



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

VIA EMAIL

March 7, 2018

Cheryl Schmit
Stand Up For California
P.O. Box 355
Penryn, CA 95663

Re: OIG-2017-00188

Dear Cheryl Schmit:

This is in response to your Freedom of Information Act (FOIA) request dated February 22, 2017, to the National Gaming Commission (NIGC). You requested the following information under the FOIA, 5 U.S.C. § 552 from NIGC:

- We request copies of any correspondence, email, letters, notes of meetings or transcripts of calls sent to or from the Tejon Indian Tribe to or from its current gaming investor/developers/management contractors or to or from the National Indian Gaming Commission. Relationships on file with the NIGC include Mr. William Wortman and Cannery Casinos of Las Vegas.
- We request copies of any correspondence, emails, letters, notes of meetings, transcripts of calls sent to or from the Tejon Indian Tribe as notification or termination of their business relationship with Cannery Casino or Mr. William Wortman to construct a casino in the County of Kern, California.
- We request copies of any correspondence, emails, letters, and notes of meetings, transcripts of calls sent to or from the Tejon Indian Tribe or Boyd Gaming of Las Vegas Nevada to or from the National Indian Gaming Commission. Boyd Gaming recently purchased Cannery Casinos. We request a copy of the management/development agreement or other collateral agreements for the development and operation of a casino in Mettler, Kern County.
- We request a copy of the Tejon Indian Tribes's gaming ordinance.

On August 1, 2017, NIGC notified our office, the Office of Inspector General (OIG), that while processing your FOIA request, it had located nine pages of responsive documents that originated with our office. Therefore, NIGC forwarded those pages to OIG to process and this is in final response to that referral.

For purposes of this request, you have been categorized an “other-use” requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs; you are also entitled to up to 2 hours of search time and 100 pages of

photocopies (or an equivalent volume) for free. *See* [43 C.F.R. § 2.39](#). If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected. *See* [43 C.F.R. § 2.49\(a\)\(1\)](#). In this case, no fee has been assessed.

We obtained the documents you seek and conducted a review of the material you requested. After reviewing this information we have determined that we may release 9 pages of responsive documents, with FOIA redactions, pursuant to exemptions 5 U.S.C. §§ 552(b)(5) and 552(b)(7)(C).

FOIA requires that agencies generally disclose records. Agencies may only withhold requested records only if one or more of nine exemptions apply.

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency.” 5 U.S.C. § 552(b)(5). One privilege available to government agencies is the deliberative process privilege. The deliberative process privilege protects materials that are both predecisional and deliberative. The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decision maker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. This privilege covers records that reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the OIG. Their contents have been held confidential by all parties and public dissemination of these drafts would have a chilling effect on the OIG’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

Exemption 7 allows agencies to refuse to disclose records compiled for law enforcement purposes under any one of six circumstances (identified as exemptions 7 (A) through 7 (F)). Law enforcement within the meaning of Exemption 7 includes enforcement pursuant to both civil and criminal statutes.

Specifically, Exemption 7(C) permits an agency to withhold information contained in files compiled for law enforcement purposes if production “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” U.S.C. § 552 (b)(7)(C). Thus, the purposed of Exemption 7 (C) is to protect the privacy interest exists, we must evaluate not only the nature of the personal information found in the records, but also whether release of that

information to the general public could affect that individual adversely. We find that release of personal information withheld here reasonably could be expected to have a negative impact on an individual's privacy. Even if a privacy interest exists, we must nevertheless disclose the requested information if the public interest outweighs the privacy interest in the information requested. You have not established that release of the privacy information of witnesses, interviewee, middle and low ranking federal employees and investigators, and other individuals name in the investigatory file, would shed light on government operations, and we have not found such a public interest in this case. For this reason, after reviewing the information in question, we have determined that disclosure would be an unwarranted invasion of personal privacy and we must withhold this information under FOIA Exemption 7 (C).

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure.

If you disagree with this response, you may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the OIG's response is in error. You must also include with your appeal copies of all correspondence between you and the OIG concerning your FOIA request, including your original FOIA request and the OIG's response. Failure to include with your appeal all correspondence between you and the OIG will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal. The OIG FOIA/Privacy Act Appeals Office Contact Information is the following:

Office of the Inspector General
U.S. Department of the Interior
1849 C Street, NW
MS-4428
Washington, DC 20240
Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-1644
Fax: (202) 219-1944
Email: foia@doioig.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See [5 U.S.C. 552\(c\)](#). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS 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
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

However, should you need to contact me, my telephone number is (202) 208-0954 and the email is foia@doioig.gov.

Sincerely,



Stefanie Jewett
FOIA Officer

Enclosures