

Federal Election Commission

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the Act to the Attorney General or other law enforcement authorities under 2 U.S.C. 437g(a)(5) and 437d(9). Information contained in FEC systems 2 and 3 contain the working papers of the Commission staff and form the basis for either civil and/or criminal proceedings pursuant to the exercise of the powers and duties of the Commission. These materials must be protected until such time as they are subject to public access under the provision of 2 U.S.C. 437g(a)(4)(B) or 5 U.S.C. 552, or other relevant statutes.

(b)(1) Pursuant to 5 U.S.C. 552a(j)(2), records contained in FEC 12, Office of Inspector General Investigative Files, are exempt from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11) and (f) , and the corresponding provisions of 11 CFR part 1, to the extent this system of records relates in any way to the enforcement of criminal laws.

(2) Pursuant to 5 U.S.C. 552a(k)(2), FEC 12, Office of Inspector General Investigative Files, is exempt from 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), and the corresponding provisions of 11 CFR part 1, to the extent the system of records consists of investigatory material compiled for law enforcement purposes, except for material that falls within the exemption included in paragraph (b)(1) of this section.

(c) The provisions of paragraph (a) of this section shall not apply to the extent that application of the subsection would deny any individual any right, privilege or benefit to which he or she would otherwise be entitled to receive.

[41 FR 43064, Sept. 29, 1976, as amended at 45 FR 21209, Apr. 1, 1980; 60 FR 4073, Jan. 20, 1995; 75 FR 31, Jan. 4, 2010]

PART 2—SUNSHINE REGULATIONS; MEETINGS

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AUTHORITY: 5 U.S.C. 552b.

SOURCE: 50 FR 39972, Oct. 1, 1985, unless otherwise noted.

§ 2.1 Scope.

These regulations are promulgated pursuant to the directive of 5 U.S.C. 552b(g) which was added by section 3(a) of Public Law 94-409, the Government in the Sunshine Act, and specifically implement section 3 of that Act.

§ 2.2 Definitions.

(a) *Commission.* *Commission* means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Commissioner or Member.* *Commissioner or Member* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a), but does not include a proxy or other designated representative of a Commissioner.

(c) *Person.* *Person* means an individual, including employees of the Commission, partnership, corporation, association, or public or private organization, other than an agency of the United States Government.

(d) *Meeting.* (1) *Meeting* means the deliberation of at least four voting members of the Commission in collegia where such deliberations determine or result in the joint conduct or disposition of official Commission business. For the purpose of this section, *joint conduct* does not include, for example, situations where the requisite number of members is physically present in one place but not conducting agency business as a body (e.g., at a meeting at which one member is giving a speech while a number of other members are present in the audience). A deliberation conducted through telephone or similar communications equipment by means of which all persons participating can hear each other will be considered a *meeting* under this section.

(2) The term *meeting* does not include the process of notation voting by circulated memorandum for the purpose of expediting consideration of routine matters. It also does not include deliberations to schedule a meeting, to take action to open or close a meeting, or to release or withhold information, or to

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change the subject matter of a meeting under 11 CFR 2.5, 2.6 and 2.7.

[50 FR 39972, Oct. 1, 1985, as amended at 50 FR 50778, Dec. 12, 1985; 65 FR 9206, Feb. 24, 2000]

§ 2.3 General rules.

(a) Commissioners shall not jointly conduct, determine or dispose of Commission business other than in accordance with this part.

(b) Except as provided in 11 CFR 2.4, every portion of every Commission meeting shall be open to public observation.

(c) No additional right to participate in Commission meetings is granted to any person by this part. A meeting is not part of the formal or informal record of decision of the matters discussed therein except as otherwise required by law. Statements of views or expressions of opinions made by Commissioners or FEC employees at meetings are not intended to represent final determinations or beliefs.

(d) Members of the public attending open Commission meetings may use small electronic sound recorders to record the meeting, but the use of other electronic recording equipment and cameras requires advance notice to and coordination with the Commission's Press Officer.

§ 2.4 Exempted meetings.

(a) *Meetings required by statute to be closed.* Meetings concerning matters specifically exempted from disclosure by statutes which require public withholding in such a manner as to leave no discretion for the Commission on the issue, or which establish particular types of matters to be withheld, shall be closed to public observation in accordance with the procedures of 11 CFR 2.5.

(1) As required by 2 U.S.C. 437g(a)(12), all Commission meetings, or portions of meetings, pertaining to any notification or investigation that a violation of the Act has occurred, shall be closed to the public.

(2) For the purpose of this section, any notification or investigation that a violation of the Act has occurred includes, but is not limited to, determinations pursuant to 2 U.S.C. 437g, the issuance of subpoenas, discussion of referrals to the Department of Justice,

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or consideration of any other matter related to the Commission's enforcement activity, as set forth in 11 CFR part 111.

(b) *Meetings closed by Commission determination.* Except as provided in 11 CFR 2.4(c), the requirement of open meetings will not apply where the Commission finds, in accordance with 11 CFR 2.5, that an open meeting or the release of information is likely to result in the disclosure of:

(1) Matters that relate solely to the Commission's internal personnel decisions, or internal rules and practices;

(i) This provision includes, but is not limited to, matters relating to Commission policies on working conditions, or materials prepared predominantly for internal use, the disclosure of which would risk circumvention of Commission regulations; but

(ii) This provision does not include discussions or materials regarding employees' dealings with the public, such as personnel manuals or Commission directives setting forth job functions or procedures;

(2) Financial or commercial information obtained from any person which is privileged or confidential;

(3) Matters which involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person;

(4) Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(5) Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;