



INTERIOR BOARD OF INDIAN APPEALS

Ramona Williams v. Muskogee Area Director, Bureau of Indian Affairs

26 IBIA 217 (09/09/1994)

Related Board cases:

24 IBIA 64

25 IBIA 97



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

RAMONA WILLIAMS,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-61-A
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 9, 1994

Appellant Ramona Williams seeks review of a January 20, 1994, decision issued by the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning custody of appellant's Certificate of Degree of Indian Blood (CDIB) records. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant is a member of the United Keetoowah Band of Cherokee Indians (Band). She requested that BIA retrieve her CDIB records from the Cherokee Nation of Oklahoma (Nation), to which they had been transferred. 1/ By letter dated January 20, 1994, the Area Director responded:

[T]he [Nation] entered into a contract with the BIA to administer our CDIB program pursuant to P.L. 93-638 [25 U.S.C. §§ 450-450n (1988 and Supps.)]. 2/ in December of 1983. * * * The maintenance of these files by the [Nation] continues under the provisions of the Self-governance compact.

We contacted * * * the custodian of the records for the Muskogee Area Office and she assured us that the compact of Self-governance between the [Nation] and the United States provides for proper record maintenance and authorization to administer the CDIB program services to all Cherokee Indians previously served by the Muskogee Area Office. As mutually compacted, the [Nation] is obligated to preserve all federally created records in a proper and safe manner, and was furnished the information necessary to adequately and properly identify the Indian population they serve. Further, the [Nation] is required to manage all records subject to the Privacy Act of 1974, 5 U.S.C. 552a, and must ensure compliance with such Act.

* * * [T]he CDIB records are properly managed by the [Nation] pursuant to the statutes and federal regulations governing Bureau

1/ For preliminary decisions concerning appellant's request, see 24 IBIA 64 (1993) and 25 IBIA 97 (1994).

2/ All further citations to the United States Code are to the 1988 edition and its supplements.

records maintained by a Federal contractor. Also, pursuant to the federal regulations the [Nation] is the proper site for the storage of CDIB records.

(Decision at 2).

On appeal to the Board, appellant states:

1. I am seeking the complete and total dissolution of the quasi de facto Cherokee Nation of Oklahoma "membership" which was assigned to me by the Muskogee Area BIA.

2. I am seeking complete federal recognition of my tribal membership status in the United Keetoowah Band of Cherokee Indians in Oklahoma for all tribal purposes.

3. I am requesting the immediate removal of my [CDIB] record from the possession of the [Nation]. I am requesting that my CDIB record be returned to its point of origin within the BIA and that the [Nation] be barred from all access.

4. I am requesting that as a [Band] member my membership be treated equally to all memberships within other tribal entities of the same status. [Emphasis in original.]

(Opening Brief at unnumbered page 1).

The administrative record furnished by the Area Director contains a copy of the FY 1984 P.L. 93-638 contract for CDIB services to be performed by the Nation. The contract states at Article II, section 201.1:

The [Nation] shall provide all necessary qualified personnel, equipment, material, and service to perform the Degree of Indian Blood services. The [Nation] is to be considered the recipient of contracts and/or grants applied for under PL 93-638 that will benefit the entire service population of the Cherokee Nation which includes the [Band]. (Members of the [Band] will receive benefits and services equal to all other persons served by such contract, in accordance with directive from the Assistant Secretary - Indian Affairs dated January 16, 1980.)

The Nation's July 2, 1990, Self-Governance Compact incorporates prior P.L. 93-638 contracts through Article II, section 1. This Compact is in effect through FY 1994. ^{3/} The June 1994 Memorandum of Understanding between BIA and the Nation specifically addresses the issuance of CDIBs by the Nation in paragraph 8(b) under the Tribal Operations Program. There is no evidence that there has been any modification of the extent of the CDIB services performed by the Nation.

^{1/} The compact may have been extended since the Area Director filed the administrative record with the Board.

In Perrault v. Acting Minneapolis Area Director, 26 IBIA 214 (1994), the Board held that for purposes of its review of an Area Director's decision concerning tribal performance of functions covered by a P.L. 93-638 contract or self-governance compact, the contract or compact is conclusive evidence that the tribe has the authority to perform the functions.

Appellant has not disputed the existence or effect of the P.L. 93-638 contract or compact with the Nation. Instead, she seeks to have her own records excepted from the compact and administered by BIA rather than the Nation. For the reasons discussed in Perrault, BIA cannot simply waive the compact it has entered into with the Nation for appellant's personal benefit.

On appeal to the Board, appellant expands greatly on the arguments she made before the Area Director. Her primary focus is now upon the problems between the Band and the Nation and between the Band and BIA, particularly concerning P.L. 93-638 contracting. These problems, however, cannot be resolved in the context of this appeal.

Appellant also argues that release of her CDIB records to the Nation constitutes a violation of the Privacy Act, 5 U.S.C. § 552. The Area Director interpreted this argument to be that appellant's records were not adequately protected while in the custody of the Nation. Therefore, he asked for assurance from the Nation that it was in compliance with 5 U.S.C. § 552. Such assurance would be necessary under 43 CFR 2.53(a) which requires that

[w]hen a contract provides for the operation by or on behalf of the Department of a system of records to accomplish a Departmental function, the contract shall, consistent with the Department's authority, cause the requirements of 5 U.S.C. 552a and the regulations contained in this subpart to be applied to such system.

On appeal, it is evident that appellant is actually arguing that the CDIB function for Band members should not have been contracted to the Nation because, under the circumstances existing between the Band and the Nation, disclosure of those records to the Nation violated the Privacy Act.

Regulations governing the Department's implementation of the Privacy Act are found in 43 CFR 2.45-2.79. The Board is not part of the review process established in those regulations. Furthermore, the Board is not part of the administrative process for determining whether a particular BIA function is contractible under P.L. 93-638. Accordingly, it does not have jurisdiction to review appellant's allegations in this area.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Muskogee Area Director's January 20, 1994, decision is affirmed. If appellant wishes to pursue her Privacy Act arguments, she must do so through the appropriate administrative review procedures.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge