

## **NYCRR Title 9, Executive**

### **Subtitle T**

#### **New York State [Racing and Wagering Board] Gaming Commission**

##### **Chapter [III] V**

##### **Administration**

##### **Subchapter A**

##### **Public Access to Records**

#### **PART 5400**

#### **Public Information**

##### **§ 5400.1. Public inspection of records.**

In accordance with [chapter 578 of the Laws of 1974] article 6 of the Public Officers Law, the Freedom of Information Law, the following procedures are prescribed for making available to the public for inspection and copying all of the records and materials mandated by such law for such purposes.

(a) Application shall be made on printed forms prescribed by the [board] commission and submitted either personally or by mail to[:] the New York State [Racing and Wagering Board, 400 Broome Street, New York, NY 10013,] Gaming Commission, One Broadway Center, Schenectady, NY 12305, Attention: Records Access Officer.

(b) The person to who such request shall be made and from whom such records or copies thereof may be obtained and certified shall be the individual [appointed] designated by the [Chairman] executive director, who shall be deemed the "records access officer" of the [board] commission. In cases where the fiscal officer is required to furnish certain records, requests shall nevertheless be made through the records access officer, who will inform the fiscal officer to make the necessary arrangements. The duties of the records access officer shall be:

\* \* \*

(3) search for the identified record and, upon locating the record, take one of the following actions:

(i) review such record and delete any information [which] that would constitute an unwarranted invasion of personal privacy[,] and thereafter make the record promptly available for inspection or schedule an appointment for inspection; or

\* \* \*

(7) if access is denied, advise the applicant of the right to appeal to the authorized representative of the [board] commission; and

\* \* \*

(d) The records access officer shall respond to the applicant, within five days of a request for inspection or copying of records, by:

\* \* \*

(3) informing the applicant that [his] the applicant's request for inspection or copying of records has been reported to the person, association, corporation or other legal entity [which] that filed the records requested with the [board] commission, so that such person, association, corporation or legal entity may have an opportunity to protest the inspection or copying of such records as not being available pursuant to the exception provisions of the Public Officers Law.

\* \* \*

(f) Inspection shall take place in a room designated by the [board] commission, and in the presence of such [board] commission representatives as may be designated.

(g) If feasible to the operations of the business of the [board] commission, then the [board] commission may furnish copies of such materials at a price of 25 cents per page, up to size 8½ inches by 14 inches per page. If not feasible, then the [board] commission may arrange by private contract for such copying to be performed, the cost to be borne by the applicant.

(h) All charges for copying must be paid in advance to the [board] commission.

(i) The records access appeals officer is the counsel or a designee of the counsel.

**§ 5400.2. Appeals of denial of access to records.**

\* \* \*

(c) The time for deciding on an appeal by the records access appeals officer shall commence upon receipt by [him] the records access appeals officer of the written appeal, which shall identify:

\* \* \*

(e) If the records access appeals officer determines that the denial of access was erroneous, [he] the records access appeals officer shall instruct the records access officer to allow the prompt inspection or copying of the records as requested.

(f) If the records access appeals officer affirms or modifies the denial, [he] the records access appeals officer shall communicate his or her reasons in writing by either first class mail or certified mail, return receipt requested, to the person making the appeal and inform such person of [his] such person's right of judicial appeal.

## **PART 5401**

### **Personal Information**

#### **§ 5401.1. Access to personal information.**

In accordance with article 6-A of the Public Officers Law [chapter 652 of the Laws of 1983], the Personal Privacy Protection Law, the following procedures are prescribed by which members of the public may assert rights granted by the Personal Privacy Protection Law:

(a) Applications shall be made [on printed forms prescribed by the board] and submitted either personally or by mail to the New York State [Racing and Wagering Board, 400 Broome Street, New York, NY 10013,] Gaming Commission, One Broadway Center, Schenectady, NY 12305, Attention: Privacy Compliance Officer.

(b) The person to whom such requests shall be made, and from whom such records or copies thereof may be obtained and certified, shall be the individual(s) designated by the [chairman to] executive director as the [board's] commission's Privacy Compliance Officer(s). The duties of the Privacy Compliance Officer shall be:

\* \* \*

(4) (i) upon request, certifying that copy of the record is a true copy; or

(ii) certifying, upon request, that:

(a) the [agency] commission does not have possession of the record sought;

(b) the [agency] commission cannot locate the record sought after having made a diligent search; or

(c) the information sought cannot be retrieved by use of the description thereof, or by use of the name or other identifier of the data subject without extraordinary search methods being employed by the [agency] commission.

(c) Records shall be made available at the main office of the [agency] commission, which is located at [400 Broome Street, New York, NY 10013] One Broadway Center, Schenectady, NY 12305.

(d) The [agency] commission shall accept requests for records and produce records during the hours of 10 a.m. to 4 p.m. on each business day.

(e) Proof of identity.

(1) When a request is made in person, or when records are made available in person following a request made by mail, the [agency] commission may require appropriate identification, such as driver's license, an identifier assigned to the data subject by the [agency] commission, a photograph or similar information that confirms that the record sought pertains to the data subject.

(2) When a request is made by mail, the [agency] commission may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification.

\* \* \*

**§ 5401.2. Request for records.**

(a) All requests shall be made in writing, except that the [agency] commission may make records available upon an oral request made in person after the applicant has demonstrated proof of identity.

(b) A request shall reasonably describe the record sought. Whenever possible, the data subject should supply identifying information that assists the [agency] commission in locating the records sought.

(c) Within five business days of the receipt of a request, the [agency] commission shall provide access to the record, deny access in writing, explaining the reasons therefor, or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which date shall not exceed 30 days from the date of the acknowledgment.

**§ 5401.3. Amendment of records.**

(a) Within 30 business days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the [agency] commission shall:

\* \* \*

(d) Any such denial may be appealed to:

Privacy Compliance Law Appeals Officer  
c/o Counsel  
New York State [Racing and Wagering Board] Gaming Commission  
[400 Broome Street] One Broadway Center  
[New York, NY 10013] Schenectady, NY 12305

**§ 5401.4. Appeal.**

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to section 5401.3 of this Part may, within 30 days of such denial, appeal to the [board's] commission's [counsel, who is designated as the] Personal Privacy Compliance Appeals Officer, who is the counsel or a designee of the counsel.

\* \* \*

(e) The [agency] commission shall forward to the Committee on Open Government a copy of any appeal made pursuant to this Part upon receipt, the determination thereof and the reasons therefor at the time of such determination.

**§ 5401.5 Statement of disagreement by data subject.**

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

(1) file with the [agency] commission a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination;

\* \* \*

(b) Upon receipt of a statement of disagreement by a data subject, the [agency] commission shall:

\* \* \*

(c) When providing a data subject's statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law, the [agency] commission may also include a concise statement of its reasons for not making the requested amendment or correction.

**§ 5401.6. Fees.**

\* \* \*

(c) The actual cost of reproduction shall be based upon the average unit cost for copying a record, excluding fixed costs of the [agency] commission, such as operator salaries and overhead.

**Subchapter B**

**General Provisions**

*9 NYCRR part 5402 (5402.1 to .11) is repealed and relocated to part 4550 of Chapter I*

**PART 5402**

**[ADJUDICATORY PROCEEDINGS] GENERAL PROVISIONS**

**[Reserved]**

**Subchapter C**

**Office of Racing Promotion and Development**

**PART 5500**

**[Reserved]**