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Attorney for Defendant Owens Valley
Indian Housing Authority

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JULIE FRITCHER, PRO SE

Plaintiff,

v.

OWENS VALLEY INDIAN HOUSING
AUTHORITY, et al.,
Defendants.

Case No.: 1 11 CV 002071 AWI JLT

**NOTICE OF MOTION AND MOTION TO
DISMISS**

[F.R.C.P. Rule 12(b)(6)]

Date: February 6, 2012

Time: 1:30 p.m.

Courtroom: 2, 8th Floor

Judge: Hon. Anthony W. Ishii

PLEASE TAKE NOTICE that, on February 6, 2012 at 1:30 p.m., or as soon thereafter as may be heard, defendants Owens Valley Indian Housing Authority ("OVIHA"), Robert L. Zucco, and Linda Puckett will, and hereby do, move this Court for an order dismissing the action for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

This motion will be made in Courtroom 2, 8th Floor, before the Honorable Anthony W. Ishii, United States District Judge, at the above-entitled Court located at 2500 Tulare Street, Fresno, CA, 93721.

Defendants bring the motion on the grounds that plaintiff fails to state a claim for which relief can be granted because the statute on which she relies applies to federal agencies only.

1 Accordingly, defendants move for dismissal of the Complaint in its entirety.

2 This motion is made upon this Notice, the attached Memorandum of Points and
3 Authorities, and all pleadings, records, and or documents on file with the Court in this action, and
4 upon such oral and/or documentary evidence as may be presented at, before, and after the hearing
5 of this motion.

6 Dated: January 6, 2011

RAPPORT AND MARSTON

8 */s/ David J. Rapport*

9 By: _____
David J. Rapport, Attorney for Defendant

PROOF OF SERVICE

I am employed in the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within action. My business address is that of Law Offices of Rapport and Marston, 405 West Perkins Street, Ukiah, CA. 95482.

On January 6, 2012, I served the below listed documents described as:

1. Notice of Motion and Motion to Dismiss;
2. Memorandum of Points and Authorities in Support of Motion to Dismiss; and
3. Declaration of Robert Zucco in Support of Plaintiff's Motion to Dismiss

by placing a true and correct copy in a sealed envelope with postage thereon fully prepaid at the United States Postal Service, at Ukiah, California, addressed as follows:

Julie Fritcher
P. O. Box 1134
Lone Pine, CA 93545

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; executed on January 6, 2012, at Ukiah, California.

/s/ Christine Feller

Christine Feller

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Attorney for Defendant Owens Valley
Indian Housing Authority

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JULIE FRITCHER, PRO SE

Plaintiff,

v.

OWENS VALLEY INDIAN HOUSING
AUTHORITY, et. al.

Defendants.

Case No.: 1 11 CV 002071 AWI JLT

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO DISMISS**

[F.R.C.P. Rule 12(b)(6)]

Date: February 6, 2012

Time: 1:30 p.m.

Courtroom: 2, 8th Floor

Judge: Hon. Anthony W. Ishii

INTRODUCTION

Plaintiff, Julie Fritcher, claims that individual defendants, Robert L. Zucco and Linda Puckett - who are, respectively, Executive Director and Bookkeeper for OVIHA – have violated the Freedom of Information Act (“FOIA”), found at 5 U.S.C. § 552. Specifically, plaintiff alleges that the individual defendants have acted outside the scope of their authority as agents of OVIHA and that by declining to comply with her request for extensive records allegedly in OVIHA’s possession and control, defendants have violated FOIA and caused plaintiff severe emotional distress entitling her to damages. Defendants move to dismiss the action in its entirety for failure to state a claim on which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

Plaintiff mistakenly seeks relief under FOIA, which is not applicable to defendant OVIHA, a tribal housing authority, or to the individual defendants, even when acting in the scope of their employment with OVIHA. Even if FOIA did apply to a tribal housing authority, FOIA does not entitle plaintiff to recover damages allegedly caused by defendants' failure to produce the requested records. In addition, plaintiff could not bring an action under FOIA in federal court before exhausting available administrative remedies. Accordingly, plaintiff's claims for relief should be dismissed for failure to state a claim upon which relief can be granted.

FACTUAL BACKGROUND

On August 16, 2011, plaintiff submitted a request for various records of OVIHA, under the authority of the Freedom of Information Act ("FOIA"), 5 U.S.C. §552. (Declaration of Robert Zucco in Support of Defendant's Motion to Dismiss ("Zucco Declaration"), pp. 1-2, ¶ 4.) OVIHA is an Indian housing authority established by an ordinance adopted by the Lone Pine Paiute-Shoshone Tribe ("Tribe"). (Zucco Declaration, p. 1, ¶ 3, Exh. 1.) A true and correct copy of the Tribe's housing authority ordinance is attached as Exhibit 1 to the Zucco Declaration. On August 20, 2011, OVIHA responded to plaintiff's request for records, informing her that OVIHA declined to produce the requested records because 1) FOIA does not apply to an entity of an Indian tribe established under tribal law, 2) neither the Tribe nor OVIHA has adopted laws requiring OVIHA to produce records in response to requests, 3) producing all requested records would be burdensome, and 4) the requested records contained personal information about other tribal members that OVIHA would refuse to disclose, even if it was subject to FOIA. Zucco Declaration, p. 2, ¶ 4, Exh. 2. A true and correct copy of OVIHA's response letter to plaintiff is attached to the Zucco Declaration as Exhibit 2. In response, plaintiff filed the current action in this Court.

ARGUMENT

A complaint may be dismissed under Fed. R. Civ. P. 12(b)(6) when it fails to state a claim upon which relief can be granted. In evaluating a motion to dismiss for failure to state a claim, a court must accept as true all allegations contained in the complaint and must view the complaint in the light most favorable to the plaintiff. *NL Industries, Inc. v. Kaplan*, 792 F.2d 896,

898 (9th Cir. 1986). Moreover, the plaintiff must allege factual allegations beyond the speculative level, and the court must accept the allegations of the complaint as true and dismiss the case only when a plaintiff fails to demonstrate that a cause of action exists upon those allegations. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007): (“[A] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”)

Plaintiff alleges that defendants Zucco and Puckett violated FOIA by refusing to comply with her request for records kept by OVIHA. In her claim for relief, plaintiff suggests that FOIA allows this Court to compel OVIHA to surrender the records she requests and to award Plaintiff damages for severe emotional distress. However, OVIHA is not a federal agency subject to FOIA.

FOIA applies to “agencies” which are defined in 25 U.S.C. §551(1) as an “. . . authority of the Government of the United States, . . .” An entity of an Indian tribe established under tribal law does not come within this definition of “agency.” As previously stated, OVIHA was established by an ordinance adopted by the Tribe. Exhibit 1 to the Zucco Declaration. OVIHA was established to provide housing for low income tribal members with federal funds. The Native American Housing and Self-Determination Act (“NAHSDA”), 25 U.S.C. §4101, et seq., provides federal funding for housing assistance to low income Native Americans. Furthermore, the regulations implementing NAHSDA regulations recognize that FOIA does not apply to the records of Indian housing authorities. 24 C.F.R. §1000.556, regarding the responsibilities of recipients of funding under NAHSDA, reads as follows:

§ 1000.556 Does the Freedom of Information Act (FOIA) apply to recipient records?

FOIA does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

The regulation reflects federal case law that recipients of federal grant funds are not subject to FOIA by virtue of their receipt of such grants. As stated

1 in *Needleman v. Healy*, 1994 U.S. Dist. LEXIS 21231 (W.D. Penn.):

2 Likewise, in an action where plaintiff sought to require a federal fund
3 recipient to turn over research data under the Freedom of Information Act,
4 the United States Supreme Court, in deciding the fund recipient was not an
agent of the federal government, wrote:

5 *Grants of federal funds generally do not create a partnership or*
6 *joint venture with the recipient, nor do they serve to convert acts of*
7 *the recipient from private acts to governmental acts absent*
8 *extensive, detailed and virtually day-to-day supervision. Forsham*
v. Harris, 445 U.S. 169, 180, 63 L. Ed. 2d 293, 100 S. Ct. 977
(1980) (emphasis added).

9 A review of NAHASDA and its implementing regulations at 24 C.F.R. Part 1000 reveals
10 that OVIHA is not subject to day-to-day supervision by the United States Department of Housing
11 and Urban Development (“HUD”), the federal agency that administers NAHASDA. In fact, as
12 stated in 24 U.S.C. §4101(7)

13 The Congress finds that--

14 (7) Federal assistance to meet these responsibilities shall be provided in a manner that
15 recognizes the right of Indian self-determination and tribal self-governance . . .

16 Plaintiff cannot state a cause of action against OVIHA or the individual defendants acting
17 within the scope of their employment with OVIHA for failure to comply with FOIA, because
18 OVIHA is not obligated to comply with FOIA.
19

20 Moreover, plaintiff cannot recover damages based on a failure to comply with a FOIA
21 request. While a prevailing complainant in a FOIA action may be awarded attorney fees and
22 other litigation costs reasonably incurred, the judicial review provisions of FOIA do not provide
23 for relief in the form of money damages. 5 U.S.C. § 552(a)(4)(E). Plaintiff has failed to state a
24 claim upon which relief can be granted and defendant urges the Court to dismiss all claims of the
25 Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedures.
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27
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CONCLUSION

For the reasons set forth above, Defendant requests the Court to dismiss the Complaint in its entirety for failure to state a claim because plaintiff's claims for relief do not allege a viable cause of action.

Dated: January 6, 2011

RAPPORT AND MARSTON

/s/ David J. Rapport

By: _____
David J. Rapport, Attorney for Defendants

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8 Attorney for plaintiff Owens Valley
9 Indian Housing Authority

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 JULIE FRITCHER, PRO SE

13 Plaintiff,

14 v.

15 OWENS VALLEY INDIAN HOUSING
16 AUTHORITY,

17 Defendants.

Case No.: 1 11 CV 002071 AWI JLT

**DECLARATION OF ROBERT ZUCCO IN
SUPPORT OF DEFENDANT'S MOTION
TO DISMISS**

Date: February 6, 2012

Time: 1:30 p.m.

Ctrm.: 2, 8th Floor

Judge: Hon. Anthony W. Ishii

18
19 I, Robert Zucco, declare as follows:

20 1. I am the Executive Director for the Owens Valley Indian Housing Authority
21 ("OVIHA"). I am submitting this declaration in support of defendant's motion to dismiss for
22 failure to state a claim. I could testify to the contents of this declaration from personal knowledge
23 or the official and business records of OVIHA, if called as a witness herein.

24 2. In my capacity as the Executive Director, I am the custodian of all official records
25 of OVIHA.

26 3. Attached to this declaration as Exhibit 1 is a true and correct copy of Ordinance
27 No. 4 adopted by the Lone Pine Paiute-Shoshone Tribe establishing OVIHA.

28 4. Attached hereto as Exhibit 2 is a true and correct copy of the letter sent to Julie

1 Fritcher in response to her request for documents under the Federal Freedom of Information Act
2 (“FOIA”) which she submitted to OVIHA on August 16, 2011.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on January 5, 2012, at Lone Pine, California.

5 */s/ Robert Zucco*

6 _____
7 Robert Zucco
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TRIBAL ORDINANCE NO. 4

Pursuant to the authority vested in the General Council of the Lawson Reservation, and by its authority to manage, lease, contract, or otherwise deal with tribal assets, and to provide for the health, safety, morals and welfare of the tribe, the General Council of the Lawson Reservation hereby joins in chartering a public corporation known as the Lawson Authority (hereinafter referred to as the Authority) and enacts this ordinance to join in establishing this charter of the Authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this ordinance. A copy of this ordinance duly certified by the Secretary of the Council shall be admissible in evidence in any suit, action or proceeding.

I. Declaration of Need

It is hereby declared:

1. That there exists on the Lawson Reservation unsanitary, unsafe, and overcrowding dwelling accommodations; that there is a shortage of safe or sanitary dwelling accommodations available at rents or prices which persons of low income can afford; and that such shortage forces such persons to occupy unsanitary, unsafe, and overcrowded dwelling accommodations;
2. That these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the Reservation; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire, and accident prevention, and other public services and facilities;
3. That the shortage of decent, safe and sanitary dwellings for persons of low income cannot be relieved through the operation of private enterprise;
4. That the providing of decent, safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which money may be spent and private property acquired and are governmental functions of concern to this Council;

Page 2

be spent and private property acquired and are governmental functions of Tribal concern:

5. That residential construction activity and a supply of acceptable housing are important factors to general economic activity, and that the undertakings authorized by this ordinance to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and

6. That the necessity in the public interest for the provisions herein-after enacted is hereby declared as a matter of legislative determination.

ARTICLE II

Purposes

The Authority shall be organized and operated for the purposes of:

1. Remedying unsafe and insanitary housing conditions, that are injurious to the public health, safety and morals;
2. Alleviating the acute shortage of decent, safe and sanitary dwellings for persons of low income; and
3. Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of low income dwellings.

ARTICLE III

Definitions

The following terms, wherever used or referred to in this ordinance, shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Area of Operation" means all areas within the jurisdiction of the tribe.

"Board" means the Board of Commissioners of the Authority.

"Council" means The Lawe Pine Tribal Council.

"Federal government" includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

Page 3

"Homebuyer" means a person(s) who has executed a lease-purchase agreement with the Authority, and who has not yet achieved homeownership.

"Housing project" or "project" means any work or undertaking to provide or assist in providing (by any suitable method, including but not limited to: rental; sale of individual units in single or multi-family structures under conventional condominium or cooperative sales contracts; lease-purchase agreements; loans, or subsidizing of rentals or charges), decent safe and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, sewers, water service, utilities, parks, site preparation or landscaping, and for administrative, community, health, recreational, welfare, or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

"Obligations" means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Authority pursuant to this ordinance.

"Obligee" includes any holder of an obligation, agent or trustee for any holder of an obligation, or lessor demise to the Authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal government when it is a party to any contract with the Authority in respect to a housing project.

"Persons of low income" means persons or families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use.

ARTICLE IV.

Board of Commissioners

1. (a) (1) The affairs of the Authority shall be managed by a Board of Commissioners composed of 3 persons from each Indian band/tribal group.

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(2) The board members shall be elected by the General Council. A member may be appointed to fill an unexpired term. A certificate of the Secretary of the Council as to the appointment or reappointment of any commissioner shall be conclusive evidence of the due and proper appointment of the commissioner.

(3) A commissioner may be a member or non-member of the Tribe, and may be a member or non-member of the Tribal Council.

(4) No person shall be barred from serving on the Board because he is a tenant or homebuyer in a housing project of the Authority; and such commissioner shall be entitled to fully participate in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect him as well. However, no such commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his capacity as a tenant or homebuyer), or to be counted or treated as a member of the Board, concerning any matter involving his individual rights, obligations or status as a tenant or homebuyer.

(b) The term of office shall be four years and staggered. When the appointments are first made, one Commissioner's term shall be designated to expire in one year, another to expire in two years, a third to expire in three years, and any additional Commissioner's terms would expire in four years (strike out designation(s) that do not apply). Thereafter, all appointments shall be for four years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his successor has been appointed and has qualified.

(c) The Board shall elect one of the commissioners as Chairman of the Board. The Board shall elect from among its members a Vice-Chairman, a Secretary, and a Treasurer.

In the absence of the Chairman, the Vice-Chairman shall preside; and in the absence of both the Chairman and Vice-Chairman, the Secretary shall preside.

(d) A member of the Board may be removed by the appointing power for serious inefficiency or neglect of duty or for misconduct in office, but only after a hearing before the appointing power and only after the member has been given written notice of the specific charges against him at least 10 days prior to hearing. At any such hearing, the member shall have the opportunity to be heard in person or by counsel and to present witnesses in his behalf. In the event

Page 5

of removal of any Board member, a record of the proceedings, together with the charges and findings thereon, shall be filed with the appointing power and a copy thereof sent to the appropriate office of the Department of Housing and Urban Development.

(e) The Commissioners shall not receive compensation for their services but shall be entitled to compensation for expenses, including travel expenses, incurred in the discharge of their duties.

(f) A majority of the full Board (i.e., notwithstanding the existence of any vacancies) shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of such full Board.

(g) The Secretary shall keep complete and accurate records of all meetings and actions taken by the Board.

(h) The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report, in written form, to the Council as required by Article VII, Section 1, of this ordinance.

2. Meetings of the Board shall be held at regular intervals as provided in the bylaws. Emergency meetings may be held upon 24 hours actual notice and business transacted, provided that not less than a majority of the full Board concurs in the proposed action.

ARTICLE V

Power

1. The Authority shall have perpetual succession in its corporate name.

2. The Council hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this ordinance and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or obligations of the Authority.

Page 6

3. The Authority shall have the following powers which it may exercise consistent with the purposes for which it is established:

(a) To adopt and use a corporate seal.

(b) To enter into agreements, contracts and understandings with any governmental agency, Federal, state or local (including the Council) or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to Federal financial assistance.

(c) To agree, notwithstanding anything to the contrary contained in this ordinance or in any other provision of law, to any conditions attached to Federal financial assistance relating to the determination of prevailing salaries or wages or compliance with labor standards, in the development or operation of projects, and the Authority may include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the Federal government may have attached to its financial aid to the project.

(d) To obligate itself, in any contract with the Federal government for annual contributions to the Authority, to convey to the Federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Authority is subject; and such contract may further provide that in case of such conveyance, the Federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: Provided, That the contract requires that as soon as practicable after the Federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal government shall reconvey to the Authority the project as then constituted.

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(e) To lease property from the Tribe and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

(f) To borrow or lend money, to issue temporary or long term evidence of indebtedness; and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Article VI of this ordinance.

(g) To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.

(h) To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law.

(i) To undertake and carry out studies and analyses of housing needs, to prepare housing plans, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.

(j) With respect to any dwellings, accommodations, lands, buildings or facilities embraced within any project (including individual cooperative or condominium units): to lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase; to establish and revise rents or required monthly payments; to make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities and concerning the occupancy, rental, care and management of housing units; and to make such further rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this ordinance.

(k) To finance purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the Department of Housing and Urban Development.

(l) To terminate any lease or rental agreement or lease-purchase agreement when the tenant or homebuyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement; and to bring action for eviction against such tenant or homebuyer.

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(m) To establish income limits for admission that insure that dwelling accommodations in a housing project shall be made available only to persons of low income.

(n) To purchase insurance from any stock or mutual company for any property or against any risk or hazards.

(o) To invest such funds as are not required for immediate disbursement.

(p) To establish and maintain such bank accounts as may be necessary or convenient.

(q) To employ an executive director, technical and maintenance personnel and such other employees, permanent or temporary, as the Authority may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper.

(r) To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Authority.

(s) To join or cooperate with any other public housing agency or agencies operating under the law or ordinances of a State or another tribe in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other public housing agency or agencies for the purpose of financing (including but not limited to the issuance of notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects of the Authority or such other public housing agency or agencies. For such purpose, the Authority may by resolution prescribe and authorize any other public housing agency or agencies, so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such agency or agencies.

(t) To adopt such bylaws as the Board deems necessary and appropriate.

4. It is the purpose and intent of this ordinance to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance or operation of any project by the Authority.

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5. No ordinance or other enactment of the Tribe with respect to the acquisition, operation, or disposition of Tribal property shall be applicable to the Authority in its operations pursuant to this ordinance.

ARTICLE VI

Obligations

1. The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The Authority may issue such types of obligations as it may determine, including obligation on which the principal and interest are payable: (a) exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the Federal government in aid of such project; (b) exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations, or (c) from its revenues generally. Any of such obligations may be additionally secured by a pledge of any revenue of any project or other property of the Authority.

2. Neither the commissioners of the Authority nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

3. The notes and other obligations of the Authority shall not be a debt of the Tribe and the obligations shall so state on their face.

4. Obligations of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Tribe. The exemption provisions of this ordinance shall be considered part of the security for the redemption of obligations and shall constitute, by virtue of this ordinance and without necessity of being restated in the obligations, a contract between (a) the Authority and the Tribe, and (b) the holders of obligations and each of them, including all transferees of the obligations from time to time.

Page 10

5. Obligations shall be issued and sold in the following manner:

(a) Obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of the full Board and may be issued in one or more series.

(b) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, and at such places and be subject to such terms of redemption, with or without premium, as such resolution may provide.

(c) The obligations may be sold at public or private sale at not less than par.

(d) In case any of the commissioners of the Authority whose signatures appear on any obligations cease to be commissioners before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners had remained in office until delivery.

6. Obligations of the Authority shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any obligation of the Authority or the security therefor, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this ordinance shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this ordinance.

7. In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the Authority, subject to the limitations in this ordinance, may:

(a) Pledge all or any part of its gross or net rents, fees or revenues on which its right then exists or may thereafter come into existence.

(b) Provide for the power and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenant or rights securing or relating to the obligations.

Page 11

(c) Covenant against pledging all or any part of its rents, fees and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

(d) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.

(e) Covenant as to what other or additional debts or obligations may be incurred by it.

(f) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(g) Provide for the replacement of lost, destroyed or mutilated obligations.

(h) Covenant against extending the time for the payment of its obligations or interest thereon.

(i) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.

(j) Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof.

(k) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other purposes and covenant as to the use and disposition of the monies held in such funds.

(l) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given.

(m) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.

(n) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.

(o) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(p) Vest in any obligors or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations.

(q) Exercise all or any part or combination of the powers granted in this section.

(r) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.

(s) Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things are not enumerated in this section.

ARTICLE VII

Miscellaneous

1. The Authority shall submit an annual report, signed by the Chairman of the Board, to the Council showing (a) a summary of the year's activities, (b) the financial condition of the Authority, (c) the condition of the properties, (d) the number of units and vacancies, (e) any significant problems and accomplishments, (f) plans for the future, and (g) such other information as the Authority or the Council shall deem pertinent.
2. During his tenure and for one year thereafter, no commissioner, officer or employee of the Authority, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he discloses his interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. If any commissioner, officer or employee of the Authority involuntarily acquires any such interest, or

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voluntarily or involuntarily acquired any such interest prior to appointment or employment as a commissioner, officer or employee, the commissioner, officer or employee, in any such event, shall immediately disclose his interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in Article IV, Section 1, (a) (4).

3. Each project developed or operated under a contract providing for Federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable Federal legislation, and with all regulations and requirements prescribed from time to time by the Federal government in connection with such assistance.

4. The Authority shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

5. The Authority shall not construct or operate any project for profit.

6. The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Tribe.

7. All property including funds acquired or held by the Authority pursuant to this ordinance shall be exempt from levy and sale by virtue of an execution and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority in its rents, fees or revenues or the right of the Federal government to pursue any remedies conferred upon it pursuant

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to the provisions of this ordinance or the right of the Authority to bring
eviction actions in accordance with Article V, Section 3 (1).

ARTICLE VIII

Cooperation In Connection With Projects

1. For the purpose of aiding and cooperating in the planning, under-
taking, construction or operation of projects, the Tribe hereby agrees that:

(a) It will not levy or impose any real or personal property taxes
or special assessments upon the Authority or any project of the Authority.

(b) It will furnish or cause to be furnished to the Authority and the
occupants of projects all services and facilities of the same character and
to the same extent as the Tribe furnishes from time to time without cost
or charge to other dwellings and inhabitants.

(c) Insofar as it may lawfully do so, it will grant such deviations
from any present or future building or housing codes of the Tribe as are
reasonable and necessary to promote economy and efficiency in the development
and operation of any project, and at the same time safeguard health and
safety, and make such changes in any zoning of the site and surrounding
territory of any project as are reasonable and necessary for the development
and protection of such project, and the surrounding territory.

(d) It will do any and all thing, within its lawful powers, necessary
or convenient to aid and cooperate in the planning, undertaking, construction
or operation of projects.

(e) The Tribal Government hereby declares that the powers of the Tribal
Government shall be vigorously utilized to enforce eviction of a tenant or
homebuyer for non-payment or other contract violations including action
through the appropriate courts.

(f) The Inyo County Justice and Superior Courts shall have jurisdiction
to hear and determine an action for eviction of a tenant or homebuyer. The
Tribal Government hereby declares that the powers of said Court shall be
vigorously utilized and the Tribal Government will cooperate to the fullest
extent possible to enforce eviction of a tenant or homebuyer for nonpayment
or other contract violations.

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2. The provisions of this Article shall remain in effect with respect to any project, and said provisions shall not be abrogated, changed, or modified without the consent of the Department of Housing and Urban Development, so long as (a) the project is owned by a public body or governmental agency and is used for low income housing purposes, (b) any contract between the Authority and the Department of Housing and Urban Development for loans or annual contributions, or both, in connection with such project, remains in force and effect, or (c) and obligations issued in connection with such project or any monies due to the Department of Housing and Urban Development in connection with such project remain unpaid, whichever period ends the latest. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or operation of low income housing, including the Federal Government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

ARTICLE IX

APPROVAL BY SECRETARY OF THE INTERIOR

With respect to any financial assistance contract between the Authority and the Federal Government, the Authority shall obtain the approval of the Secretary of the Interior or his designee.

APPROVED FOR THE SECRETARY OF INTERIOR

By


Acting Area Director

Owens Valley Indian Housing Authority
P.O. Box 792, 1101 South Main St
Lone Pine, CA 93545

August 19, 2011

Ms. Julie Fritcher
P.O. Box 1134
Lone Pine, CA. 93545

Re: Freedom of Information Act request for documents'

Dear Ms. Fritcher:

This letter responds to your request, dated August 16, 2011, for various records of the Owens Valley Indian Housing Authority ("OVIHA"). You have requested these records under the authority of the Freedom of Information Act ("FOIA"), 5 U.S.C. §552.

FOIA does not apply to OVIHA, which is an Indian housing authority established by Ordinance No. 4 adopted by the Lone Pine Paiute-Shoshone Tribe ("Tribe"). FOIA applies to agencies which are defined in 25 U.S.C. §551(1) as "... each authority of the Government of the United States, ..." An entity of the Tribe established under tribal law does not come within this definition of "agency."

The regulations implementing the Native American Housing and SelfDetermination Act, 25 U.S.C. §4101 et seq., recognizes that FOIA does not apply to the records of Indian housing authorities. 24 C.F.R. §1000.556 states:

§ 1000.556 Does the Freedom of Information Act (FOIA) apply to recipient records?

FOIA does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

Neither the Tribe nor OVIHA have adopted laws or policies which require OVIHA to produce records in response to requests from tribal members or other members of the public.

There are other reasons why OVIHA would decline to produce all of the records you have requested, including the burdensome nature of the request and the fact that the records pertain to projects involving other tribal members.

If you have specific concerns about services provided to you by OVIHA or services for which you wish to apply, feel free to contact us. However, OVIHA has no legal obligation to produce the records you have requested and it declines to do so.

Sincerely,

Executive Director