



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

June 26, 2013

MEMORANDUM

For Meeting of 6-27-13

TO: The Commission Secretary

SUBMITTED LATE

FROM: Anthony Herman (A) H
General Counsel

SUBJECT: Enforcement Procedure 2011-XX: Requests for Information from the
Department of Justice and other Criminal Law Enforcement Agencies

Attached is a draft September 2011 memo prepared by staff for Kathleen Guith regarding a proposed Enforcement Procedure 2011-XX: Requests for Information from the Department of Justice and other Criminal Law Enforcement Agencies. The Commission has requested the document be placed on the agenda for June 27, 2013.

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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2
3 **MEMORANDUM**

4
5 **TO:** Enforcement Staff
6
7 **FROM:** Kathleen Guith
8 Acting Associate General Counsel for Enforcement
9
10 **SUBJECT:** Enforcement Procedure 2011-XX: Requests for Information from the
11 Department of Justice and other Criminal Law Enforcement Agencies

12
13 **I. Introduction**

14
15 During Executive Session meetings on July 19, August 2, and August 30, 2011,
16 Commissioners raised questions about the Office of the General Counsel's ("OGC")
17 handling of requests for information to the Commission from the Department of Justice
18 ("DOJ"). The questions arose from a specific matter, but more general questions about
19 OGC's policy for handling these requests were raised. OGC explained it follows a
20 general practice of handling such inquiries from DOJ, but that it did not have a written
21 policy detailing its practice.

22
23 After conducting additional research, OGC confirmed that its current practice has
24 generally been:

- 25
26
- 27 • To share information with DOJ freely when it is requested; this furthers
28 cooperation between the agencies as envisioned by DOJ and FEC's Memorandum
29 of Understanding;
 - 30 • To require that DOJ request documents or testimony from the Commission in
31 writing, to generally comply with such written requests, and to notify the
32 Commission of such a request in relevant General Counsel's Reports;
 - 33 • To recommend whether the Commission should comply with Grand Jury
34 subpoenas and to circulate such recommendations on tally vote; and
35
 - 36 • To require written requests from state or local law enforcement agencies asking
37 for information from the Commission and to notify the Commission of such
38 interactions through informational memos.
39
40

1 OGC's information-sharing practice with DOJ has evolved over time. Before
2 2001 and 2002, OGC required DOJ to issue "friendly" subpoenas before handing over
3 any documents. These subpoenas were considered "friendly" because the Commission
4 intended to comply with the requests, but preferred to disclose documents through a more
5 formal channel. OGC has handled "friendly" subpoenas in this manner since at least
6 1993, as evidenced by Enforcement Procedure 1993-22, which addresses the handling of
7 subpoenas for information from DOJ.
8

9 The practice of requiring a "friendly" subpoena changed under General Counsel
10 Larry Norton. Mr. Norton did not believe that a subpoena was necessary for the
11 Commission to provide information to DOJ or other law enforcement agencies. More
12 specifically, because the Act's confidentiality provision prohibits the release of
13 information to the "public," *see* 2 U.S.C. § 437a(12), and DOJ and other law enforcement
14 agencies do not appear to be part of the "public" for purposes of the Act, the Commission
15 may share relevant information with these agencies when appropriate. By sharing
16 information with DOJ more freely, the Commission hoped that it would gain more
17 frequent cooperation from DOJ. The change in practice appears to have been discussed
18 at an Executive Session with the Commissioners present, but that decision is not reflected
19 in a written document.
20

21 OGC's current practice in handling requests from state and local law enforcement
22 agencies is slightly different. OGC has typically been more reluctant to disclose
23 information to state and local law enforcement, and when it has done so it typically alerts
24 the Commission to the disclosure through an informational memo. *See, e.g.*, MUR 5380
25 (Delay Congressional Committee) (2006) (OGC informed Commission that state
26 prosecutor had asked for all files from matter but Commission denied request); Audit of
27 ARMPAC (2002) (local district attorney requested interview with Audit Chief; OGC
28 informed Commission and Commission denied request). OGC has treated requests from
29 state and local law enforcement agencies differently because (1) there are significantly
30 more state and local law enforcement agencies than federal agencies, and granting every
31 request could place undue burden on the Commission and its staff; (2) OGC does not
32 have the same developed relationship with state or local prosecutors, and they may be
33 less aware of the Act's confidentiality requirements; and (3) requests from state and local
34 law enforcement agencies are usually for information that would support allegations
35 other than campaign finance violations (i.e., embezzlement from local campaigns).
36

37 Since the change in practice around 2002, the Commission, through OGC, has
38 had a number of opportunities to cooperate with DOJ and other state and local law
39 enforcement agencies. Most frequently, DOJ has asked the Commission for information
40 pertaining to one or more respondents in an open matter. In these instances, DOJ may be
41 seeking responses, deposition transcripts, or even the General Counsel's Reports. *See*
42 [REDACTED] MUR 6054 (Buchanan); MUR
43 5924 (Nguyen); [REDACTED] MUR 5187 (Mattel, Inc.);
44 MURs 5069/5132 (Acevedo-Vila); and [REDACTED]. In
45 these matters, OGC provided the requested documents to DOJ upon a written request. In
46 some instances, OGC notified the Commission through email, *see* [REDACTED]

1 [REDACTED], or in the First General Counsel's Report. See [REDACTED]
2 [REDACTED]. In other matters, OGC did not inform the Commission of the
3 request from DOJ. See MUR 5924 (Nguyen). With respect to the audit process, OGC
4 has submitted an informational memo to the Commission where DOJ requested
5 information regarding an ongoing audit. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8

9 **II. Procedure**

10
11 In order to more efficiently and effectively handle requests from DOJ and state
12 and local law enforcement agencies, the following Enforcement Procedure should be
13 consulted when staff in the Enforcement Division are approached for information in a
14 Commission matter.

15 16 **A. Grand Jury Subpoenas**

17
18 In the event that OGC receives a subpoena from a grand jury for Commission
19 documents, Commission approval must be obtained before providing the documents. A
20 memorandum should be prepared with appropriate recommendations.
21

22 **B. Written Requests for Information from the Department of Justice in** 23 **Commission Matters**

24
25 In the event that OGC receives a written request from the Department of Justice
26 (or any component or sub-component, such as the Federal Bureau of Investigation) for
27 information in a Commission matter (including MURs, pre-MURs, Audits, etc.),
28 approval should be obtained from the Associate General Counsel for Enforcement (or his
29 or her delegate) before providing the documents.
30

31 An informational memorandum should be prepared that informs the Commission
32 of the request from DOJ, identifies the documents to be provided, and alerts the
33 Commission of the date on which disclosure is to occur.
34

35 **C. Oral Requests for Information from the Department of Justice in** 36 **Commission Matters**

37
38 In the event that OGC receives an oral request from the Department of Justice (or
39 any component or sub-component, such as the Federal Bureau of Investigation) for
40 information in a Commission matter (including MURs, pre-MURs, Audits, Etc.), OGC
41 may inform DOJ orally of the existence and the status of the matter, but should inform
42 DOJ that any requests for specific information or documents should be made in writing.
43

44 OGC should inform the Commission of such requests in the next appropriate
45 General Counsel's Report or Memorandum to the Commission if the request is deemed
46 relevant to a potential violation of the Act.

1
2 **D. Department of Justice Requests to Hold an Investigation in Abeyance**
3

4 In the event that OGC receives a request from the Department of Justice (or any
5 component or sub-component, such as the Federal Bureau of Investigation) asking that
6 the Commission hold an investigation in abeyance, DOJ should provide the request in
7 writing. Moreover, OGC should prepare an informational memorandum that notifies the
8 Commission of the abeyance request. OGC should include in the informational memo
9 any statute of limitations issues that might be impacted by the proposed abeyance.
10

11 **E. Requests for Information from State and Local Law Enforcement Agencies**
12

13 In the event that OGC receives a written or oral request from a state or local law
14 enforcement agency for information in a Commission matter (including MURs, pre-
15 MURs, Audits, etc.), approval should be obtained from the Associate General Counsel
16 for Enforcement (or his or her delegate) before providing the documents.
17

18 An informational memorandum should be prepared that informs the Commission
19 of the request from the state or local law enforcement agency, identifies the documents to
20 be provided, and alerts the Commission of the date on which disclosure is to occur. If
21 information is requested by subpoena, then Commission approval should be obtained
22 before providing the documents. A memorandum should be prepared with appropriate
23 recommendations.
24

25 **F. Request for Testimony of Commission Staff, Either as an Expert or Fact
26 Witness**
27

28 In the event that OGC receives a request from DOJ for Commission staff to testify
29 (or otherwise provide information as part of an investigation), approval should be
30 obtained from the Associate General Counsel for Enforcement (or his or her delegate)
31 before providing testimony. If the request is for testimony from a staff member not
32 within the Enforcement Division, the Associate General Counsel for Enforcement (or his
33 or her delegate) shall consult with the appropriate manager of that staff person.
34

35 An informational memorandum should be prepared informing the Commission of
36 the request, identifying the substance of the testimony sought, and alerting the
37 Commission of the date and location during which the testimony will be given.
38

39 In the event that OGC receives a request from a state or local law enforcement
40 agency for Commission staff to testify, or otherwise provide information as part of an
41 investigation, approval should be obtained from the Associate General Counsel for
42 Enforcement (or his or her delegate) before providing testimony. If the request is for
43 testimony from a staff member not within the Enforcement Division, the Associate
44 General Counsel for Enforcement (or his or her delegate) shall consult with the
45 appropriate manager of that staff person. However, the Associate General Counsel for
46 Enforcement (or his or her delegate) may decline to make the staff person available

1 unless the testimony involves potential violations of the Act and the providing of such
2 testimony does not place an undue burden on Commission resources.

3

4 If such testimony is provided, an informational memorandum should be prepared
5 informing the Commission of the request, identifying the substance of the testimony
6 sought, and alerting the Commission of the date and location during which the testimony
7 will be given.

8

9 **G. Appropriate Confidentiality Disclaimers**

10

11 When forwarding the documents to a Grand Jury, DOJ, or a state or local law
12 enforcement agency, every page of each document provided should be stamped
13 "CONFIDENTIAL." An appropriate cover letter detailing the confidentiality
14 requirements of 2 U.S.C. § 437g(a)(12) and 2 U.S.C. § 437g(B)(i) should accompany
15 each document disclosure.

16

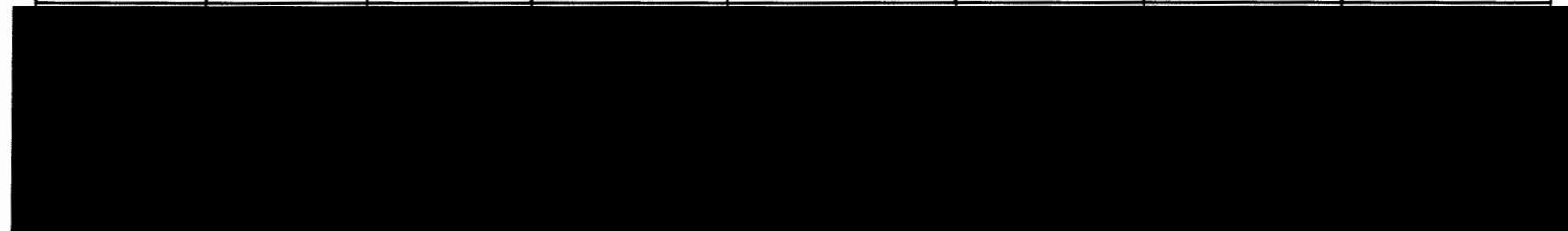
17 **III. Conclusion**

18

19 Enforcement Division staff should follow this Enforcement Procedure, but where
20 significant or unexpected issues arise the Associate General Counsel for Enforcement
21 should be consulted.

DOJ REQUESTS FOR INFORMATION EXAMPLE MURS

MUR	Who requests information?	What type of information is requested?	How is it (must it be) requested?	At what stage of our process?	At what stage of DOJ matter?	What does OGC do?	Commission Involvement
[REDACTED]							
6054 (Vern Buchanan)	DOJ (Public Integrity)	[REDACTED]	Informally, via phone.	After investigation, before and after PC Report	[REDACTED]	Disclose to DOJ with letter	[REDACTED]
5924 (Tan Nguyen)	DOJ (USA for E.D. Calif.)	[REDACTED]	Via phone (check with RQL)	OGC was "standing down" pending criminal matter	[REDACTED]	Disclose to DOJ with letter	No



DOJ REQUESTS FOR INFORMATION EXAMPLE MURS

5187 (Mattel, Inc.)	DOJ	[REDACTED]	Informally through phone and email contact.	Investigation stage	[REDACTED]	Information disclosed.	[REDACTED]
5069/5132 (Acevedo Vila)	DOJ (FBI Agent)	[REDACTED]	Phone call.	Post-closing	?	Information disclosed.	[REDACTED]
Derrick Shepherd Campaign Committee 2006 Audit	DOJ (USA for E. D. of La.)	[REDACTED]	Initially issued grand jury subpoena but withdrawn after consultation with OGC; OGC informed DOJ that formal process not necessary	During ongoing Audit	[REDACTED]	Information disclosed.	[REDACTED]

**DOJ REQUESTS FOR INFORMATION
EXAMPLE MURS**

