

BEST PRACTICES TO PROTECT AND GOVERN TRIBAL GEOSPATIAL DATA*

When developing tribal law or policy to govern tribal geospatial data, tribes should consider the following:

1. Require education of tribal employees regarding implications of sharing tribal data with outside entities, including federal agencies, and regarding the risks of inputting tribal data into AI.
2. Implement a policy requiring tribal employees, contractors, volunteers, and interns to keep non-public tribal data confidential and to sign confidentiality and data use agreements/nondisclosure agreements.
3. Enter into MOUs, MOAs, and/or licensing agreements with outside entities (such as governmental, commercial, educational/institutional entities) that seek to access or utilize tribal geospatial data.
 - a. If possible, use a licensing agreement providing that data (or sensitive data, or certain identified categories of data) are not to be retained by the outside party, only accessed under the conditions specified in the agreement.
 - b. Assert the tribe's exclusive ownership of, sovereignty over, and right to govern the tribal data in any written agreement regarding the sharing of tribal data.
 - c. Consider the tribe's bargaining power when negotiating a licensing, data access, or data sharing agreement with an outside party; do not just accept the standard terms presented by that outside party. Consider negotiating for the agreement to include the following terms:
 - i. Who (from the outside party) may access the tribal data;
 - ii. How the outside party may access the tribal data;
 - iii. How the tribal data can be used;
 - iv. Whether the tribal data can be modified by the outside party;
 - v. Whether the outside party may distribute the tribal data to a third party; and
 - vi. Prohibition on the secondary use of administratively collected tribal data for AI training without the tribe's prior, informed consent.

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- vii. With respect to agreements with government agencies, Agency agreement that the tribal data will not be integrated into the agency's recordkeeping system or files.
 - d. Include a sovereign immunity clause in any agreement.
4. When dealing with outside entity partners, whether government, commercial, academic, or other types of partners, provide such partners with a written notice of tribal ownership of tribal data informing them that any data they gather, generate, or receive regarding the tribe, its members, or its resources is property of the tribe and subject to tribal law.
 5. When creating geospatial data, use at least some tribal funds in addition to any federal funds. If possible, do not use federal funds to create geospatial data.
 6. If geospatial data is created using both tribal and federal funds, pass a tribal resolution determining what portion of the geospatial data was created using solely tribal funds and is thus outside the GDA's definition of geospatial data.
 7. Use solely tribal funds, if possible, when creating sensitive geospatial data and maintain records demonstrating that only tribal funds were used.
 8. If federal funding is used to support a position at the tribe pertaining to geospatial data, incorporate some tribal funding to support that position as well.
 9. If a tribal position that pertains to geospatial data is funded by both tribal and federal funds, pass a tribal resolution determining what portion of the employee's work was conducted using solely tribal funds and is thus outside the GDA's definition of geospatial data.
 10. Develop classifications of tribal data and designate the appropriate level of protection each classification must be afforded. More sensitive data should be afforded greater protections. In making these designations, a tribe should consider to whom each classification of information should be able to be released and what authority, if any, should be required to approve the release of information. For example, data classified as highly sensitive, such as geospatial data identifying the locations of burials or sacred sites, could require a written request and the approval of the tribal council by resolution to be released, while less sensitive data could merely require a verbal request and approval of a supervisor to be released. Tribes should also consider any restrictions that should be imposed for each classification of tribal data, such as prohibiting reproduction of the information or further disseminating the information.
 11. If and when imposing penalties for violations of tribal data governance laws or policies, consider the scope of civil and criminal jurisdiction and the *Montana* test.
 12. Require consent to tribal law and tribal court jurisdiction in any agreement

13. Provide training for employees regarding the uses and dangers of AI. Tribes should be cautious about inputting tribal data into non-proprietary AI and adopt an AI use policy.
14. Prohibit the secondary use of administratively collected tribal data for AI training without the tribe's prior informed consent.
15. Track relevant federal laws and regulations, including the GDA and FOIA, to monitor developments and potential implications for tribal data governance.
16. If engaging with a federal agency, document in writing to the agency that the tribe retains, and does not relinquish, control over the data.
17. Closely review agency-specific policies regarding data sharing, confidentiality, and FOIA before submitting or agreeing to submit data to a federal agency.
18. Closely review grant terms and applicable regulations to identify any provisions that impact data ownership or that pertain to data sharing and weigh the risks of sharing data before deciding whether to accept a grant.
19. Be mindful about incorporating sensitive information or traditional knowledge into geospatial data if the geospatial data will be distributed to entities outside the tribe.
20. Store tribal data in tribal servers on tribal lands.
21. Do not share more data with a federal agency or other outside entity than is required pursuant to the terms of a data sharing or data access agreement.
22. If engaging with a state agency, be familiar with the state's freedom of information act or similar law, which may allow even greater access to data than the federal FOIA.