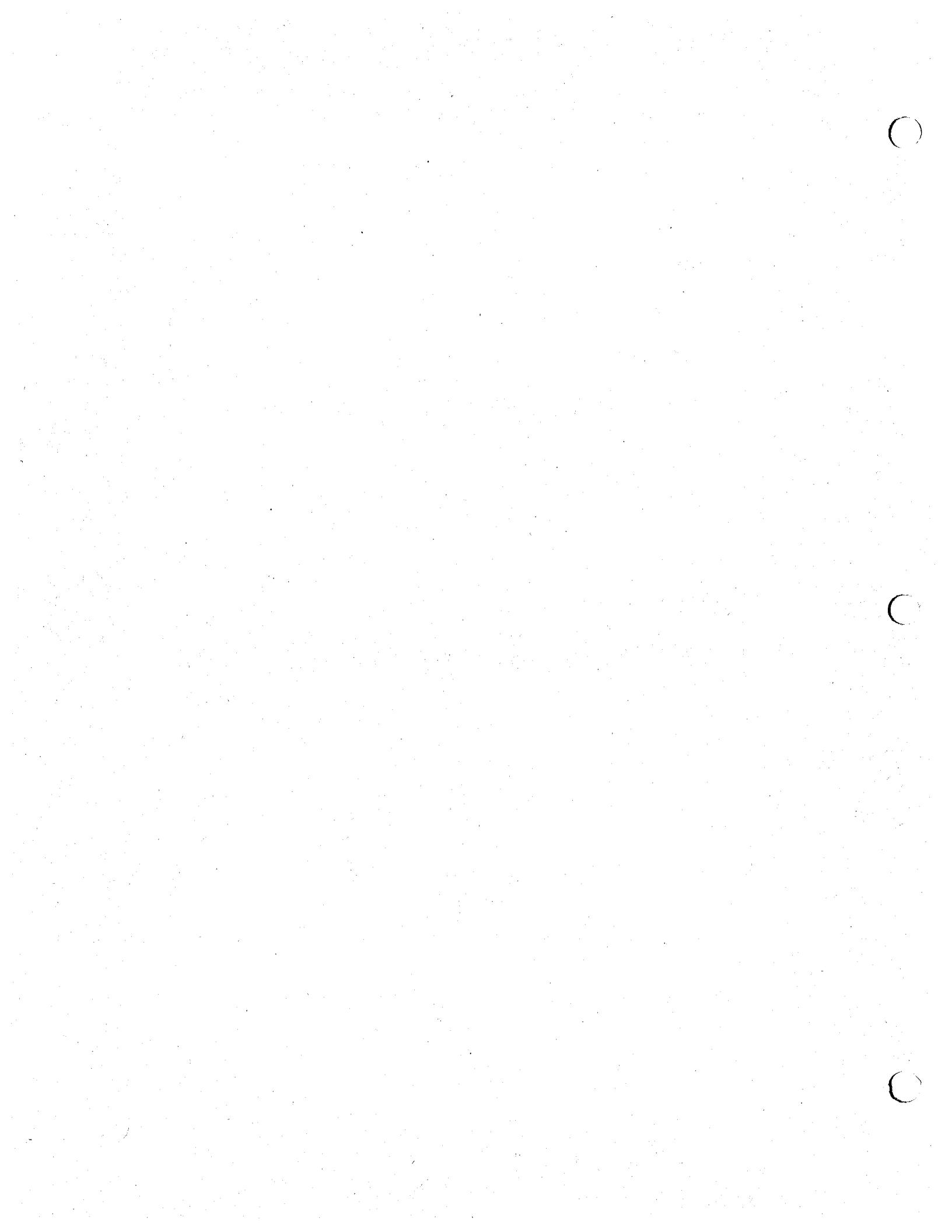




**CHAPTER 28**

**FREEDOM OF INFORMATION**



## FREEDOM OF INFORMATION

### SECTION 1.

This Ordinance shall be referred to as the Penobscot Nation Freedom of Information Ordinance.

### SECTION 2.

As used in this Ordinance:

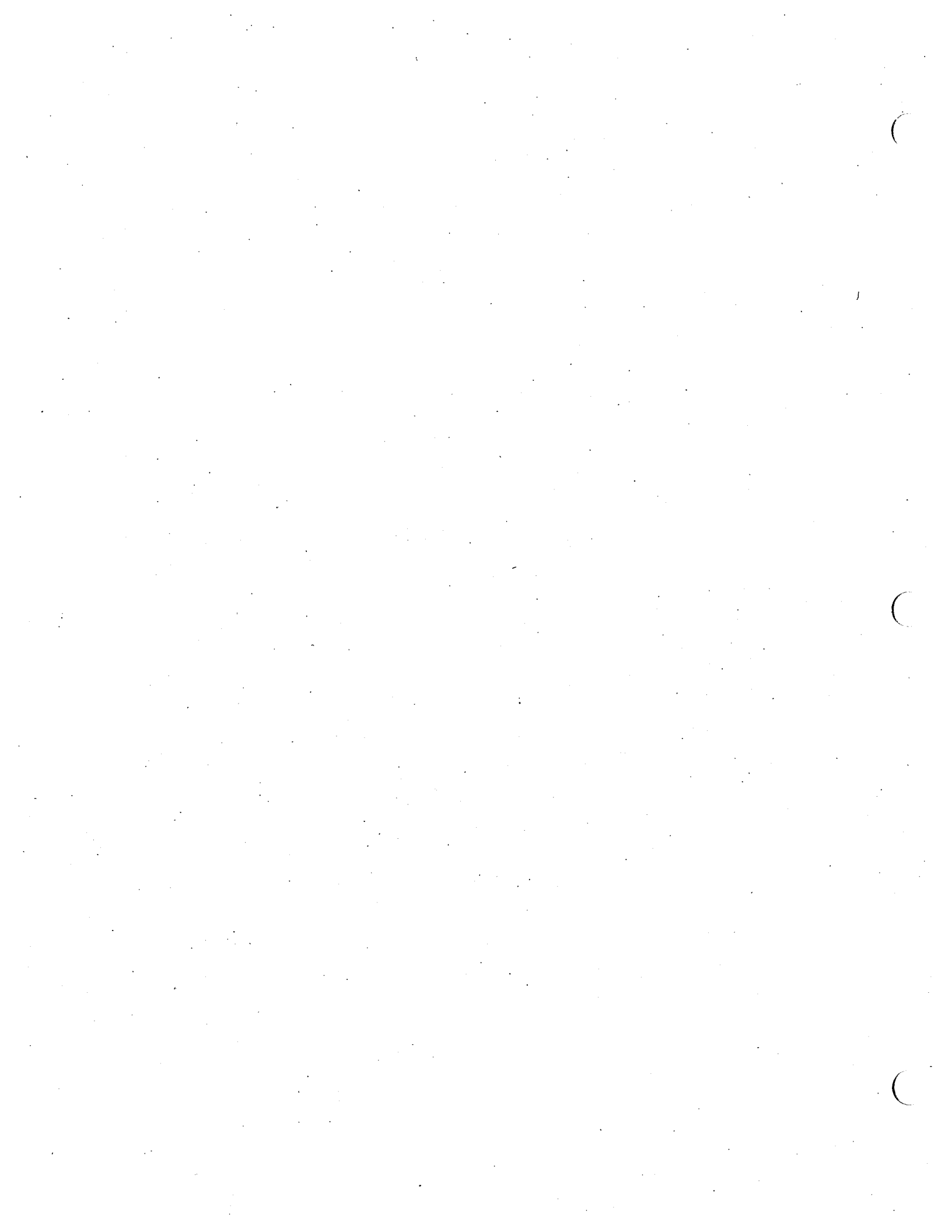
- (a) The term "tribal member" or "member" shall mean any person or entity who is listed as an enrolled member of the Penobscot Nation according to the census of the Penobscot Nation kept by the Penobscot Nation Census Committee.
- (b) The term "non-member" means any person or entity who is not listed as an enrolled member of the Penobscot Nation according to the census of the Penobscot Nation kept by the Penobscot Nation Census Committee.
- (c) The term "maintain" includes maintain, collect, use or disseminate.
- (d) The term "record" means any written or recorded information concerning or related to the affairs of the Penobscot Nation in the custody of the governmental offices of the Penobscot Nation.
- (e) The term "confidential record" means those records that are not subject to disclosure under applicable federal law or tribal law, including but not limited to the Federal Privacy Act, and including those items set forth in Section 4 below.

### SECTION 3.

It is the official policy of the Penobscot Nation that in conformance with ancient and historical traditions and customs of the Penobscot Nation tribal members shall have access to tribal records, including records maintained by the Chief and Council, Tribal Secretary, Tribal Clerk, all Council Committees and all tribal departments and programs inclusive of the Indian Island School; resolutions and ordinances, tribal minutes, all transactions involving tribal loans, descriptions of tribal lands, records related to the leasing or exchanges of tribal lands, and records regarding any tribal contractor; provided, however, that confidential records shall not be subject to disclosure pursuant to this Ordinance. Tribal members requesting information shall submit a written request to the Tribal Chief.

### SECTION 4.

The following items are deemed confidential records and are exempted from disclosure pursuant to this Ordinance:



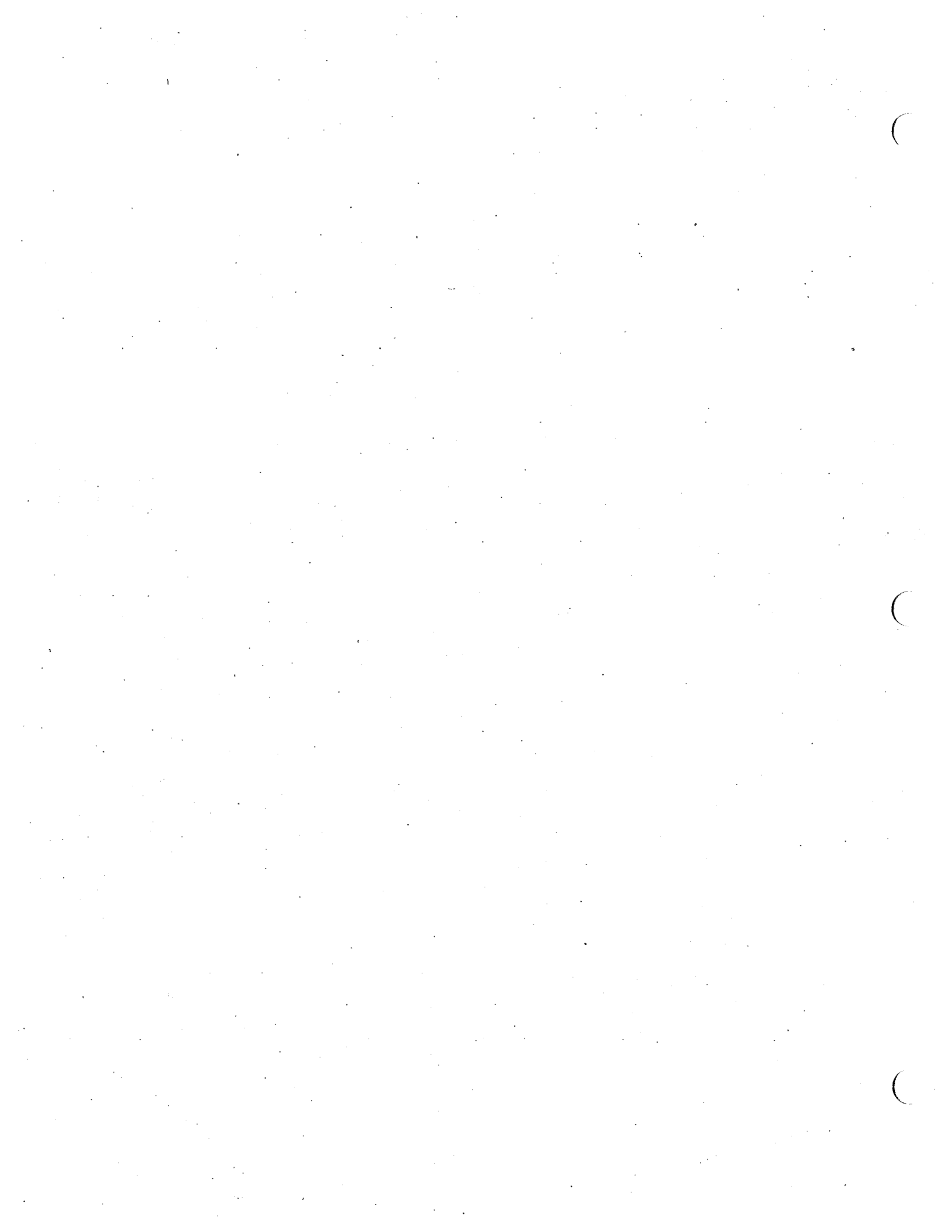
- (a) all medical, counseling and dental records maintained by the Penobscot Nation; and
- (b) minutes and/or recordings of any executive sessions of Chief and Council meetings; and
- (c) all materials that are required to be kept confidential pursuant to the terms of any confidentiality agreements entered into by the Penobscot Nation; and
- (d) all personnel records maintained by the Penobscot Nation except as otherwise provided in Section 7 of this Ordinance; and
- (e) worker's compensation and individual insurance information maintained by the Penobscot Nation; and
- (f) all census records maintained by the Penobscot Census Department; and
- (g) all records maintained by the Penobscot Nation Human Services Department including but not limited to protective services, Low Income Heating Energy Assistance Program, domestic violence, general assistance, burial assistance and elder services; and
- (h) all juvenile records and all other records regarding minors maintained by the Penobscot Nation; and
- (i) all records related to ongoing investigations and/or open cases of the Penobscot Nation Police Department, Penobscot Nation Warden Service and the Tribal Court; and
- (j) records that would be within the scope of a privilege against discovery or use as evidence recognized by the Penobscot Nation Tribal Court in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding.

#### SECTION 5.

Except as provided in Section 7, non-Members shall not have a right to any item included in Section 3 except upon the written permission of the Penobscot Nation Chief and Council. The Chief and Council shall be guided by the general policy of the Penobscot Nation to provide open access to its records, and for non-members, to provide them with access to records that concern their particular interests.

#### SECTION 6.

The Chief and Council, any Committee of the Council, Tribal Clerk or any officer and program thereof shall not disclose any record by any means of communication to any person, including a tribal member, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains when the information requested involved an individual, unless the disclosure of the information would be:



- (a) To those officers and employees of a tribal department or program which maintains the record of who have need for the record in the performance of their duties.
- (b) To a recipient who has provided the tribal department or program with written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transformed in a form that is not individually identifiable.
- (c) To the Penobscot Nation Police Department, law enforcement officials of the State of Maine, or law enforcement officials of the United States Government for a criminal law enforcement activity if the activity is authorized by law, provided that the request must be made in writing and specify the particular information desired and the law enforcement activity for which the record is sought.
- (d) Pursuant to an order of the Penobscot Nation Tribal Court or a state or federal court in a proceeding where the Penobscot Nation Tribe is a party.

#### SECTION 7.

All individuals, including non-members, shall have access to their personnel records maintained by the Penobscot Nation or department or program thereof upon written request. Also, Chief and Council have the authority to create a policy for tribal departments to make records available to individual tribal members upon request.

#### SECTION 8.

Any person who is aggrieved by a final decision of the Chief or the Chief and Council concerning access to records under this Ordinance may bring a civil action in the Penobscot Nation Tribal Court within thirty (30) days of the issuance of such decision to compel access to records; provided however that no individual shall be permitted to sue for damages in such action.

#### SECTION 9.

All records shall be reviewed during regular business hours except as otherwise authorized by the Tribal Chief.