



MEMORANDUM

TO: Alberto Gonzalez
Attorney General
United States Department of Justice

Rob Portman
Director
Office of Management and Budget

FROM: Philip N. Hogen
Chairman
National Indian Gaming Commission

DATE: June 8, 2006

SUBJECT: Implementation of Executive Order (EO) 13,392, Improving Agency Disclosure of Information

In response to EO 13, 392, the National Indian Gaming Commission (NIGC) conducted a review of the Freedom of Information Act (FOIA) program. The following is a compilation of the review and plan for implementation of EO 13,392.

A. NIGC's Current FOIA Operation

The NIGC has spent the last few years working to reduce the FOIA backlog. The backlog at the end of FY 2003 was 73; at the end of FY 2004 was 27 cases; and at the end of FY 2005 was 10 cases. During this time period the NIGC experienced a steady increase in the number of FOIA requests received annually: FY 2003 – 90 requests received; FY 2004 – 104 requests received; and FY 2005 – 139 requests received. All FOIA request are received and processed in the Washington, DC office.

B. Areas to be Reviewed

The NIGC conducted a review of the following areas within the FOIA program: affirmative disclosure under section (a)(2); proactive disclosure of information; the NIGC FOIA website; the NIGC's FOIA reference guide; the automated tracking system; process for reviewing and releasing documents; multi-track processing of requests; expedited processing of requests; backlog reduction and elimination; customer service; forms of communication with requesters; consultation procedures; process by which co-operation is obtained from agency personnel; and purchasing new equipment. The review results are discussed below.

C. Review Findings

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The review of the areas of the FOIA program identified in Part B above determined the following:

Affirmative disclosure under section (a)(2) – this is an area that could be improved. The website contains the information required under subsection (a)(2); however, not all links are operational.

Proactive disclosure of information – this is an area that could be expanded. Public source documents could be included on the website to assist viewers glean a better understanding of how the NIGC operates. Examples are copies of Tribal-State gaming contracts, lands opinions that originated with the Department of the Interior, and copies of gaming ordinances approved by the NIGC. The NIGC should post redacted copies of management agreements that have been approved by the Chairman when they are approved, rather than wait for requests to begin the redacting process.

FOIA Website – the review of the website indicated the basic information on how to make a proper FOIA requests, appeal an adverse determination, and other general FOIA information is current, but not all the links on the FOIA webpage are operational.

FOIA reference guide – the website and CFR provide detailed instructions for making requests, where to send the request for processing, the fee structure and how to request a waiver of fees, what to expect after a request is made, and how to appeal a determination. The information is presented in a clear, concise manner and was last updated in May 2006 when the NIGC FOIA regulations were updated in the Federal Register.

Automated tracking system – the system in place is adequate for the volume of requests received. Information can be retrieved using a request number, a requester name, or the subject of the request. Each electronic record provides a place for notes detailing action taken and the status of the case.

Process for reviewing and releasing documents – documents are reviewed line-by-line using paper copies of the documents. Material that is exempted from release under FOIA is manually redacted with a copy made of each redacted page for release to the requester. Based on the volume of requests received the current method is sufficient. The NIGC has recently begun scanning redacted documents into a database for use for any future requests.

Multi-track processing of request – the NIGC operates under a three track classification system. The tracks consist of Track 1 for requests that qualify for expedited review; Track 2 for requests that do not involve a large volume of documents or require extensive search and review time; and Track 3 for all other requests. Within each track the NIGC follows the “first in, first out (FIFO)” processing approach. The E-FOIA Amendment, which authorizes the multi-track and FIFO approach, also allows for relatively simple requests within a track to be moved up for processing, a practice currently in place at the NIGC.

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To qualify for Track 1 (expedited processing) a requester has to demonstrate that one of the following compelling needs is met: (1) that failure to receive records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or, (2) that the requester is primarily engaged in disseminating information and can demonstrate that an urgency to inform the public concerning actual or alleged Federal Government activity exists.

Track 2 requests are those that require a minimal amount of search and review time and can generally be completed within 20 business days.

Track 3 requests are those that require a more thorough search of agency records (such as records stored in off site or regional office locations); require a review of large amounts of documents (generally over 1000 pages); require submitter notices; or require consultations with other agencies.

Expedited processing of requests – both the website and the CFR detail the information needed to qualify for expedited processing and provide appeal instructions should a request be denied. Each request is considered individually and a response is sent within the 10 day time period as stated in the regulations.

Backlog reduction and elimination – at the time of the review, the backlog was under five cases. Those requests were waiting on responses from submitter notices or documents stored at an off site location.

Customer service – current procedures provide for timely responses to requests, either with an acknowledgment letter indicating how much more time will be needed to complete the request or a final release letter where the requesters is given copies of any responsive documents either in full or redacted form, notified that responsive documents are being withheld in full, or notified that no responsive documents were located. Telephonic inquiries for status checks are responded to when received, as are inquiries concerning the proper procedures for making requests.

Forms of communication with requesters – the current procedures in place are adequate for the volume of requests received. The FOIA requires that an agency notify a requester within 20 business days of receipt of the request letter. Our practice is to log a letter into the system and send out search requests to all offices where records could be located. Search requests are to be returned within 14 days. Once search requests are returned a quick review of responsive documents is performed to determine how long the processing will take. If processing will exceed the 20 business day time period from the date the letter was received, an acknowledgement letter is sent to the requester explaining what needs to be done to complete processing of the request along with an estimate of the additional time needed. The requester may modify his request at this time to shorten the processing time. Telephone inquiries are responded to when received, and requesters are contacted if a question arises during the processing of the request.

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Consultation procedures – submitter notices are required under both the FOIA and NIGC regulations for information deemed commercial or confidential business information. Prior to sending out submitter notices, the documents are reviewed for information that qualifies for withholding. The information is highlighted and copies are sent to the submitters explaining why the information will be withheld. If the submitters believe more information needs to be withheld, or the document needs to be withheld in full, they are required to provide written justification within 10 days. Extensions on this timeframe are generally granted when requested. Submitter response letters are reviewed to see if any additional information has been requested to be withheld, or if a document has been requested to be withheld in full, and whether that information qualifies for withholding under any FOIA exemption. A final determination letter is sent to the submitters letting them know the final agency action and allowing them an opportunity to seek judicial relief prior to the NIGC release of any documents.

Process by which co-operation is obtained from agency personnel – overall co-operation within the NIGC for processing request is good. Search requests are generally returned within the specified time frame. The structure of the agency requires some field personnel to travel for extended periods of time, thereby causing delays when searching for responsive documents. The current practice is to extend the response time, as needed, to allow field personnel on travel to perform adequate searches for responsive material.

Purchasing new equipment – based on the size of the FOIA staff and the amount and complexity of request letters received annually the present system of manually redacting documents prior to release is adequate. A high speed scanner and software were purchased in FY 2005 to aide in the scanning of documents for inclusion on the website.

D. Areas Chosen for Improvement

While all components of the FOIA program are important, the NIGC will be concentrating on two components, the FOIA website and backlog reduction and elimination.

E. Breakdown of Areas Cited for Improvement

1. FOIA Website – the objective in this area is to expand the electronic reading room to include frequently requested documents and other documents that would be of interest to the public. It is anticipated that requesters will be able to find the information they are seeking on the website without having to submit a FOIA request, thereby allowing the FOIA Officer to concentrate on the backlog.

A new website was constructed and became operational in Spring 2006. As mentioned earlier a review of the content indicated some areas to be in need of improvement. One such area is the reading room which contains frequently requested documents. A review of all FOIA requests processed within the last three years will be conducted to identify frequently requested documents and those documents will be posted in the reading room.

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A review will also be conducted to ensure all documents that fall under subsection (a)(2) have been posted. Additionally, a working group will be formed to meet quarterly to identify any public information, not already included under subsection (a)(2) that would be helpful to the public to better understand how the NIGC conducts business.

New scanning equipment and software have been purchased and are being utilized to aide in getting the information posted in a timely fashion. A review is also being conducted to identify and reconfigure invalid links.

The timeframe for completing the update of the website is September 30, 2006, and quarterly reviews will be conducted thereafter.

2. Backlog reductions and elimination – the objective in this area is to close FY2006 with a 50% decrease of the previous year's backlog and maintain or decrease that percentage by 10% each year until the backlog is eliminated.

Attention is being focused to working with agency personnel to complete search requests within a two week time period and provide assistance in locating and copying responsive documents. Multiple requests for the same subject are now grouped together for processing. Requesters are being consulted when a large volume of responsive documents have been identified to determine if all documents need to be processed or if they are willing to negotiate what they are requesting. Quarterly reviews will be conducted to identify any problem areas and address them as needed.

The timeframe for completing this component is September 30, 2006, and the close of each fiscal year thereafter.