

NYCRR Title 9, Executive

Subtitle T

New York State Gaming Commission

Chapter V

Administration

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Subchapter A

Public Access to Records

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PART 5400

Public Information

Section

5400.1 Public inspection of records

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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

Problem Gambling

Part

5402 Self-Exclusion

5403 Restrictions on Account Wagering in Horse Racing

PART 5402

Self-Exclusion

Section

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§ 5402.1. Definitions.

For purposes of this Part:

(a) *gaming facility* means any room, premises, designated gaming area or platform where gaming pursuant to articles 2, 3, 4, 5, 6, 9, 10, 13 or 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or video lottery gaming pursuant to Tax Law section 1617-a is conducted; and

(b) *gaming operator* means any licensee or operator authorized to conduct or operate gaming or other activity pursuant to articles 2, 3, 4, 5, 6, 9, 10, 13 or 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or video lottery gaming pursuant to Tax Law section 1617-a.

§ 5402.2. Request for self-exclusion.

(a) A person requesting placement on the self-exclusion list shall submit to the commission or the commission's designee a completed request for voluntary self-exclusion form provided by the commission. Such submission may be made by appearing at the commission's principal office in Schenectady during regular business hours or at any licensed gaming facility's area designated for problem gambling intake. Persons who are unable to travel may request accommodation for submission through United States mail, so long as a notarized statement accompanies the required form stating clearly that the person signing understands fully the implications of submitting such form.

(b) A request for self-exclusion from gaming activities shall include the following identifying information:

(1) name, including any aliases or nicknames;

(2) date of birth;

(3) address of current residence;

(4) telephone number;

(5) social security number, when voluntarily provided in accordance with section seven of the Privacy Act of 1974 (5 U.S.C. § 552a) or Article 6-A of the Public Officers Law (Personal Privacy Protection Law);

(6) a copy of a current government-issued photo identification, such as a driver's license or passport; and

(7) height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person.

(c) Any person requesting self-exclusion pursuant to this Part shall be required to file with the commission or the commission's designee a photograph of such person taken within six months of the date of the request. Such photograph shall accompany the submission of the required form.

(d) A self-excluded person shall update any of the information set forth in paragraphs (1) through (6) of subdivision (b) of this section and any material change in any of the information set forth in paragraph (7) of subdivision (b) of this section within 30 days of any change.

(e) The length of self-exclusion requested by a person shall be one of the following:

- (1) one year;
- (2) three years;
- (3) five years; or
- (4) lifetime.

(f) The commission or the commission's designee shall document a description of the type of identification credentials examined containing the signature of a person requesting self-exclusion and whether said credentials included a photograph or general physical description of the person.

(g) The commission or the commission's designee shall document the signature of the intake employee authorized to accept a self-exclusion request, indicating that the signature of the person on the request for self-exclusion appears to agree with that contained on the requester's identification credentials and that any photograph or physical description of the person appears to agree with the requester's actual appearance.

(h) Each person requesting self-exclusion shall be advised in writing that if such person is found violating the rules set forth in this Part, such person may be subject to arrest for trespassing pursuant to Penal Law sections 140.10, 140.15 and 140.17.

§ 5402.3. Self-exclusion list.

(a) The commission shall maintain an official self-exclusion list and notify each gaming operator of additions to or deletions from the list within five business days of the verification of the information received pursuant to section 5402.2 of this Part.

(b) The notice that the commission provides to gaming operators shall include the information provided pursuant to subdivision (a) of section 5402.2 of this Part and a copy of the person's photograph pursuant to subdivision (b) of section 5402.2 of this Part.

(c) A gaming operator shall maintain a current copy of the self-exclusion list and ensure that all appropriate employees and agents of the gaming operator are notified promptly of any addition to or deletion from the list.

(d) Gaming operators, employees or agents thereof may not disclose the name of, or any information about, a person who has requested self-exclusion to anyone other than employees and agents of the gaming operator whose duties and functions require access to the information or as authorized by the Racing, Pari-Mutuel Wagering and Breeding Law for the limited purpose of assisting in the proper administration of responsible gaming programs. Notwithstanding anything to the contrary in this subdivision, a gaming operator may disclose the identity of a self-excluded person to appropriate employees of other gaming operators in the State of New York or affiliated gaming entities in other jurisdictions for the limited purpose of assisting in the proper administration of problem gambling treatment or responsible gaming programs or to law enforcement or as may be required by a validly issued court order.

(e) A self-excluded person shall not, directly or indirectly, collect in any manner any winnings or recover any losses arising as a result of any gaming activity, including lottery, conducted during the period of time that such person is on the commission's self-exclusion list, consistent with the requirements set forth in the Racing, Pari-Mutuel Wagering and Breeding Law and article 34 of the Tax Law.

(f) Winnings of a self-excluded person shall be subject to forfeiture to the commission if such forfeiture is authorized by the Racing, Pari-Mutuel Wagering and Breeding Law or article 34 of the Tax Law.

(g) For the purposes of this section, winnings issued to, found on or about, or redeemed by, a self-excluded person shall be presumed to constitute winnings subject to forfeiture to the commission if such forfeiture is authorized by the Racing, Pari-Mutuel Wagering and Breeding Law or article 34 of the Tax Law.

(h) A self-excluded person shall be removed from any lottery subscription program described in Part 5005 of subchapter A of Chapter III of this subtitle. The commission shall not accept any new lottery subscription deposits from such self-excluded person, but such self-excluded person shall be allowed to withdraw any amounts from such person's account as of the date of the self-exclusion.

§ 5402.4. Duties of gaming operators.

(a) A gaming operator shall train its employees and establish procedures to:

(1) for a physical facility, identify a self-excluded person when such person is present on a gaming floor, present in areas off the gaming floor where gaming activity is conducted, present in areas accessible only through a gaming floor or engaging in gaming-related activities and, upon identification, notify immediately, unless section 5402.6 of this Part applies, the following persons:

- (i) employees of the gaming operator whose duties include the removal of self-excluded persons;
 - (ii) the commission's designated staff at the licensed facility; and
 - (iii) if the gaming operator deems appropriate, a law enforcement agency;
 - (2) refuse wagers or entry fees from and deny gaming privileges to a self-excluded person;
 - (3) deny gaming-related activities including credit and check-cashing privileges, player club membership, complimentary goods and services, redemption of any previously earned complimentary goods and services, gaming junket participation and other similar privileges and benefits to a self-excluded person;
 - (4) ensure that self-excluded persons do not receive, either from the gaming operator or any agent thereof, gaming junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities at any licensed facility;
 - (5) comply with section 5402.3 of this Part; and
 - (6) make available to patrons written materials approved by the commission explaining the self-exclusion program and resources for treatment and assistance.
- (b) A gaming operator shall designate responsible gaming ambassadors and provide commission approved training to such ambassadors to assist in the development and maintenance of the self-exclusion list.
- (c) A gaming operator shall submit amendments to the procedures and training materials required under subdivisions (a) and (b) of this section to the commission for review and approval at least 30 days prior to the intended implementation date of such amendments. Such gaming operator may implement the amendments on the 30th calendar day following the submission of such amendments unless such gaming operator receives a notice under subdivision (e) of this section objecting to such amendments.
- (d) If during the 30-day review period the commission determines that an amendment is inconsistent with the intent of this Part, the commission shall, by written notice to the gaming operator, object to such amendment. The objection shall:
- (1) specify the nature of the objection and, when possible, an acceptable alternative; and
 - (2) direct that the amendments not be implemented until approved by the commission.

(e) When amendments to procedures and training materials have been objected to pursuant to subdivision (d) of this section, a gaming operator may submit revised amendments in accordance with subdivision (c) of this section.

(f) For physical facilities, each gaming operator shall post signs in a conspicuous manner within 50 feet of each entrance and exit of the gaming facility or at a distance otherwise approved in writing by the commission indicating that a person who is on the self-exclusion list will be subject to arrest for trespassing pursuant to Penal Law sections 140.10, 140.15 and 140.17 if such person is on the gaming floor, in areas off the gaming floor where gaming activity is conducted, in areas accessible only through a gaming floor or engaging in gaming-related activities in the gaming facility. The text and font size of such signs shall be submitted to the commission for review and approval.

(g) For interactive gaming, a gaming operator shall not accept any new deposits from the self-excluded person, but such self-excluded person shall be allowed to withdraw any amounts from such person's account and the gaming operator shall acknowledge such withdrawals to such person.

§ 5402.5. Removal from self-exclusion list.

For a person who is self-excluded for one, three or five years, upon the conclusion of such period of self-exclusion, such person shall be removed from the self-exclusion list unless such person requests in writing, no later than 30 days prior to the expiration of such self-exclusion period, that the commission extend the term of such self-exclusion.

§ 5402.6. Exceptions for individuals on the self-exclusion list.

For physical facilities, the prohibition against allowing self-excluded persons to be on the gaming floor or in areas off the gaming floor where gaming activity is conducted shall not apply to a person who is on the self-exclusion list, if all of the following apply:

(a) the individual is carrying out the duties of employment or incidental activities related to employment;

(b) the gaming operator's security department has received prior notice, unless it was impracticable to have done so;

(c) access to the gaming floor or areas off the gaming floor where gaming activity is conducted is limited to the time necessary to complete the individual's assigned duties; and

(d) the individual does not otherwise engage in gaming activities.

§ 5402.7. Disclosure of information related to persons on the self-exclusion list.

- (a) Information furnished to or obtained by the commission pursuant to this Part shall be deemed confidential and shall not be disclosed unless necessary to implement this Part or other law or as may be required by a validly issued court order;
- (b) The commission may release periodically to the public demographics and general information in regard to the self-exclusion list, such as the total number of persons on the list, gender breakdown and age range.
- (c) The commission may make selected data available, upon request, for the limited purpose of assisting in the proper administration of problem gambling treatment or responsible gaming programs.

PART 5403

Restrictions on Account Wagering in Horse Racing

Section

5403.1 General requirements

5403.2 Voluntary restrictions on account wagering

§ 5403.1. General requirements.

- (a) Each account wagering licensee, as defined by Racing, Pari-Mutuel Wagering and Breeding Law section 1001(r), that maintains telephone betting accounts for wagering on horse races shall establish procedures that are designed to permit an account holder to voluntarily place limits on the amount of his or her wagers. This restriction may be calculated on a daily or weekly basis.
- (b) An account holder who has placed restrictions on his or her account may remove such exclusion or restrictions upon request made to the account wagering licensee. No request, however, from a person to remove any self-exclusion or limit placed on account wagers shall be effective until seven days after such request has been received by the account wagering licensee.

§ 5403.2. Voluntary restrictions on account wagering.

- (a) Any holder of an account authorized pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1012 may voluntarily place limits on the amount of his or her wagers. This restriction may be calculated on a daily or weekly basis.
- (1) Each account wagering licensee that maintains telephone betting accounts for wagering on horse races shall establish procedures that are designed to deny wagering privileges beyond a daily or weekly threshold set by the account holder.
- (2) Any holder of an account voluntarily restricted may have such restrictions removed or modified upon written or in-person request to the racing association or corporation.



Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 111(3), no request from a person to remove any limit placed on account wagers shall be effective until seven days after such request has been received by the racing association or corporation.

(b) Each account wagering licensee that maintains telephone betting accounts for wagering on races shall file with the commission a copy of such account wagering licensee's procedures established pursuant to this section.

Subchapter C

Office of Racing Promotion and Development

Part

5500 [Reserved]

PART 5500

[Reserved]