



U.S. Department of Justice
Drug Enforcement Administration
FOIA and Privacy Act Unit
8701 Morrissette Drive
Springfield, Virginia 22152

September 29, 2022

Case Number: 21-00507-F

Subject: A copy of the DEA guidelines and policies for those who are registered and/or seek registration and exemption concerning the use, production, and distribution of peyote

John Birrenbach
The Institute for Cannabis
18185 North Lake Lane
Pine City, Minnesota 55063
Sent via e-mail: john@birrenbach.com

Dear Mr. Birrenbach:

This letter responds to your Freedom of Information Act/Privacy Act (FOIA/PA) request dated June 27, 2021, addressed to the Drug Enforcement Administration (DEA), FOIA/PA Unit, seeking access to information regarding the above subject.

After reviewing your request, we conducted two searches for responsive records pertaining to the above subject. To search for responsive records, we queried the DEA's Diversion Control Division (DC). As a result of our queries, we were unable to identify records pertaining to the subject of your request. DC advised that no such records exist. Please note, DEA guidelines and policies are rules which specifically impact agency employees. The information you seek is covered by federal statute and DEA regulations.

On September 16, 2022, I informed you that since 1965, Federal Regulation has protected the ceremonial use of peyote by Native Americans and these protections, specifically for the Native American Church (NAC). The U.S. government codified these protections in [21 CFR § 1307.31](#). In 1978, the U.S. government issued statutory protections for Native Americans under the American Indian Religious Freedom Act. Title 42, United States Code, Section 1996 ([42 U.S.C. § 1996](#)). In 1994, the U.S. government extended these protections for traditional Native American religious use of peyote under the American Indian Religious Freedom Act of 1994 (42 U.S.C. § 1996a). This statute allowed the use, possession, or transportation of peyote by Native Americans for bona fide transitional ceremonial purposes in the practice of Native American religions, notwithstanding any other provision of law. DEA's regulations exempt members of the NAC from non-drug use of peyote in bona fide religious ceremonies and from registration. Any person who distributes peyote to members of the NAC is required to obtain a registration annually and comply with all other requirements of the law, as outlined in [21 CFR § 1307.31](#).

As a courtesy, we are providing links to the following DEA regulations which may be of interest to you:

- [21 CFR § 1308.11](#)- Schedule I Drugs
- [25 CFR § 11.452\(a\)](#) - Possession of a controlled substance (including peyote exemptions)
- [25 CFR § 140.19](#) – Drugs (traders and possession of peyote)
- [28 CFR § 42.540\(n\)\(2\)](#) – Definitions (drug abuse examples)

While the FOIA does not require agencies to conduct research, DC located a Memorandum of Opinion in Westlaw which may be of interest to you. The opinion was written in 1981 by Theodore Olson, former Assistant Attorney General, to the Chief Counsel of the DEA, as it relates to Peyote Exemption for NAC. As a courtesy, we are providing you with a copy of the opinion with this determination letter.

The rules and regulations of the DEA applicable to FOIA/PA requests are contained in the Code of Federal Regulations, Title 28, Part 16, as amended. They are published in the Federal Register available to the public (see <https://www.ecfr.gov/current/title-28/chapter-I/part-16>).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the 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.

You may contact our FOIA Public Liaison at (571) 776-2300 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448; or facsimile at (202) 741-5769.

If you are not satisfied with DEA's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you have any questions regarding this letter, you may contact FOIA/PA Unit representative Melanie M. Hoyos at (571) 776-3008 or via e-mail at Melanie.M.Hoyos@dea.gov.

Sincerely,

Kelleigh A. Miller, Chief
Freedom of Information and Privacy Act Unit
Administrative and General Law Section
Office of Chief Counsel