

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE FEDERAL BUREAU OF INVESTIGATION  
AND  
NATIONAL INDIAN GAMING COMMISSION  
CONCERNING  
NONCRIMINAL JUSTICE FINGERPRINT SUBMISSIONS

I. PURPOSE

This Memorandum of Understanding (MOU) documents the agreed-upon responsibilities and functions of the parties with respect to the submission of noncriminal justice fingerprints for primary management officials and key employees of Indian gaming enterprises, as defined by NIGC regulations, 25 C.F.R. §§ 502.14(a-c) and 502.19(a-c).

II. PARTIES

This MOU is between the Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, and the National Indian Gaming Commission (NIGC), hereinafter referred to as "Parties".

III. AUTHORITIES

The FBI enters into this MOU under the authority of 28 U.S.C. § 534. The NIGC enters into this MOU under the NIGC's fingerprint collection and background check authorities that include the following: 25 U.S.C. §§ 2706(b)(3), 2706(b)(7), 2706(b)(10), 2708, 2710(b)(2)(F), 2710(c)(1)-(2), 2710(d)(9), 2711(a), 2711(e).

IV. BACKGROUND INFORMATION

The Indian Gaming Regulatory Act (IGRA) established federal standards for gaming on Indian lands to protect Indian gaming as a means of generating tribal revenue. 25 U.S.C. § 2702(3). To carry out this purpose, Congress generally authorized the NIGC to "conduct or cause to be conducted such background investigations as may be necessary" and to "promulgate regulations and guidelines as it deems appropriate to implement the provisions of" the IGRA. *Id.* § 2706(b)(3), (10). To assist in that role, Congress specifically provided the

NIGC with the power to “secure from any department or agency of the United States information necessary to enable it to carry out” those functions. *Id.* § 2708.

The NIGC submits fingerprints of key employees and primary management officials of Indian gaming enterprises as part of the background screening process required by IGRA. *See* 25 U.S.C. § 2710(b)(2)(F), (c)(1)-(2), & (d)(1)(A). The NIGC also submits fingerprints and performs background investigations of “each person or entity . . . having a direct financial interest in, or management responsibility for” a management contract. *Id.* § 2711(a). The authority to receive criminal history information for key employees and primary management officials of class II and class III gaming enterprises stems from statutory language specifically empowering the NIGC Chair to “consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe” and to facilitate the suspension of gaming licenses when a key employee or primary management official does not meet the statute’s suitability standards with regard to an applicant’s criminal history. 25 U.S.C. § 2710(b)(2)(F)(ii)(II), (c)(1)-(2), (d)(1)(A)(ii). Likewise, § 2711(e) requires the Chairman to review the criminal history information of persons with a direct or indirect financial interest in management contracts and to disapprove a management contract when one of those individuals “has been or subsequently is convicted of any felony or gaming offense” or where his or her “criminal record if any . . . pose[s] a threat to the public interest or to the effective regulation and control of gaming.” This, likewise, applies to both class II and class III gaming. *See* 25 U.S.C. § 2711(e)(1)(B); 25 C.F.R. § 533.6(b)(1)(ii), (c).

## V. SPECIFIC RESPONSIBILITIES

### A. The FBI will:

1. Conduct fingerprint-based criminal history record searches of NIGC submissions and return the results of the checks to the NIGC.
2. Return rejected fingerprint submissions to NIGC. The NIGC is responsible for notifying each subject of deficiencies in the fingerprint submissions that were rejected by the FBI.
3. Bill NIGC for fingerprint submissions in accordance with the terms of the Interagency Agreement between the NIGC and the CJIS Division.

4. Ensure that the NIGC is not charged supplemental fees for resubmissions and reprocessing of illegible (i.e., unclassifiable) fingerprints, provided that the NIGC follows the procedures outlined by the CJIS Division for the resubmission of the fingerprint cards returned to the NIGC. (This waiver is limited to one resubmission per subject.)

B. The NIGC will:

1. Ensure that all fingerprint submissions have been properly and adequately completed.
2. Convert properly submitted fingerprint card submissions into an electronic format and forward them to the FBI via a means acceptable to the FBI.
3. Collect and remit the FBI's fee for the processing of the applicant fingerprint submission. (See 83 FR 48335, dated September 24, 2018, or any successor fee schedule.)

VI. EFFECT OF THIS AGREEMENT

- A. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise against any of the parties, their parent agencies, the United States, or the officers, employees, agents, or other associated personnel thereof. The parties will seek to resolve any disputes regarding this MOU by mutual consideration.
- B. Except as provided in this document, this MOU is not an obligation or commitment of funds, nor a basis for the transfer of funds, but rather is a basic statement of the understanding between the Parties of the matters described herein. Unless otherwise agreed in writing, each Party shall bear its own costs in relation to this MOU. Expenditures by each Party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the language in this MOU in no way implies that funds will be made available for such expenditures.
- C. This MOU does not constitute an agreement for any Party to assume or waive any liability or claim under any applicable law.

- D. The information involved in this MOU may identify U.S. persons, whose information is protected by the Privacy Act of 1974 and/or Executive Order 12333 (or any successor executive order). All such information will be handled lawfully pursuant to the provisions thereof.
- E. Each Party will only disclose personally identifiable information (PII) as authorized under applicable system of records notices published in the Federal Register. For purposes of this MOU, PII is defined as “information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, date and place of birth, mother’s maiden name, biometric information, etc., including any other personal information which is linked or linkable to a specific individual.”
- F. Before using PII shared pursuant to this MOU, the recipient agency will make reasonable efforts to ensure that the information is accurate, timely, relevant, and complete.
- G. In the event that either Party to this MOU becomes aware of any inaccuracies in the information received from the other Party pursuant to this MOU, the information recipient will promptly notify the information provider so that corrective action can be taken.
- H. Each Party will immediately report to the other Party each instance in which information received from the other Party is used, disclosed, or accessed in an unauthorized manner (including any information losses or breaches).
- I. Each Party will provide appropriate training regarding the responsibilities under this MOU to individuals whose information sharing activities are covered by the provisions of this MOU.
- J. Subject to federal law or regulation, either Party or both Parties may audit the handling and maintenance of information relevant to this MOU in electronic and paper recordkeeping systems to ensure that appropriate security and privacy protections are in place.

VII. EFFECTIVE DATE, MODIFICATION AND TERMINATION

This agreement shall be effective when executed by both Parties and will continue in effect until terminated. This agreement may be modified at any time by written consent of both Parties.

This MOU may be terminated with respect to any Party, at any time, upon written notice of withdrawal to the other Party. Any Party desiring to terminate or modify this MOU will provide such written notification to the other Party at least thirty (30) days prior to modification or termination. The Parties intend to review this MOU annually to ensure all provisions are meaningful and current.

**The preceding seven sections represent the understanding reached by the Parties.**

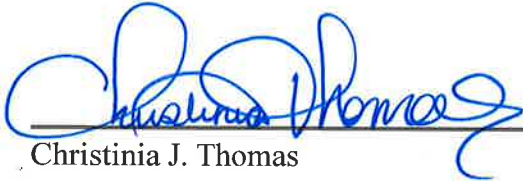
**FEDERAL BUREAU OF INVESTIGATION**



Michael D. DeLeon  
Assistant Director  
Criminal Justice Information Services Division

2/10/2020  
Date

**NATIONAL INDIAN GAMING COMMISSION**



Christinia J. Thomas  
Acting Chief of Staff  
National Indian Gaming Commission

1/17/2020  
Date