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UNITED STATES OFFICE OF
GOVERNMENT ETHICS



July 25, 2016

VIA ELECTRONIC MAIL ONLY

John Greenwald, Jr.



john@greenewald.com

Tracking No: OGE FOIA FY 16/059

Dear Mr. Greenwald:

The U.S. Office of Government Ethics (OGE) is granting in part and denying in part your Freedom of Information Act (FOIA) request, which was received by the OGE FOIA Office on June 28, 2016. In your request, you asked for “all unpublished memos at OGE, written between 2015 to the date of processing this request, regarding ethics issues or ethics compliance or financial disclosure or divestment issues associated with the US Presidential campaign.”

In response, we are enclosing one responsive document, OGE’s current public financial disclosure review procedures for principle candidates for President or Vice President of the United States.

Our search also found two three-page “write ups” used to brief senior management in preparation for OGE’s reauthorization hearing in December 2015. One of these write-ups concerns the Presidential Transitions Improvements Act of 2015 and the other relates to the work of OGE’s Presidential Nominations Branch. Both write-ups are being withheld in their entirety pursuant to FOIA Exemption 5 as intra-agency predecisional deliberative process material. *See* 5 U.S.C. §§ 552(b)(5). Release of these documents would discourage open and frank discussion on matters of policy between subordinates and superiors and otherwise harm the deliberative process.

We note that OGE has reviewer’s notes pertaining to each financial disclosure report filed by a 2016 presidential candidate. To the extent that these records are responsive, they are being withheld in their entirety pursuant to FOIA Exemptions 5, 5 U.S.C. § 552(b)(5), as inter- and intra-agency predecisional deliberative process material. The notes are an expression of the individual reviewer’s views and not an expression of the agency’s official position. As such, the release of these documents could lead to unnecessary confusion, mislead the public about the filer, and otherwise harm the deliberative process. The records are also withheld pursuant to FOIA Exemption 6, 5 U.S.C. § 552(b)(6), as information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

If you have any questions or wish to discuss any aspect of your request, you may contact me by telephone at (202) 482-9267. As OGE's FOIA Public Liaison, I am available for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. 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, 8601 Adelphi Road-OGIS, 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.

The OGE official responsible for this FOIA determination is the undersigned. In accordance with the FOIA, as codified at 5 U.S.C. § 552(a)(6)(A), and OGE's updated FOIA regulations, at 5 C.F.R. § 2604.304, you may administratively appeal this determination to the Program Counsel, U.S. Office of Government Ethics, 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005-3917. Any such appeal must be in writing and must be sent within 90 days of the date you receive this response letter. If you do appeal, you should include copies of your request and this response, together with a statement of why you believe this initial determination is in error. Also, if you appeal, you should clearly indicate on the envelope and in the letter that it is a "Freedom of Information Act Appeal."

Sincerely,

Rachel Dowell
OGE FOIA Officer

Enclosure

PUBLIC FINANCIAL DISCLOSURE REVIEW PROCEDURES

PRINCIPLE CANDIDATES FOR PRESIDENT OR VICE PRESIDENT OF THE UNITED STATES

(June 2016)

I. APPLICABILITY

The following procedures apply to any candidate for President or Vice-President of the United States determined, without regard to political affiliation, by the Director or the General Counsel to meet the criteria of one of the following groups.

1. **GROUP A:** The candidate satisfies all of the following criteria:
 - a. The Federal Election Commission has determined that the candidate is required to file a public financial disclosure report (OGE Form 278e) as a candidate for President or Vice-President;
 - b. The candidate is seeking nomination by a major party, as defined in 26 U.S.C. §9002(6), for President or Vice-President of the United States; and
 - c. The Director or the General Counsel concludes that the candidate:
 - i. Is likely to qualify, to participate in a nationally televised debate among those seeking nomination by a major party, as defined in 26 U.S.C. §9002(6);
 - ii. Has, during the current election cycle, participated in a nationally televised debate among those seeking nomination by a major party; or
 - iii. Appears generally to have performed during the current election cycle in the polls of several major national news organizations comparably with other principle candidates seeking nomination by a major party, as defined in 26 U.S.C. §9002(6).
2. **GROUP B:** The candidate has been selected for nomination by a major party, as defined in 26 U.S.C. §9002(6) for President or Vice-President of the United States.
3. **GROUP C:** The candidate is otherwise determined by the Director or the General Counsel to be among the principal contenders for the general election to such offices (e.g., the candidate has been registered in a majority of states, the candidate has raised or appears likely to raise \$1,000,000 for the candidate's current campaign, etc.).

II. INTAKE

1. The public financial disclosure reports of candidates for President or Vice President of the United States are received by the General Counsel & Legal Policy Division's Presidential Nominations Branch (PNB).
2. As to each report, PNB determines, in consultation with the Director or the General Counsel, whether the report meets the applicability requirements stated above.
3. If the report does not meet the applicability requirements stated above, PNB refers the report to the Compliance Division's Financial Disclosure Branch (FDB) for expedited processing. FDB processes the report from that point forward. If, however, circumstances change after referral, the FDB Chief may consult with the PNB Chief to determine whether the report should be reassigned to PNB for processing.
4. If the report meets the applicability requirements stated above, PNB assigns the report to an OGE employee in the General Counsel & Legal Policy Division for review and retains first-level responsibility for supervising the review. The review is conducted according to the procedures established in this policy issuance.

III. REVIEW AND INFORMAL ADMENTMENT PROCESS

1. Reasonable efforts are made to review the report and make any amendments informally. The following steps describe the Review and Informal Amendment Process.
2. Within four workdays of assignment, the assigned OGE employee (Reviewer) completes the following steps. If the Reviewer requires additional time for this phase of the review beyond four workdays for an extensive report, the reviewer must contact the supervisor or designated team leader prior to the end of the four-day period. The supervisor or designated team leader may extend the deadline.
 - The Reviewer reviews the report for legal compliance with the Ethics in Government Act of 1978 (EIGA). Consistent with 5 C.F.R. § 2634.605, the Reviewer does not audit the report to ascertain whether the disclosures are factually correct. Disclosures are to be taken at "face value" as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. (Certification signifies that, on the basis of information contained in the report, the filer is in compliance with applicable laws and regulations.)
 - The Reviewer identifies apparent deficiencies in the report and determines whether additional information is required.
 - The Reviewer prepares questions and information requests for the candidate.

- The Reviewer meets with a supervisor or designated team leader to discuss the draft questions and information requests. During this meeting, the questions and information requests are refined and clarified.
 - After obtaining approval from the supervisor or designated team leader, the Reviewer transmits the questions and information requests to the candidate's representative. (This step may require the Reviewer to contact either the Federal Election Commission or the candidate's apparent representative to confirm points of contact and contact information.)
 - During the initial conversation with the candidate's representative, the Reviewer should attempt to provide a basic overview of the process. The Reviewer explains to the representative that any revised or new pages will need to be initialed personally by the candidate. The Reviewer should generally caution against having the candidate initial any pages until a supervisor at OGE has reviewed the pages and provided feedback.
 - The Reviewer informs the candidate's representative that OGE would like to resolve all outstanding issues within 60 days through an informal process, while noting that the report will be released if requested 30 days after receipt by OGE. After 60 days, the Director may commence the formal amendment request process.
 - When transmitting the questions and requests for information to the candidate's representative by e-mail, the Reviewer requests a response confirming receipt by the candidate's representative. If the Reviewer does not receive this confirmation promptly, the reviewer confirms receipt by sending an additional e-mail or telephoning the candidate's representative. The e-mail from the Reviewer and the confirmation by the candidate's representative are retained until all outstanding issues regarding the report have been resolved, unless a referral is made to the Department of Justice.
 - A copy of the initial list of questions and requests for information are saved electronically in the prescribed manner to permit access by the supervisor or designated team leader. This copy of the list of questions and requests for information are retained until all outstanding issues regarding the report have been resolved, unless a referral is made to the Department of Justice.
 - The Reviewer also maintains a timeline of contacts with the candidate and the candidate's representative. This timeline is saved electronically in the prescribed manner to permit access by the supervisor or designated team leader. The timeline is retained until all outstanding issues regarding the report have been resolved, unless a referral is made to the Department of Justice.
3. After transmitting the initial questions, the Reviewer contacts the candidate's representative at least once every two weeks. Before the 30th day after receipt, the reviewer reminds the filer's representative that the report will be released if requested 30 days after receipt by OGE.

4. After transmitting the initial questions, the Reviewer provides a brief written update each week to the supervisor or designated team leader.
5. When the Reviewer concludes that all identified issues in the report have been resolved, the Reviewer submits the report to the supervisor or designated team leader for examination.
6. If the supervisor or designated team leader identifies additional issues or concludes that the previously identified issues have not been satisfactorily resolved, the supervisor or designated team leader will return the report with instructions to the Reviewer.
7. When the supervisor or designated team leader concludes (in consultation with the General Counsel) that all issues have been resolved, the supervisor or designated team leader notifies the Reviewer. The Reviewer then notifies that candidate's representative that the candidate may initial any revised or new pages.
8. After supervisor or designated team leader concludes that all issues have been resolved and the candidate has initialed any revised or new pages, the report is routed up the chain to the Director or General Counsel for certification.
9. If the Director or General Counsel identifies additional issues or concludes that the previously identified issues have not been satisfactorily resolved, the Director or General Counsel will return the report down the chain with instructions to the Reviewer.
10. After the Director or General Counsel concludes that all issues have been resolved, the Director or General Counsel certifies the report and returns it to PNB for processing.
11. The Reviewer notifies the candidate's representative that the report has been certified.
12. PNB scans the report, sends a copy to the FEC, and uploads a copy to FDTS.
13. PNB sends an e-mail to the FDB requesting that they place the Candidate's name on the OGE website.
14. If the report has not been certified after 50 days from receipt by OGE, the escalation procedures are triggered.
15. The Reviewer meets with the supervisor or designated team leader, as well as the General Counsel. They discuss progress on the report.
16. Based on the discussion of progress in the report, the General Counsel determines whether to initiate the Formal Amendment Process. In making this determination, the General Counsel considers such factors as the following:
 - The extent to which the candidate has satisfactorily responded to the initial questions and requests for additional information that the Reviewer transmitted;

- The promptness with which the candidate and the candidate’s representative have responded to follow up questions and requests for information from the Reviewer;
- The degree to which circumstances beyond the candidate’s control have caused required information to be inaccessible by the candidate and the likelihood that the candidate will obtain and release requested information in the immediate future;
- The number of issues that remain outstanding with regard to the report;
- The complexity of the outstanding issues;
- The degree to which the candidate or the candidate’s representative has articulated a plan for resolving the outstanding issues and has demonstrated that resolving the issues is a priority for the candidate; and
- The likelihood that all outstanding issues will be resolved in the near future.

17. If the General Counsel decides not to initiate the Formal Amendment Process at that time, another meeting will be held within 10 days to reassess the appropriateness of initiating the Formal Amendment Process. Additional meetings will be held within every 10 days thereafter.

18. Regardless of the candidate’s progress on the report, the Formal Amendment Process is initiated on the 90th day after OGE’s receipt of the report if any issues remain outstanding.

IV. FORMAL AMENDMENT PROCESS

1. If a decision is made to initiate the Formal Amendment Process, the procedures in this section apply.
2. The Reviewer attempts to notify the candidate’s representative that OGE has initiated the Formal Amendment Process. If the attempt to contact the candidate’s representative is successful, the Reviewer explains that OGE will send a letter initiating the Formal Amendment Process in 10 days if all outstanding issues are not resolved.
3. If all outstanding issues are not resolved within 5 days of the Reviewer’s attempt to contact the candidate’s representative, the Reviewer and the General Counsel attempt to contact the candidate’s representative. If the attempt to contact the candidate’s representative is successful, the Reviewer and the General Counsel explain that OGE will send a letter initiating the Formal Amendment Process in 5 days if all outstanding issues are not resolved.
4. After expiration of the notice period, the General Counsel sends letter to the Candidate and/or the candidate’s representative. The letter establishes a 30-day deadline for resolving all outstanding issues through a formal amendment. The letter is sent by Certified Mail with return receipt requested. (If the candidate is making progress on the report and resolution of all outstanding issues is imminent, however, the General Counsel may in his or her sole

discretion delay issuance of the letter by up to 5 days upon request by the candidate's representative.)

5. During the 30-day formal amendment request period, the Reviewer attempts to contact the candidate's representative once per week.
6. If all outstanding issues have not been resolved within 2 workdays of the end of the 30-day formal amendment request period, the Reviewer attempts to contact the candidate's representative to remind the representative of the impending deadline.
7. Upon written request by the candidate's representative, the General Counsel may extend the 30-day deadline for good cause shown up to an additional 10 days. Upon a second written request by the candidate's representative, the General Counsel may extend the deadline again for good cause shown up to an additional 5 days.
8. Upon expiration of the deadline, the Director sends written notice to the candidate's representative that the candidate will be referred to the U.S. Department of Justice if all outstanding issues are not resolved within 14 days. The letter is sent by Certified Mail with return receipt requested.
9. Upon issuance of the Director's notice, the Reviewer attempts to contact the candidate's representative at least twice before expiration of the 14-day deadline.
10. The Reviewer prepares the referral package for submission to the U.S. Department of Justice, and on the 7th day after issuance of the Director's notice submits the referral package up the chain to the General Counsel.
11. The General Counsel and the Reviewer meet with the Director on or before the 13th day to review the package.
12. On or before the 14th day after issuance of the Director's notice, the General Counsel notifies the U.S. Department of Justice that a package will be submitted on the 15th day if all outstanding issues have not been resolved. The referral to the U.S. Department of Justice will not include a recommendation as to the action that the U.S. Department of Justice should take.
13. On the 15th day after issuance of the Director's notice, the referral package is transmitted to the U.S. Department of Justice. (If all outstanding issues are resolved before the referral package has been transmitted, the Director may in his or her sole discretion decide not to send the referral package.)
14. After OGE has transmitted the referral package to the U.S. Department of Justice, the Reviewer and the General Counsel make at least one attempt to notify the candidate's representative that OGE has referred the candidate to the U.S. Department of Justice and will send a copy of the referral package to the Candidate.

15. Thereafter, if all outstanding issues are resolved to OGE's satisfaction, OGE will notify the U.S. Department of Justice by letter that all outstanding issues have been resolved. The notice will include a copy of the amended report. The notice to the U.S. Department of Justice will not make a recommendation as to the action that the U.S. Department of Justice should take.

V. DOCUMENTATION

1. Generally, the candidate's public financial disclosure report speaks for itself. If, however, the basis of a determination material to the certification of the report is not apparent on the face of the report, the Reviewer and the supervisor or designated team leader work together to attempt to document in file notes facts they deem necessary to understanding the basis of the certification.
2. File notes are retained for as long as the report is retained.