

§515.9

court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this section. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of court order, or similar documents, and proof of the individual's identity in a form that complies with §515.3(b) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed.

§515.9 Fees.

The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of reviewing the record, the Commission shall not charge the individual for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplication.

§515.10 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§515.11 General exemptions. [Reserved]

§515.12 Specific exemptions.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

Indian Gaming Individuals Records System

(b) The exemptions under paragraph (a) of this section apply only to the extent that information in this system is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission with respect to licensing of key employees and primary manage-

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ment officials for employment in an Indian gaming operation, the applicable exemption may be waived by the Commission.

(c) Exemptions from the particular sections are justified for the following reasons:

(1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and

under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

PART 516—TESTIMONY OF COMMISSIONERS AND EMPLOYEES AND FORMER COMMISSIONERS AND FORMER EMPLOYEES RESPECTING OFFICIAL DUTIES; RESPONSE TO SUBPOENA

Sec.

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2706; 25 U.S.C. 2716(a); 18 U.S.C. 1905.

SOURCE: 64 FR 54542, Oct. 7, 1999, unless otherwise noted.

§516.1 What is the purpose of this part and to whom does it apply?

(a) The purpose of this part is to promulgate regulations regarding the release of official National Indian Gaming Commission information and provision of testimony by National Indian Gaming Commission personnel with respect to litigation or potential litigation and to prescribe conduct on the part of National Indian Gaming Commission personnel in response to a litigation-related request or demand.

(b) This part applies to requests or demands that are litigation-related or otherwise arise out of judicial, administrative or other legal proceedings (including subpoena, order or other demand) for interview, testimony (including by deposition) or other statement, or for production of documents relating to the business of the National Indian Gaming Commission, whether or not the National Indian Gaming Commission or the United States is a

party to the litigation. It does not, however, apply to document requests covered by 25 CFR parts 515 and 517.

(c) To the extent the request or demand seeks official information or documents, the provisions of this part are applicable to Commissioners, employees, and former Commissioners and former employees, of the National Indian Gaming Commission.

§516.2 When may a person to whom this part applies give testimony, make a statement or submit to interview?

(a) No person to whom this part applies, except as authorized by the Chairman or the General Counsel pursuant to this regulation, shall provide testimony, make a statement or submit to interview.

(b) Whenever a subpoena commanding the giving of any testimony has been lawfully served upon a person to whom this part applies, such individual shall, unless otherwise authorized by the Chairman or the General Counsel, appear in response thereto and respectfully decline to testify on the grounds that it is prohibited by this regulation.

(c) A person who desires testimony or other statement from any person to whom this part applies may make written request therefor, verified by oath, directed to the Chairman setting forth his or her interest in the matter to be disclosed and designating the use to which such statement or testimony will be put in the event of compliance with such request: provided, that a written request therefor by an official of any federal, state or tribal entity, acting in his or her official capacity need not be verified by oath. If it is determined by the Chairman or the General Counsel that such statement or testimony will be in the public interest, the request may be granted. Where a request for a statement or testimony is granted, one or more persons to whom this part applies may be authorized or designated to appear and testify or give a statement with respect thereto.