

NYCRR Title 9, Executive

Subtitle T

New York State Gaming Commission

Chapter V

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Subchapter A

Public Access to Records

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PART 5400

Public Information

Section

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§ 5400.1. Public inspection of records.

In accordance with 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 commission and submitted either personally or by mail to the New York State Gaming Commission, One Broadway Center, Schenectady, NY 12305, Attention: Records Access Officer.

(b) The person to whom such request shall be made and from whom such records or copies thereof may be obtained and certified shall be the individual designated by the executive director, who shall be deemed the “records access officer” of the 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:



- (1) assist the applicant in identifying the record or records sought;
 - (2) determine whether the record is available for inspection;
 - (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 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
 - (ii) deny access to the record;
 - (4) upon request, for copies of records, make copies available upon payment of the established fees;
 - (5) certify, upon request, to the correctness of the copies of the records;
 - (6) if the record cannot be located, take one of the following actions:
 - (i) certify in writing that the corporation is not the legal custodian for such records; or
 - (ii) certify in writing that the record of which the corporation is a legal custodian cannot be found;
 - (7) if access is denied, advise the applicant of the right to appeal to the authorized representative of the commission; and
 - (8) compile and update, not less than semiannually, a reasonably detailed list, by subject matter, of any records required by the Freedom of Information Law to be made available for public inspection and copying.
- (c) Applications will be entertained during the hours of 10 a.m. to 4 p.m. on each business day.
- (d) The records access officer shall respond to the applicant, within five days of a request for inspection or copying of records, by:
- (1) appointing a time for inspection or copying the requested records;
 - (2) providing a written statement of denial, which shall include notice of the right to appeal to the records access appeals officer, together with the name, title, business address and telephone number of the records access appeals officer; or
 - (3) informing the applicant that the applicant's request for inspection or copying of records has been reported to the person, association, corporation or other legal

entity that filed the records requested with the 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.

(e) If more than five days are required to produce records, an explanation shall be sent within five days of the request to the applicant, indicating the reason for and extent of the delay anticipated. If access to records is neither granted nor denied within 10 business days after the date of acknowledgment of receipt of request, the request may be construed as a denial of access that may be appealed.

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

(g) If feasible to the operations of the business of the commission, then the 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 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 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.

(a) Any person who has been denied access to records by the records access officer may appeal such denial to the records access appeals officer.

(b) The appeal must be made within 30 days of the denial of access.

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

- (1) the date and location of requests made for records;
- (2) the records to which the applicant was denied access; and
- (3) the name and return address of the applicant.

(d) The records access appeals officer shall, within seven business days of the receipt of a written appeal, review the matter and affirm, modify or reverse the denial.

(e) If the records access appeals officer determines that the denial of access was erroneous, 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, 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 such person's right of judicial appeal.

PART 5401

Personal Information

Section

- 5401.1 Access to personal information
- 5401.2 Request for records
- 5401.3 Amendment of records
- 5401.4 Appeal
- 5401.5 Statement of disagreement by data subject
- 5401.6 Fees

§ 5401.1. Access to personal information.

In accordance with article 6-A of the Public Officers Law, 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 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 executive director as the commission's Privacy Compliance Officer(s). The duties of the Privacy Compliance Officer shall be:

(1) assisting data subject in identifying and requesting personal information, if necessary;

(2) describing the contents of systems records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information identifiable to a data subject requesting such record or personal information;

(3) taking one of the following actions upon locating the record sought:

(i) make the record available for inspection, in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(ii) deny access to the record in whole or in part and explain in writing the reasons therefor;



- (iii) make a copy available, upon request, upon payment of established fees, if any, or permitting the data subject to copy the records; and
- (4) (i) upon request, certifying that copy of the record is a true copy; or
 - (ii) certifying, upon request, that:
 - (a) the commission does not have possession of the record sought;
 - (b) the 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 commission.
- (c) Records shall be made available at the main office of the commission, which is located at One Broadway Center, Schenectady, NY 12305.
- (d) The 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 commission may require appropriate identification, such as driver's license, an identifier assigned to the data subject by the 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 commission may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification.
 - (3) Proof of identity shall not be required regarding a request for a record accessible to the public pursuant to article 6 of the Public Officers Law.

§ 5401.2. Request for records.

- (a) All requests shall be made in writing, except that the 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 commission in locating the records sought.

(c) Within five business days of the receipt of a request, the 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 commission shall:

(1) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law; or

(2) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefor.

(b) Denial of a request for records or amendment or correction of a record or personal information:

(1) shall be in writing, explaining the reasons therefor; and

(2) identifying the person to whom an appeal may be directed.

(c) A failure to grant or deny access to records within five business days of the receipt of a request, or within 30 days of an acknowledgment of the receipt of a request, or a failure to respond to a request for amendment or correction of a record within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

(d) Any such denial may be appealed to:

Privacy Compliance Law Appeals Officer
c/o Counsel
New York State Gaming Commission
One Broadway Center
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 commission's Personal Privacy Compliance Appeals Officer, who is the counsel or a designee of the counsel.

(b) The time for deciding an appeal shall commence upon receipt of an appeal that identifies:

- (1) the date and location of a request for a record or amendment or correction of a record or personal information;
- (2) the record that is the subject of the appeal; and
- (3) the name and return address of the appellant.

(c) Within seven business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the person determining such appeals shall:

- (1) provide access to or correct or amend the records or personal information; or
- (2) fully explain in writing the factual and statutory reasons for further denial, and inform the data subject of the right to seek judicial review of such determination.

(d) If, on appeal, a record of personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law.

(e) The 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 commission a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination;
- (2) request that such a statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law.

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



- (1) clearly note any portions of the record that are disputed; and
- (2) attach the data subject's statement as part of the record.

(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 commission may also include a concise statement of its reasons for not making the requested amendment or correction.

§ 5401.6. Fees.

(a) Unless otherwise prescribed by statute, there shall be no fee charged for:

- (1) inspection of records;
- (2) search for records; or
- (3) any certification pursuant to this Part.

(b) Unless otherwise prescribed by statute, copies of records shall be provided:

- (1) at a rate of 25 cents per photocopy up to 9 by 14 inches; or
- (2) upon payment of the actual cost of reproduction, if the record or personal information cannot be photocopied.

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

Subchapter B

General Provisions

**Part
5402 [Reserved]**

**PART 5402
[Reserved]**

Subchapter C

Office of Racing Promotion and Development

**Part
5500 [Reserved]**

**PART 5500
[Reserved]**