



November 16, 2017

Mr. Jonodev Chaudhuri, Chairman
National Indian Gaming Commission
1849 C Street NW
Mailstop #1621
Washington, DC 20240

Re: Comments on October 17, 2017 Notice of Proposed Rulemaking Amending FOIA
Procedures in 25 C.F.R. § 517

Dear Chairman Chaudhuri:

On behalf of The Mohegan Tribe, we hereby submit the following comments on the National Indian Gaming Commission's ("NIGC") Notice of Proposed Rulemaking ("Proposed Rule") issued on October 17, 2017[1] containing proposed amendments to 25 C.F.R. Part 517 ("Part 517"), Freedom of Information Act ("FOIA") procedures for the NIGC. The United States Congress has amended FOIA twice since the last comprehensive revisions to Part 517 on April 19, 2006[2]. We are pleased that the NIGC is now willing to take up the important task of updating Part 517 to reflect the latest amendments to FOIA, and we applaud the NIGC's efforts to bring greater clarity and transparency to the FOIA process.

While we generally support the NIGC's efforts to streamline FOIA processing, we are deeply concerned with the proposal to remove the term "record" from the definitions section of the regulation. It is unclear to us whether this action was due to an oversight or an intentional omission since the Proposed Rule does not provide any explanation for this proposed change.

Nonetheless, we find the proposed removal of such a critical definition to be deeply troubling. The term is not only used repeatedly throughout Part 517, but is the very term that describes what is being sought in a FOIA request. The term, is, therefore, essential to understanding and interpreting the NIGC's FOIA process. We note that under FOIA, agencies are given the discretion to develop their own definitions of "record," and that most agencies, including the U.S. Department of the Interior,[3] have adopted specific definitions of "record" in their FOIA procedures.

We believe the NIGC's current definition of "record" in 25 C.F.R. § 517.3(h) appropriately describes the scope of materials accessible via a FOIA request to the NIGC. We, therefore, urge the NIGC to retain the existing definition of "record" in order to ensure that the final rule properly defines the scope of information that will be subject to the FOIA processes contained therein.

THE MOHEGAN TRIBE

In closing, we would like to thank you for this opportunity to share our views and comments on the proposed changes reflected in the Proposed Rule for Part 517. We respectfully seek your favorable consideration of our comments and ask that you carefully consider our views and concerns as you move through the rulemaking process.

Please do not hesitate to contact us if we can provide any additional information.

Sincerely,



Kevin P. Brown, "Red Eagle"
Chairman

- [1] Freedom of Information Act Procedures, 82 Fed. Reg. 48205 (Oct. 17, 2017).
- [2] Freedom of Information Act Procedures, 71 Fed. Reg. 20006 (Apr. 19, 2006).
- [3] 43 C.F.R. § 2.70 (2016).