BULLETIN

No. 05-7 **Date: December 1, 2005**

Subject: Retention and Storage of Inactive Gaming Personnel and Background Investigation Files

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During recent tribal consultations the Commission was asked how long a tribe should retain licensing applications for key employees who are no longer employed by the tribe's gaming operation. The tribal leader who asked the question stated that inactive files were stored in a secured location, but that the tribe was running out of space.

The Commission's regulations require special handling of licensing application files only for key employee and primary management employee positions. Tribes must "retain applications for employment and reports (if any) of background investigations for inspection by the Chairman [of the National Indian Gaming Commission] or his or her designee for no less than three (3) years from the date of termination of employment." 25 C.F.R. § 558.1. The Commission's regulations have no storage requirements for other employees' applications.

The Commission strongly recommends the use of a secure, locked storage facility for these files because they contain a wide variety of confidential personal and financial information, and only authorized persons should be allowed access to them. Authorized persons might include investigators, personnel specialists, records clerks, and gaming managers who hire employees.

To the extent that tribes process criminal history checks through the Commission, they are subject to additional restrictions on the access and dissemination of criminal history record information from the FBI. *See NIGC Bulletin 93-2 and Memorandum of Understanding Regarding the Dissemination of Criminal History Record Information.* Access to information received from the FBI criminal checks and summary memoranda must be restricted to personnel directly involved in licensing deliberations, and the tribe must maintain a record of anyone accessing the FBI files. A sign in/out log indicating the date and time the person had the file is recommended for all employee files.

If the tribe is considering destroying the applicant files rather than storing them, it should do so with caution. Tribal codes, including tribal privacy acts and record retention policies, should be consulted and complied with prior to destruction of files. The tribe should also shred or otherwise destroy the files so that they can not be read or, if electronic data, can never be used again. We recommend that the tribe maintain a permanent log of each file destroyed.