

## National Indian Gaming Comm., Interior

## §517.3

or give a statement with respect thereto.

### §516.3 When may a person to whom this part applies produce records?

(a) Any request for records of the National Indian Gaming Commission shall be handled pursuant to the procedures established in 25 CFR parts 515 and 517 and shall comply with the rules governing public disclosure as provided in 25 CFR parts 515 and 517.

(b) Whenever a subpoena duces tecum commanding the production of any record has been lawfully served upon a person to whom this part applies, such person shall forward the subpoena to the General Counsel. If commanded to appear in response to any such subpoena, a person to whom this part applies shall respectfully decline to produce the record on the ground that production is prohibited by this part and state that the production of the record(s) of the National Indian Gaming Commission is a matter to be determined by the Chairman or the General Counsel.

### §516.4 How are records certified or authenticated?

(a) Upon request, the person having custody and responsibility for maintenance of records which are to be released under this part or 25 CFR parts 515 or 517 may certify the authenticity of copies of records that are requested to be provided in such format.

(b) A request for certified copies of records or for authentication of copies of records shall be sent to the following address: NIGC Attn: Freedom of Information Act Officer, C/O Department of the Interior, 1849 C Street NW., Mail Stop #1621, Washington, DC 20240.

[64 FR 54542, Oct. 7, 1999, as amended at 80 FR 31994, June 5, 2015]

## PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

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### §517.1 General provisions.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. These regulations provide procedures by which you may obtain access to records compiled, created, and maintained by the Commission, along with procedures the Commission must follow in response to such requests for records. These regulations should be read together with the FOIA, which provides additional information about access to records maintained by the Commission. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552(a), are processed in accordance with the Commission's Privacy Act regulations, 25 CFR part 515, as well as under this part.

### §517.2 Public reading room.

Records that are required to be maintained by the Commission shall be available for public inspection and copying at 90 K Street NE, Suite 200, Washington, DC 20002. Reading room records created on or after November 1, 1996, shall be made available electronically via the Commission's website.

### §517.3 Definitions.

(a) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of himself or the person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a request properly belongs in this category, the FOIA Officer shall determine the use to which the requester will put the documents requested. Where the FOIA Officer has reasonable cause to doubt the use to which the requester will put the records sought, or where that use is not clear from the request itself, the FOIA Officer shall contact the requester for additional clarification before assigning the request to a specific category.

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(b) *Confidential commercial information* means records or information provided to the government by a submitter that arguably contains material exempt from disclosure under Exemption 4 of the FOIA.

(c) *Direct costs* mean those expenditures by the Commission actually incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in response to the FOIA request. Direct costs include the salary of the employee or employees performing the work (*i.e.*, the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses, such as the cost of space, heating, or lighting of the facility in which the records are stored.

(d) *Duplication* refers to the process of making a copy of a record, or the information contained in it, necessary to respond to a FOIA request. Such copies can take the form of, among other things, paper copy, microfilm, audiovisual materials, or electronic records (*e.g.*, compact discs or USB flash drives). The copies provided shall be in a form that is reasonably usable by the requester.

(e) *Educational institution* refers to a preschool, a public or private elementary school, an institute of undergraduate higher education, an institute of graduate higher education, an institute of professional education, or an institute of vocational education which operates a program of scholarly research. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(f) *Freedom of Information Act Officer* means the person designated by the Chairman to administer the FOIA.

(g) *Non-commercial scientific institution* refers to an institution that is not operated on a “commercial” basis as that term is used in paragraph (a) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not

intended to promote any particular product or industry. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(h) *Record* means an agency record that is either created or obtained by an agency and is under agency control at the time of the FOIA request.

(i) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available for purchase by or free distribution to the general public, including news organizations that disseminate solely on the internet. For a “freelance journalist” to be regarded as working for a news organization, the requester must demonstrate a solid basis for expecting publication through that organization, such as a publication contract. Absent such showing, the requester may provide documentation establishing the requester’s past publication record. To qualify for this category, the requester must not be seeking the requested records for a commercial use. However, a request for records supporting a news-dissemination function shall not be considered to be for a commercial use.

(j) *Requester* means any person, including an individual, Indian tribe, partnership, corporation, association, or public or private organization other than a Federal agency, that requests access to records in the possession of the Commission.

(k) *Review* means the process of examining a record in response to a FOIA request to determine if any portion of that record may be withheld under one or more of the FOIA Exemptions. It also includes processing any record for

disclosure, for example, redacting information that is exempt from disclosure under the FOIA. Review time includes time spent considering any formal objection to disclosure made by a business submitter under §517.7(c). Review time does not include time spent resolving general legal or policy issues regarding the use of FOIA Exemptions.

(l) *Search* refers to the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within a document and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Officer shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

(m) *Submitter* means any person or entity who provides information directly or indirectly to the Commission. The term includes, but is not limited to, corporations, Indian tribal governments, state governments and foreign governments.

(n) *Working day* means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

#### §517.4 Requirements for making requests.

(a) *How to make a FOIA request.* Requests for records made pursuant to the FOIA must be in writing. Requests may be mailed, dropped off in person, or faxed to (202) 632-7066 (not a toll free number). Requests that are dropped off in person should be made at 90 K Street NE, Suite 200, Washington, DC 20002 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Requests that are mailed should be sent to NIGC Attn: FOIA Officer, 1849 C Street NW, Mail Stop #1621, Washington, DC 20240. Requests may also be sent via electronic mail addressed to [FOIARequests@nigc.gov](mailto:FOIARequests@nigc.gov) or submitted through the Commission's website.

(b) *First person requests for records.* If the requester is making a request for records about himself/herself, the requester must provide verification of identity. Verification requirements are described in 25 CFR 515.3.

(c) *Requests for records about another individual.* If the requester is making a

request for records about another individual, the requester may receive greater access by submitting either a notarized authorization signed by that individual, a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester or by submitting proof that the individual is deceased (for example, a copy of the death certificate or a copy of the obituary).

(d) *Description of records sought.* Requests for records shall describe the records requested with as much specificity as possible to enable Commission employees to locate the information requested with a reasonable amount of effort. Whenever possible, the request should describe the subject matter of the records sought, the time periods in which the records were generated, and any tribe or tribal gaming facility with which they were associated. Before submitting a request, requesters may contact the Commission's FOIA contact or FOIA Public Liaison to discuss the records being sought and receive assistance describing the records. If after receiving a request the FOIA Officer determines that it does not reasonably describe the records sought, the FOIA Officer must inform the requester of what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the Commission's FOIA contact or FOIA Public Liaison. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(e) *Agreement to pay fees.* Requests shall also include a statement indicating the maximum amount of fees the requester is willing to pay to obtain the requested information, or a request for a waiver or reduction of fees. If the requester is requesting a waiver or reduction of fees the requester must include justification for such waiver or reduction (see §517.9(c) for more information). If the request for a fee waiver is denied, the requester will be notified of this decision and advised that fees associated with the processing of the request will be assessed. The requester must send an acknowledgment to the