



FEDERAL ELECTION COMMISSION
Washington, DC 20463

**STATEMENT OF CHAIR DARA LINDENBAUM
CONCERNING THE COMMISSION'S DIRECTION TO THE PRESS OFFICE
CONCERNING THE ACKNOWLEDGEMENT OF COMPLAINTS**

I greatly value the critical role that the press plays in ensuring that information concerning major issues in campaign finance are communicated broadly, accurately, and promptly to the public. I also take seriously my responsibility to uphold the provisions of the Federal Election Campaign Act of 1971, as amended (the "Act") and its implementing regulations. On April 19, 2023, I, along with three of my fellow Commissioners, voted to direct the Press Office to decline to either confirm or deny the agency's receipt of complaints in response to future inquiries.¹ I write to explain the legal justification for my vote and to express my commitment going forward to find ways to advance transparency while complying with the Commission's obligations under its regulations, as they currently exist.

The Commission's relevant regulations, as they currently stand, do not permit the Commission to disclose complaints to the public while the matters are pending before the Commission. Enacted in 1980 to implement amendments to the Act, the relevant regulation provides that, ". . . no complaint filed with the Commission . . . shall be made public by the Commission . . . without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made."² The Explanation and Justification for this regulation explains that this provision "... governs the Commission's entire compliance proceeding until such time as a case is closed."³ Further, when considering this issue in 2006, the Commission's Office of General Counsel concluded that the enforcement process includes "the point that process is triggered up to and including the closing of the matter."⁴ Upon learning that the Commission's Press Office was disclosing the existence of complaints in response to inquiries and that this practice was contrary to Commission regulations and the Commission's Office of General Counsel most recent assessment, I agreed with my fellow Commissioners to take action to align FEC practices with its legal authority.

Specifically, in 2006 the Commission's Office of General Counsel considered whether the Press Office, in response to press inquiries, could acknowledge that a complaint had been filed, and concluded that the Press Office should "decline to confirm or deny the filing of a

¹ See Press Release, FEC approves advisory opinion, Memorandum of Understanding with Department of Justice, FEC (April 19, 2023), <https://www.fec.gov/updates/fec-approves-advisory-opinion-memorandum-of-understanding-with-department-of-justice/>.

² 11 CFR Section 111.21(a).

³ "Explanation and Justification of Regulations Concerning January 8, 1980 Amendments to the Federal Election Campaign Act of 1971", 45 CFR Section 15089 (March 7, 1980).

⁴ See September 22, 2006 Memorandum from the Office of General Counsel to the Commission at 3-4 (attached to Agenda Document No. 23-06-A1), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-23-06-A1.pdf>.

complaint.”⁵ This advice reasoned that “Section 111.21 appears to prohibit the Commission from publicly acknowledging the existence of a complaint.”⁶ While this advice was not incorporated into the Commission’s Press Office practices in 2006, I believe it remains sound legal advice as Commission regulations on this topic have not changed since that time.

Rulemaking efforts to modify the Commission’s regulations on this topic have not been successful. In fact, the Commission issued a Notice of Proposed Rulemaking (NPRM) in 1993 addressing the enforcement confidentiality regulations, including the confidentiality provisions of the Act in the context of acknowledging the filing of a complaint.⁷ Although this NPRM proposed laudable rules to, among other things, permit the Commission to maintain a public file of complaints that had been properly filed before the Commission, no action has ever been taken on those proposals.⁸

As a practical matter, although the Press Office will no longer be providing confirmation when asked about the existence of a complaint, complainants are free to share their complaints with the public. Commission procedures provide for the sending of a notification letter to a complainant following the Office of General Counsel’s receipt and processing of that complaint. A complainant can share that notification letter along with a copy of the complaint. In addition, a complainant can seek a stamped copy of a complaint by delivering a paper copy to the Commission by courier and requesting that the mail room date-stamp that document. I am open to adapting Commission procedures and programs in a manner that expands transparency while complying with Commission regulations, such as by automatically providing complainants with a stamped copy of their complaint along with the notification letter, which Complainants can then choose to share with the public. As noted above, I am also open-minded in considering whether the standing regulation should be modified. I would welcome fresh petitions for rulemaking on this issue with ideas for how the Commission can amend its regulations to allow for greater transparency and accountability.

April 25, 2023

Date



Dara Lindenbaum
Chair

⁵ *Id.* at 4.

⁶ *Id.* at 4.

⁷ *Id.* at 2-3.

⁸ *Id.* It has been approximately thirty years since these issues were considered. It may well be time to revisit some of the proposals in this NPRM as well as others. For example, it may be in the public’s interest and consistent with the statute for the Commission to maintain a database of complaints and eliminate selective confirmation through press office inquiries.