

## **National Indian Gaming Commission**

### **2006 Annual FOIA Report**

#### **I. Basic Information Regarding Report**

- A. Any questions concerning this report should be directed to:

Regina Ann McCoy  
FOIA/PA Officer  
National Indian Gaming Commission  
1441 L Street, N.W., Suite 9100  
Washington, D.C. 20005  
Telephone number: (202) 632-7003  
Fax number: (202) 632-7066

- B. This report is available on the NIGC Web site:

<http://www.nigc.gov/FOIA/FOIAAnnualReports/tabid/129/Default.aspx>

- C. To obtain a copy of the report in paper form contact:

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#### **II. How to Make a FOIA Request**

For basic information on how to make a FOIA request, visit our Web site at:

<http://www.nigc.gov/FOIA/FreedomofInformationActFinal/tabid/535/Default.aspx#MR>

- A. Address of office that receives FOIA requests:

FOIA requests are centralized and written requests should be addressed to:

Regina Ann McCoy  
FOIA/PA Officer  
National Indian Gaming Commission  
1441 L Street, N.W., Suite 9100

Washington, D.C. 20005

Fax number: (202) 632-7066

B. Agency's response-time ranges:

Response times vary from one day to more than one year depending on complexity of the request.

C. Brief description of why some requests are not granted.

Requests for information are not granted if the information sought falls within one of the FOIA exemptions; the information requested falls under the jurisdiction of another authority; or no responsive records are located.

**III. Definitions of Terms and Acronyms Used in the Report (to be included in each report)**

A. Agency-specific acronyms or other terms.

NIGC National Indian Gaming Commission

B. Basic terms, expressed in common terminology.

1. FOIA/PA request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)
2. Initial Request -- a request to a federal agency for access to records under the Freedom of Information Act.
3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are placed in one processing

track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first out basis. A requester who has an urgent need for records may request expedited processing (see below).

6. Expedited processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple request -- a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.
8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Full Grant -- an agency decision to disclose all records in full in response to a FOIA request.
10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as no responsive records are located).
12. Time limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. "Perfected" request -- a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. Exemption 3 statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. Median number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
16. Average number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group.

**IV. Exemption 3 Statutes**

- A. List of Exemption 3 statutes relied on by agency during current fiscal year.

1. Brief description of type(s) of information withheld under each statute.

Exemption 3 was not cited in any of the releases.

2. Statement of whether a court has upheld the use of each statute. If so, then cite example.

N/A

**V. Initial FOIA Requests**

- A. Numbers of initial requests.

Number of requests pending as of end of preceding fiscal year	10
Number of requests received during current fiscal year	103
Number of requests processed during current fiscal year	103
Number of requests pending as of end of current fiscal year	10

- B. Disposition of initial requests.

Number of total grants	21
Number of partial grants	60
Number of denials	3

a. number of times each FOIA exemption used (counting each exemption once per request)

Exemption 1	0
Exemption 2	0
Exemption 3	0
Exemption 4	51
Exemption 5	29
Exemption 6	44
Exemption 7A	4
Exemption 7B	0
Exemption 7C	6
Exemption 7D	2
Exemption 7E	6
Exemption 7F	0
Exemption 8	0
Exemption 9	0

2. Other reasons for nondisclosure (total) 19

No records	15
Referrals	0
Request withdrawn	2
Fee-related reason	1
Records not reasonably described	0
Not a proper FOIA request for some other reason	1
Not an agency record	0
Duplicate request	0
Other (specify)	0

## VI. Appeals of Initial Denials of FOIA Requests

A. Number of appeals.

Number of appeals received during fiscal year	4
Number of appeals processed during fiscal year	5

B. Disposition of appeals.

Number completely upheld	0
Number partially reversed	2
Number completely reversed	1

a. number of times each FOIA exemption used (counting each exemption once per appeal)

Exemption 1	0
Exemption 2	0
Exemption 3	0
Exemption 4	0
Exemption 5	2
Exemption 6	0
Exemption 7A	0
Exemption 7B	0
Exemption 7C	1
Exemption 7D	0
Exemption 7E	0
Exemption 7F	0
Exemption 8	0
Exemption 9	0

2. Other reasons for nondisclosure (total) 2

No records	1
Referrals	0
Request withdrawn	1
Fee-related reason	0
Records not reasonable described	0
Not a proper FOIA request for some other reason	0
Not an agency record	0
Duplicate request	0
Other (specify)	0

**VII. Compliance with Time Limits/Status of Pending Requests**

A. Median processing time for requests processed during the year.

Type of Requests	Number of request processed	Median number of days to process
Simple Requests	100	30

Complex Requests	2	70
Expedited Processing Requests	1	10

B. Status of pending requests.

Number of request pending as of end of current fiscal year	10
Median number of days requests were pending	31

**VIII. Comparisons with Previous Year(s) (Optional)**

The NIGC received three requests for expedited processing and determined only one met the criteria for expedited processing outlined in 25 C.F.R. § 517.6(f).

**IX. Costs/FOIA Staffing**

A. Staffing levels.

Number of full time FOIA personnel	2
Number of personnel with part-time or occasional FOIA duties (in total work years)	.25
Total number of personnel (in work years)	2.25

B. Total costs (including staff and all resources).

FOIA processing (including appeals)	\$ 163,657
Litigation related activities (estimated)	\$ 5,280
Total costs	\$ 168,937

C. Statement of additional resources needed for FOIA compliance (optional)

**X. Fees**

Total amount of fees collected by agency for processing requests	\$ 3,376.15
Percentage of total costs	2%

**XI. FOIA Regulations (Including Fee Schedule)**

NIGC FOIA regulations and fee schedule can be found in 25 CFR § 517. A paper copy of this regulation can be obtained by contacting the FOIA Officer ([see](#) section I(A) of this report) or electronically at:

**XII. Report on FOIA Executive Order Implementation**

- A. Description of supplemental/modification of agency improvement plan.

N/A

- B. Report on agency implementation of its plan, including performance meeting milestones, with respect to each improvement area.

The NIGC focused on improving two components of its FOIA program – the FOIA website and backlog reduction. The NIGC redesigned its website to include a FOIA reading room. Included in the reading room are frequently requested documents to include: copies of enforcement actions; game classification opinions; Indian lands determinations; bulletins issued by the NIGC; approved management contracts; and approved gaming ordinances and amendments, for a total of 1084 documents published.

The agency has also stepped up efforts to be more pro-active by publishing information related to current issues on the website. An example of this is the publishing of information related to the Class II Game Classification Standards. Available documents include: meeting agendas; comment letters received from Indian tribes and other entities with an interest in the issue; hearing transcripts and statements; reports submitted by outside entities; and notices previously published in the Federal Register.

The second component addressed in the implementation plan was to reduce the agency backlog by 50% from the previous year. FY2006 ended with 10 pending FOIA requests, the same number of requests pending in FY2005. This is somewhat misleading as four of the pending requests were received less than 20 business days prior to the end of the fiscal year, and not true backlog cases. The actual backlog reflects a decrease of 40% from the previous year.

- C. Identification and discussion of any deficiency in meeting plan milestones.

While the goal of the agency was to reduce the backlog by 50%, only a 40% decrease was achieved. In reviewing the true backlog cases it is noted that all cases are Track 3 cases, which are cases that involve voluminous material, consultations with other entities, or involve other

unusual circumstances. Two of the cases involve material that has been placed under seal by a Federal judge and have been placed in suspension at the request of the requesters. The remaining cases involve voluminous pages that contains proprietary and financial information and require the agency to provide the submitters of the information with notification of the FOIA requests so the entities can review the information and advise the agency of the release ability of the information. See 25 C.F.R. § 517.7. The process itself routinely exceeds the 20 business day requirement for responding to FOIA requests. At the time this report was drafted, 66% of these backlog cases had been closed.

- D. Additional narrative statement regarding other executive order-related activities (optional).

N/A

- E. Concise descriptions of FOIA exemptions.

The following are the exemptions and explanations used in processing FOIA requests:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or

information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

F. Additional statistics:

1. Time range of requests pending, by date of request

The date ranges of the pending requests are February 14, 2003 through January 26, 2007.

2. Time range of consultations pending with other agencies, by date of initial interagency communication

N/A

G. Attachment: Agency improvement plan

A paper copy of the improvement plan can be obtained by contacting the FOIA Officer ([see](#) section I(A) of this report) or electronically at:

<http://www.nigc.gov/Portals/0/NIGC%20Uploads/foia/signedeo13392.pdf>