



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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## AGENDA ITEM

June 26, 2013

For Meeting of 6-27-13

### MEMORANDUM

TO: The Commission Secretary

FROM: Anthony Herman  
General Counsel

AH

SUBJECT: Requests for Records or Information from Federal, State and Local  
Government Entities

**SUBMITTED LATE**

Attached is the June 14, 2012, memo from Daniel A. Petalas to Enforcement Staff regarding Requests for Records or Information from Federal, State and Local Government Entities. The Commission has requested the document be placed on the agenda for June 27, 2013.

Attachment



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** Enforcement Staff

**FROM:** Daniel A. Petalas  
Associate General Counsel for Enforcement

**SUBJECT:** Requests for Records or Information from Federal, State, and Local  
Government Entities

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Absent contrary instruction from this Office, Enforcement Division counsel who receive a request for documents or information relating to FEC matters from the Department of Justice or any other federal, state, or local government entity must proceed as follows:

- I. **Requests from the U.S. Department of Justice (DOJ) or Its Components**
  - A. **Requests for Information About the Existence or Current Status of Enforcement Matters**
    - Enforcement Division counsel ("Staff") may provide information to a representative of DOJ or its components about the existence or status of closed or pending enforcement matters, whether made orally or in writing. Staff may describe the nature of the allegation, including the identity of complainants and respondents, the stage of the proceeding, and the anticipated timeline for any remaining steps in the matter. Absent further direction from the Associate General Counsel (or his or her delegate) (the "AGC"), staff should not provide information regarding anticipated recommendations to the Commission.
    - Staff must document any such communication in a memorandum to file, describing the contact, nature of the request, and any action taken. The memorandum must be provided both to CELA for inclusion in the permanent record of the relevant matter and to the AGC.

**B. Requests for Non-Public Documents from Closed Enforcement Matters**

- Staff may provide a representative of DOJ or its components documents not ordinarily placed on the public record, including investigative materials, from closed Enforcement Division matters. If the request was initially made orally, staff should direct the requestor to make the request in writing before responding.
- Not less than 24 hours before producing any such records, staff must provide written notice to the AGC about the contact, describing the nature of the request and what, if any, records will be produced.
- Staff must further memorialize any production of records in a memorandum to file describing the contact, nature of the request, and any action taken. The memorandum must be provided both to CELA for inclusion in the Voting Ballot Matter folder (“VBM”) and the permanent record of the relevant matter, as well as to the AGC.
- When producing records, staff must adhere to the restrictions discussed below concerning cover letters, document numbering, and confidentiality disclaimers. *See infra* Part V.

**C. Requests for Pre-RTB Pleadings in Open Enforcement Matters**

- Staff may provide a representative of DOJ or its components complaints, responses, and *sua sponte* submissions in open Enforcement Division matters filed during the pre-reason to believe stage. If the request was initially made orally, staff should direct the requestor to make the request in writing before responding.
- Not less than 24 hours before producing any such records, staff must provide written notice to the AGC about the contact, describing the nature of the request and what, if any, records will be produced.
- Staff must further memorialize any production of records in a memorandum to file describing the contact, nature of the request, and any action taken. The memorandum must be provided both to CELA for inclusion in VBM and the permanent record of the relevant matter, as well as to the AGC.
- When producing records, staff must adhere to the restrictions discussed below concerning cover letters, document numbering, and confidentiality disclaimers. *See infra* Part V.

**D. Requests for Information or Records Relating to Enforcement Matters Not Covered Above**

- Staff must obtain the approval of the AGC before responding to any request by a representative of DOJ or its components seeking information or records not identified above. If the request was initially made orally, staff should direct the requestor to make the request in writing before responding.
- In some instances, the AGC may require staff to prepare an informational memorandum to the Commission concerning such a request. If required, the informational memorandum to the Commission should identify the nature of the information or records sought, what response will be provided, and the date on which that response is anticipated. As with other informational memoranda to the Commission, staff should circulate the memorandum to the relevant second-level reviewer prior to submitting to the Commission. Circulation to the Commission should be on a 48-hour basis. No response to the outstanding request may be provided until after the expiration of the period during which the matter is in circulation with the Commission.
- Staff must memorialize any production of records in a memorandum to file describing the contact, nature of the request, and action taken. The memorandum must be provided both to CELA for inclusion in VBM and the permanent record of the relevant matter, as well as to the AGC.
- When producing records, staff must adhere to the restrictions discussed below concerning cover letters, document numbering, and confidentiality disclaimers. *See infra* Part V.

**F. Grand Jury Subpoenas for Documents and Things**

- Commission approval must be obtained before providing documents and other items pursuant to a grand jury subpoena. Staff must prepare a formal memorandum to the Commission with appropriate recommendations.
- The formal memorandum concerning receipt of a grand jury subpoena for documents and things should be circulated on a one-week tally vote basis.

**II. Requests for Information or Records from Non-DOJ Federal Entities and State and Local Government Entities**

- With respect to requests by federal entities not associated with DOJ or state or local government entities, staff must consult with and obtain approval from the AGC before providing any information or records. If the request was initially made orally, staff should direct the requestor to make the request in writing.
- Staff must submit an informational memorandum to the Commission regarding the request from a non-DOJ governmental entity on a 48-hour basis before any records are offered or provided.
- Staff should describe in the relevant memorandum the mission of the requesting governmental entity, its need for the information or records, how that material will be used, and the likelihood that Commission materials could be made public as a result of providing them to the requesting entity.
- If a non-DOJ governmental entity seeks records or information through a subpoena, staff should prepare a formal memorandum to the Commission with appropriate recommendations. If the records or information sought are publicly available, however, then staff may discuss with the requesting entity whether the subpoena should be withdrawn and the records obtained instead from publicly-accessible FEC sources.

**III. Requests to Hold an Enforcement Matter or Investigation in Abeyance**

- Commission approval must be obtained before agreeing to any request from any federal, state, or local governmental entity to hold a matter or investigation in abeyance. Staff must prepare an informational memorandum to the Commission concerning any such request.
- The memorandum must describe the nature of the request, any justifications for granting the request offered by its proponent, the likely time during which a matter is expected to remain in abeyance, what if any effect the proposed abeyance would have with respect to the statute of limitations, and the course of action recommended by the OGC.
- An informational memorandum concerning a request to abate a pending Enforcement Division matter or investigation should be circulated on a one week basis.

IV. **Requests for Testimony of Commission Staff, Either as an Expert or Fact Witness**

- If DOJ or any other federal, state or local governmental entity requests testimony from any Commission staff member, Enforcement Division staff may not make any representation about the availability of any FEC employee to provide testimony in any proceeding or the likelihood that the FEC will produce any such witness. Staff must refer all such requests directly to the AGC.
- As further directed by the AGC, staff should prepare an informational memorandum to the Commission informing it of the request, identifying the substance of the testimony sought, the staff member who is to provide testimony, and the date and location of the testimony to be given. Any such informational memorandum should be circulated on a one week basis.
- Nonetheless, if a request for testimony is made by subpoena, staff must prepare a formal memorandum to the Commission with appropriate recommendations and circulate it on a one-week tally vote basis.

V. **Cover Letters, Document Numbering, and Confidentiality Disclaimers**

- Whenever providing any Commission record in response to a request from an outside government source, unless directed otherwise by the AGC, staff must prepare an appropriate cover letter specifically identifying each record being provided (by their Bates number ranges, if appropriate) and detailing the relevant confidentiality obligations under 2 U.S.C. § 437g(a)(4)(B)(i) and 2 U.S.C. § 437g(a)(12) to the extent those obligations may apply.
- Unless otherwise directed by the AGC, all records produced in response to an outside request must be marked on each page with a readily identifiable numbering system, such as "FEC 0001," "FEC 0002," and so forth.
- When providing documents, every page of each document should be stamped "CONFIDENTIAL," unless the information is from a closed matter file and does not relate to conciliation negotiations under 2 U.S.C. § 437g(a)(4)(B)(i).
- A form cover letter for production of records (Form 134) is maintained at <http://fecas049/FEC/Live/prd/llisapi.dll?func=ll&objaction=overview&objid=1412875>

VI. **Delivering Records to Requestors**

- Staff may email records to outside sources as PDF attachments, but only if done in a manner that complies with the requirements concerning cover letters, page numbering, and confidentiality disclaimers described above. *See supra* Part V.
- When providing documents to an outside government entity, staff should arrange for the recipient to return a signed acknowledgement upon receipt. Staff may use a duplicate of the cover letter for that purpose, or the form of acknowledgement of receipt (Form 120) maintained at <http://fecas049/FEC/Liveprd/llisapi.dll?func=ll&objaction=overview&objid=108127>
- Upon receipt of the signed acknowledgement, staff should submit it to CELA for inclusion in the permanent record and VBM of the relevant Enforcement Division matter.