



July 1, 2019

**Re: CHRI MOU Compliance Update**

Dear Tribal Gaming Regulator:

The National Indian Gaming Commission (NIGC) is updating requirements for processing fingerprints and disseminating Criminal History Record Information (CHRI). These updates are a result of a request by the Federal Bureau of Investigations (FBI). Tribes are permitted to submit fingerprints to the FBI through the NIGC to obtain and use CHRI if they have an executed Memorandum of Understanding (MOU) with the NIGC. Attached is a sample of the current MOU, which lists the requirements of the FBI and the NIGC. Under the MOU, tribes are subject to any additional restrictions imposed by the FBI on the dissemination and use of the CHRI (in addition to those imposed by the NIGC).

The MOU was updated in 2017 to include reference to the use of the *Applicant Record Notification*, also known as the Non-Criminal Justice Applicant's Privacy Rights notice. This notice was subsequently updated by the FBI. The NIGC would also like to bring attention to the requirement that applicants receive and acknowledge the FBI's Privacy Act Statement prior to submitting their fingerprints. The FBI's Privacy Act Statement is separate from the Privacy Act notice required under NIGC regulations.<sup>1</sup> Both the FBI Privacy Act Statement and the Non-Criminal Justice Applicant's Privacy Rights notice must be provided to and acknowledged<sup>2</sup> by a gaming license applicant prior to fingerprinting. Copies of each are attached to this letter. It should be noted that regardless of what entity the tribal gaming regulatory authority (TGRA) uses to submit fingerprints to the FBI, the NIGC or another source, the FBI requires these two written notices be provided to any applicant submitting fingerprints for a national criminal history records search. If you are not already doing so, please begin the use of these notices with all future fingerprint submissions.

The Non-Criminal Justice Applicant's Privacy Rights notice includes multiple requirements. First, applicants must be provided written notification that their fingerprints will be

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<sup>1</sup> 25 C.F.R. § 556.2.

<sup>2</sup> Acknowledge in this use means to sign, initial, mark, check or otherwise indicate receipt.

used to check the criminal history records of the FBI; this step is satisfied by providing applicants with the FBI Privacy Act Statement. Second, if an applicant has a criminal history record, the TGRA must provide him or her the opportunity to complete or challenge the accuracy of the information in the record. Third, the TGRA must advise applicants that the procedures for obtaining a change, correction, or update of a criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34. Finally, if the applicant has a criminal history record, the TGRA must afford them a reasonable amount of time to correct or complete the record (or decline to do so) before denying a gaming license based on information in the criminal history record.

To help facilitate the challenge process, the NIGC permits the TGRA to provide the applicant with a copy of his or her FBI criminal history record for review and possible challenge. This courtesy saves the applicant the time and additional fee to obtain his or her record directly from the FBI. As a prerequisite, however, the TGRA must develop a written procedure for such releases. The TGRA's written procedure must require verification of the subject's identity prior to dissemination and must document each release. To limit potential risks associated with a subject's subsequent use of CHRI, the TGRA must mark the record in some manner to distinguish it as not an original copy. CHRI may not be disseminated to spouses or other household or family members, even at the subject's request. Further, CHRI may not be disseminated to other parties such as potential employers or licensing agencies on behalf of the subject. Although the preferred method is to release CHRI directly to the individual that is the subject of the record, the record may be released at the request of the applicant to an attorney acting on his or her behalf. This scenario could come about when an applicant challenges the outcome of the TGRA's eligibility determination as part of a formal appeal process. If the TGRA chooses not to provide the applicant a copy of the record, the TGRA's policy should prohibit its release for such purpose and must direct the applicant to the FBI's process for obtaining a copy which is set forth at Title 28, CFR, Sections 16.30 through 16.34 and on the FBI's website, <http://www.fbi.gov/about-us/cjis/background-checks>.

The NIGC has updated its training modules for Backgrounding and Licensing and Understanding CHRI to include the above outlined information and will be providing the trainings at all future Regional Training Conferences and site specific training engagements. A summary of the updated information is included with this letter and titled CPM-103 Understanding the FBI CHRI Supplemental Handout. The Handout contains links the TGRA should use to ensure it is the most recent version of the required FBI notices.

The updated training information includes the definitions of CHRI, Applicant's Rights, CHRI Use and CHRI Re-Use. With regard to CHRI re-Use, the NIGC wants to specifically ensure that CHRI obtained under our MOU is not being provided to state gaming agencies for state licensing purposes. The CHRI that is made available for use in connection with gaming licensing of PMOs and KEs under the authority of the Indian Gaming Regulatory Act may be

used solely for the purpose for which the record was requested. Although the use of CHRI may be necessary, and authorized under separate authority, to meet state licensing requirements, a new record request must still be conducted when CHRI is needed for a subsequent authorized use. If you are currently re-using CHRI in this manner, please notify your Region Office and provide a copy of any agreement you have with the state gaming agency and the state statute authorizing the state gaming agency the authority to access FBI CHRI for non-criminal justice purposes. Regulatory inspections by a state gaming agency whereby they may access CHRI as part of an audit or review of licensing during a site visit is not re-use and not prohibited.

Over the next two years, the NIGC and the FBI will be working to migrate the NIGC's policies on the use and dissemination of CHRI from our last/previous agreement with the FBI established in 1993 to include additional applicable standards and protocols established under the National Crime Prevention and Privacy Compact Act of 1998, the National Crime Prevention and Privacy Compact Council and the CJIS Security Policy.

Be on the lookout for future updates, training opportunities and on-site discussions. The NIGC recognizes the access to CHRI it provides the TGRA is vital and we are willing to assist the TGRA in implementing or clarifying any requirements under the MOU.

Should you need further assistance, please do not hesitate to contact your Compliance Officer or Region Director.

Sincerely,

A handwritten signature in black ink that reads "Dustin Thomas". The signature is written in a cursive style with a large initial "D".

Dustin Thomas  
Director of Compliance  
National Indian Gaming Commission