

# PRIVACY ACT PROCEDURES

## 25 CFR PART 515

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**Authority:** 5 U.S.C. 552a.

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### **§ 515.1 Purpose and scope.**

(a) The purpose of this part is to inform the public of records maintained by the Commission about identifiable individuals and to inform those individuals how they may gain access to and amend records concerning themselves.

(b) This part carries out the requirements of the Privacy Act of 1974 (Pub. L. 93–579) codified at 5 U.S.C. 552a.

(c) The regulation applies only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. 552, the Freedom of Information Act.

### **§ 515.2 Definitions.**

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* means maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or a photograph.

(d) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected.

### **§ 515.3 Identification of individuals making requests.**

(a) Any individual may request that the Commission inform him or her whether a particular record system named by the individual contains a record pertaining to him or her and the contents of such record. Such requests shall conform to the requirements of §515.4 of this part. The request may be made in person or in writing at the NIGC, suite 250, 1850 M Street, NW., Washington, DC 20036–5803 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday.

(b)(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, the individual shall submit adequate proof of identity in the form of a driver's license, birth certificate, passport, or other identification acceptable to the notary. If the statement is witnessed, it shall include a statement above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identity to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identity.

(2) If the request is made in person, the requester shall submit proof of identity similar to that described in paragraph (b)(1) of this section, and that is acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

(c) Requests made by an agent, parent, or guardian shall be in accordance with the procedures described in paragraph (b) of this section.

### **§ 515.4 Procedures for requests and disclosures.**

(a) Requests for a determination under §515.3(a) of this part shall be acknowledged by the Commission within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the request. If the Commission is unable to locate the information requested, it shall so notify the individual within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after receipt of the request. Such acknowledgement may request additional information to assist the Commission in locating the record, or it may advise the individual that no record exists about that individual.

(b)(1) Upon submission of proof of identity as required by §515.3(b)(1) or (2) of this part, the Commission shall respond within ten (10) days (excluding Saturdays, Sundays and Federal holidays). The Commission shall decide whether to make a record available to the record subject and shall immediately convey its determination to the requester. If the individual asks to see the record, the Commission may make the record available at the location where the record is maintained.

(2) The Commission shall furnish each record requested by an individual under this section in a form intelligible to that individual.

(3) If the Commission denies access to a record to an individual, that person shall be advised of the reason for the denial and of the appeal procedures provided in §515.7 of this part.

(4) Upon request, an individual shall be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in §515.3 of this part.

### **§ 515.5 Request for amendment to record.**

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request that the Commission amend all or any part of that record.

(b) Each individual requesting an amendment shall send the request to the Records Manager.

(c) Each request for an amendment of a record shall contain the following information:

(1) The name of the individual requesting the amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or a sufficiently detailed description of that record;

(5) A statement of the material in the record that the individual desires to amend;

(6) A statement of the basis for the requested amendment, including any material that the individual can furnish to substantiate the reasons for the amendment sought.

#### **§ 515.6 Review of request for amendment of record by the Records Manager.**

(a) The Records Manager shall, not later than ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the receipt of a request for an amendment of a record under §515.5 of this part, acknowledge receipt of the request and inform the individual whether more information is required before the amendment can be considered.

(b) If more information is not required, within ten (10) days after receipt of the request (excluding Saturdays, Sundays and Federal holidays), the Records Manager shall either make the requested amendment or notify the individual of the Commission's refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in §515.7 of this part.

(c) The Records Manager shall make each requested amendment to a record if such amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete material in the record.

(d) The Records Manager shall inform prior recipients of any amendment or notation of dispute of such individual's record. The individual may request a list of prior recipients if there exists an accounting of the disclosures.

#### **§ 515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.**

(a) Any individual whose request for access or an amendment has been denied in whole or in part, may appeal the decision to the Commission no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain all of the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which such record is contained;

(4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the appeal, the Commission shall complete its review of the appeal and

make a final decision thereon. For good cause shown, however, the Commission may extend such thirty (30) day period. If the Commission extends the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requester containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's denial of access or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying requested access or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record; and

(3) The right of the requester to institute a civil action in a Federal district court for judicial review of the decision.

#### **§ 515.8 Disclosure of record to a person other than the individual to whom it pertains.**

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized or witnessed as provided in §515.3 of this part.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this section. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of court order, or similar documents, and proof of the individual's identity in a form that complies with §515.3(b) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed.

#### **§ 515.9 Fees.**

The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of reviewing the record, the Commission shall not charge the individual for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplication.

#### **§ 515.10 Penalties.**

Any person who makes a false statement in connection with any request for a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

#### **§ 515.11 General exemptions. [Reserved]**

#### **§ 515.12 Specific exemptions.**

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

Indian Gaming Individuals Records System

(b) The exemptions under paragraph (a) of this section apply only to the extent that information in this system is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation, the applicable exemption may be waived by the Commission.

(c) Exemptions from the particular sections are justified for the following reasons:

(1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.