



## NATIVE AMERICAN HERITAGE COMMISSION

October 13, 2023

CHAIRPERSON  
**Reginald Pagaling**  
Chumash

To: Native American Heritage Commissioners

VICE CHAIRPERSON  
**Buffy McQuillen**  
Yokayo Pomo, Yuki,  
Nomlaki

Re: Bagley Keene FAQ for Contact List

SECRETARY  
**Sara Dutschke**  
Miwok

From: Mario Pallari, Staff Counsel

### FREQUENTLY ASKED QUESTIONS CONCERNING BAGLEY-KEENE OPENING MEETING ACT'S IMPACT ON ANY PROPOSED COMMISSION CONTACT-LIST PROCESS

PARLIAMENTARIAN  
**Wayne Nelson**  
Luiseño

COMMISSIONER  
**Isaac Bojorquez**  
Ohlone-Costanoan

---

In adopting any Contact-List process regulations, the Commission must maintain compliance with the Bagley-Keene Opening Meeting Act (Bagley-Keene). Below are answers to frequently asked questions about Bagley Keene's impact on any contact list process.

COMMISSIONER  
**Stanley Rodriguez**  
Kumeyaay

- **Question:** May Commissioners deliberate in closed session as part of any contact-list process to make determinations on tribal applications?
  - **Response:** No. Bagley-Keene imposes strict requirements on when a state agency may go into closed session to deliberate on certain matters with a presumption that deliberation be done publicly. (Gov. Code, § 11126.) Currently, no exemption exists allowing the NAHC to go closed session for this purpose.
- **Question:** If tribes provide records related to sacred sites, graves, cemeteries, and ancient village sites, will these records be made public as part of any proposed public hearing process before Commissioners?
  - **Response:** No. The Commission will maintain existing protections for records of sacred sites, graves,

EXECUTIVE SECRETARY  
**Raymond C. Hitchcock**  
Miwok/Nisenan

**NAHC HEADQUARTERS**  
1550 Harbor Boulevard  
Suite 100  
West Sacramento,  
California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
NAHC.ca.gov

cemeteries, and ancient village sites. (Gov. Code, §§ 7927.000, 7927.005 and 11125.1.)

- *Question:* Will tribes be given access to any records considered by Commissioners as part of any proposed public hearing process as a part of the contact-list process which are not protected from public disclosure?
  - Yes. Tribes will have access to all records considered by Commissioners which are distributed to Commissioners with the exception of records otherwise subject to exclusion from public disclosure, including for records of sacred sites, graves, cemeteries, and ancient village sites. (Gov. Code, §§ 7927.000, 7927.005 and 11125.1.)
  
- *Question:* Upon a tribe's request, may the Commission convene in closed session outside the presence of other tribes and the public to allow the tribe to address Commissioners privately on sensitive matters, including information contained in records not subject to public disclosure?
  - *Response:* No. Bagley-Keene imposes strict requirements on when a state agency may go into closed session to deliberate on certain matters with a presumption that deliberation be done publicly. (Gov. Code, § 11126.) Currently, no exemption exists allowing the NAHC to go closed session for this purpose. Further, a state body as a general rule is limited in closed session to only the members of the body and required support staff. (46 Ops.Cal.Atty.Gen. 34, 35.)
  
- *Question:* If a tribe has an interest in another tribe's specific contact list application, how will it know if that application is being considered before the Commission?
  - *Response:* The Commission may only deliberate on items on its agenda which are required to be made public 10-days before public meetings and will include the names of the tribes being proposed for inclusion on the contact list for that public meeting. (Gov. Code, § 11125.)
  
- *Question:* If a tribe wants to comment on another tribe's contact list application, will it be allowed to speak on the matter?
  - *Response:* Yes. In addition to whatever process is adopted under proposed regulations, Bagley-Keene ensures that members of the

public may address Commissioners before they vote on any agenda item. (Gov. Code, § 11125.7.)

- *Question:* Can the Commission deliberate on tribal contact list applications to reach a decision without a public meeting?
  - *Response:* No. Bagley-Keene prohibits the Commission from deliberating and making decisions outside of noticed public meetings, which includes using other communication methods, like emails, texts, and phone conversations to do so. (Gov. Code, § 11122.5.)