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Description of document: National Indian Gaming Commission (NIGC) Agency
Reorganization Plan required by Executive Order 14210,
2025

Requested date: 17-March-2025

Release date: 02-May-2025

Posted date: 26-May-2025

Source of document: FOIA Request
FOIA Officer
Council of the Inspectors General on Integrity and
Efficiency
1750 H Street NW, Suite 400
Washington DC 20006
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March 28, 2025

Re: NIGC-FOIA-0365

This responds to your Freedom of Information Act (FOIA) 5 U.S.C. § 552, request to the National Indian Gaming Commission (NIGC) received in the FOIA office on March 17, 2025. In your request, you stated that you were seeking:

a copy of the Agency Reorganization Plan that the National Indian Gaming Commission submitted to the Office of Management and Budget (OMB) in February or March 2025, as required by Executive Order 14210, issued on February 11, 2025, entitled 'Implementing the President's Department of Government Efficiency Workforce Optimization Initiative.

Pursuant to this request, the NIGC FOIA Office has conducted a search of its relevant recordkeeping systems and found one document (totaling 10 pages) that is responsive to your request. This document is being released to you with partial redactions having been applied pursuant to Exemption Five of the FOIA. See 5 U.S.C. §§ 552(b)(5). The responsive document is attached to the email transmitting this letter. A more detailed explanation of Exemption 5 and its application here follows below.

FOIA Exemption 5

Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), permits the withholding of "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." See 5 U.S.C. § 552(b)(5). Accordingly,

Exemption 5 traditionally incorporates the civil discovery privileges: the deliberative process privilege, the attorney-client privilege, and the attorney work product privilege, among others. *U.S. v. Weber Aircraft Corp.*, 465 U.S. 792, 800 (1984). In this instance, the information being withheld under Exemption 5 is protected from disclosure by the deliberative process privilege.

In order to qualify for the deliberative process privilege, the information must meet three requirements. First, it must be internal to the executive branch agencies. See 5 U.S.C. § 552(b)(5). Second, the information must be pre-decisional, meaning it was prepared prior to an agency decision. *Mapother v. Dep't of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993); *Schell v. HHS*, 843 F.2d 933, 941 (6th Cir. 1988). Third, it must constitute a direct part of the deliberative process by offering recommendations or expressing opinions on legal and policy matters. *Access Reports v. Dep't of Justice*, 926 F.2d 1192, 1196 (D.C. Cir. 1991). Furthermore, while factual information is not usually considered deliberative, when the "facts themselves reflect the agency's deliberative process" it may also qualify for withholding. *Skelton v. U.S. Postal Serv.*, 678 F.2d 35, 38-39 (5th Cir. 1992); see also *Mapother*, 3 F.3d at 1538. Such a situation exists in cases where agencies "exercise their judgment" in compiling factual summaries and use discretion to differentiate between significant and non-significant facts. *Montrose Chemical Corp. of California v. Train*, 491 F.2d 63, 67-68 (D.C. Cir. 1974).

In this matter, Exemption 5 is applied to information contained within an inter-agency memorandum sent from the NIGC to the Office of Management and Budget (OMB). This memo was submitted by the NIGC to the OMB, as directed by the OMB. to be reviewed by OMB. The redacted information reflects the exercise of judgement in compiling factual summaries and the use of discretion in differentiating between significant and non-significant facts. It conveys opinions concerning the agency and recommends actions that would be undertaken only with OMB approval. Release of this information would infringe upon, and directly harm, the deliberative process that protects frank discussion and deliberation and, therefore, it is being properly withheld from disclosure under Exemption 5.

Fees

For fee assessment purposes you were designated as an "all others" requester and, therefore, required to pay the full reasonable direct costs incurred for searching for and reproducing records if that total costs exceeds \$15.00, except that the first 100 pages and the first two hours of manual search time shall not be charged.

Because the processing costs did not exceed \$15.00, there are no fees being assessed for this request.

Closure of Request

As this completes the processing of your request, the NIGC now considers your request closed. Pursuant to 25 C.F.R. § 517.8, you may challenge the NIGC FOIA Office's determination by submitting a written appeal to the National Indian Gaming Commission, 1849 C Street N.W., Mail Stop #1621, Washington, D.C., 20240 no later than ninety (90) days after the date of this

letter. *See* 5 U.S.C. § 552 (a)(6)(A)(i)(III)(aa). Both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.” The written submission should include copies of the original request, the denial, and a brief statement of the reasons you believe the denial to have been in error.

Please be advised that you have the right to seek dispute resolution services from the NIGC’s FOIA Public Liaison or the Office of Government Information Services (OGIS). If you wish to contact the NIGC’s FOIA Public Liaison, please contact Jo-Ann Shyloski at (202) 632-7003 or by way of e-mail at Jo-Ann_Shyloski@nigc.gov. If you would prefer to contact OGIS, you may do so in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: (202) 741-5770
Fax: (202) 741-5769
Toll-free: 1 (877) 684-6448

If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (202) 264-0676.

Sincerely,

A handwritten signature in black ink that reads "Tim Osumi". The signature is written in a cursive, slightly stylized font.

Tim Osumi
Chief FOIA Officer



MEMORANDUM

TO: Russell T. Vought, Director, Office of Management and Budget (OMB)
Charles Ezell, Acting Director, Office of Personnel Management (OPM)

FROM: Sharon M. Avery, National Indian Gaming Commission, Acting Chairwoman

DATE: March 13, 2025

SUBJECT: Agency RIF and Reorganization Plans (ARRP)
(Phase 1)

On February 11, 2025, the President issued Executive Order *Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative* (EO 14210) directing "Agency Heads [to] promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law."

On February 26, 2025, the U.S. Office of Management and Budget ("OMB") and the U.S. Office of Personnel Management ("OPM") issued a joint memorandum, *Guidance on Agency RIF and Reorganization Plans Requested by Implementing the President's "Department of Government Efficiency Workforce Optimization Initiative"*, providing guidance on Agency RIF and Reorganization Plans ("ARRP"). The memorandum further directed agencies to submit their ARRP (Phase 1) to OMB and OPM no later than March 13, 2025, for review and approval.

This memorandum details Phase 1 of the National Indian Gaming Commission's ARRP. Generally, Phase 1 of the NIGC's ARRP focuses on reductions to agency staff. Moreover, pursuant to the OMB/OPM joint memorandum, the NIGC Phase 1 ARRP identifies the following:

1. A list of agency subcomponents or offices that provide direct services to citizens. Such subcomponents or offices should be included in ARRPs to improve services to citizens while eliminating costs and reducing the size of the federal government. But for service delivery subcomponents or offices, implementation shall not begin until certified by OMB and OPM as resulting in a positive effect on the delivery of such services.

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March 13, 2025

2. Any statutes that establish the agency, or subcomponents of the agency, as statutorily required entities. Agency leadership must confirm statutes have not been interpreted in a way that expands requirements beyond what the statute actually requires. Instead, statutes should be interpreted to cover only what functions they explicitly require.

Statutorily mandated establishment of the National Indian Gaming Commission.

In 1987, the U.S. Supreme Court, in *California v. Cabazon Band of Indians*, 480 U.S. 202 (1987), affirmed the inherent sovereign authority of tribes to operate and regulate gaming facilities on Indian lands, free from state regulation if the state did not prohibit gaming. The following year, Congress enacted the Indian Gaming Regulatory Act of 1988 ("IGRA") (P.L. 100-497, codified at 25 U.S.C. Chapter 29), and established the NIGC as an independent regulatory agency. The IGRA set federal standards for gaming on Indian lands to provide a statutory basis for the regulation of gaming by an Indian tribe to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players.¹

The Commission is composed of a Chair, appointed by the President and confirmed by the Senate, and two Associate Commissioners, appointed by the Secretary of Interior.² The NIGC's organizational structure is composed of two main offices: (i) the Office of General Counsel, which handles legal affairs; and (ii) the Office of Chief of Staff, which manages the day-to-day activities. The NIGC maintains its headquarters in Washington, D.C., and currently has eight regional offices throughout the country. The NIGC established the locations of its field offices as a vital tool to carry out its statutory and regulatory responsibilities. By having NIGC field staff close to tribal gaming facilities, the NIGC seeks to facilitate compliance with IGRA by fostering productive and cooperative relationships with tribal leaders, officials, and regulatory personnel, promoting a better understanding of gaming controls within the regulated industry, and ensuring the integrity of Indian gaming operations.

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¹ 25 U.S.C. §§ 2702, 2704.

² 25 U.S.C. § 2704.

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3. All agency components and employees performing functions not mandated by statute or regulation who are not typically designated as essential during a lapse in appropriations (because the functions performed by such employees do not fall under an exception to the ADA) using the Agency Contingency Plans submitted to OMB in 2019 referenced above.

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4. Whether the agency or any of its subcomponents should be eliminated or consolidated; and which specific subcomponents or functions, if any, should be expanded to deliver on the President's priorities.

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5. The specific tools the agency intends to use to achieve efficiencies, including, as to each, the number of FTEs reduced and any potential savings or costs associated with such actions in Fiscal Years 2025, 2026 and 2027:

a. Continuation of the current hiring freeze;

(b) (5) [Redacted]

b. Regular attrition (e.g., retirement, movement between agencies and the private sector);

(b) (5) [Redacted]

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c. Attrition through enhanced policies governing employee performance and conduct;

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d. Attrition through the termination or non-renewal of term or limited positions or reemployed annuitants;

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e. Attrition achieved by RIFs. Please refer to Appendix 1 for specific steps and timing. For purposes of the Phase 1 ARRP, the agency should include the following information:

i. The competitive areas and organizational components that the agency has targeted or will target for initial RIFs, and

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ii. The agency's target for reductions in FTE positions via RIFs.

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6. A list by job position of all positions categorized as essential for purposes of exclusion from large-scale RIFs, including the number per each job position and total by agency and subcomponent.

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7. The agency's suggested plan for congressional engagement to gather input and agreement on major restructuring efforts and the movement of fundings between accounts, as applicable, including compliance with any congressional notification requirements.

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8. The agency's timetable and plan for implementing each part of its Phase 1 ARRP.

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