

FILED
JAMES BONINI
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

2012 APR 27 AM 10:42
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

MARK W. MILLER,)	
)	
Plaintiff,)	
)	Civil Action No. 1:12-cv-242
v.)	
)	Chief Judge Susan J. Dlott
FEDERAL ELECTION COMMISSION,)	
)	ANSWER
Defendant.)	

**DEFENDANT FEDERAL ELECTION COMMISSION'S
ANSWER TO PLAINTIFF'S COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Defendant Federal Election Commission ("FEC" or "Commission") submits its Answer to plaintiff's Complaint for Declaratory and Injunctive Relief. Any allegation not specifically responded to below is DENIED.

1. The Commission lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

2. ADMIT, except the Commission notes that its name is the Federal Election Commission, not the Federal "Elections" Commission.

3. DENIED. This case is moot because the Commission has released records responsive to plaintiff's request under the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 *et seq.*, to the extent required by law.

4. The Commission lacks knowledge or information sufficient to form a belief as to the location of plaintiff's residence, and therefore cannot determine whether venue is proper in this district.

5. ADMIT.

6. The Commission lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

7. The Commission lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

8. The Commission lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

9. The Commission lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

10. The Commission lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

11. The Commission lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

12. The Commission lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

13. The Commission lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

14. The Commission ADMITS that Phil Greenberg requested an Advisory Opinion (“AO”) from the Commission on or about October 7, 2011. The remainder of the paragraph contains plaintiff’s description of the request, which speaks for itself, and therefore no response is necessary.

15. ADMIT.

16. This paragraph quotes 11 C.F.R. § 112.1(f), which speaks for itself, and therefore no response is necessary.

17. ADMIT.

18. This paragraph contains conclusions of law to which no response is necessary.

19. This paragraph quotes 11 C.F.R. § 112.2(a), which speaks for itself, and therefore no response is necessary.

20. The Commission ADMITS that it assigned number 2011-20 to the October 7, 2011, Greenberg letter and caused 2011-20 to be posted on the FEC website on October 18, 2011.

21. This paragraph quotes 11 C.F.R. § 112.3(a), which speaks for itself, and therefore no response is necessary.

22. This paragraph quotes 11 C.F.R. § 112.3(b), which speaks for itself, and therefore no response is necessary.

23. This paragraph quotes 11 C.F.R. § 112.4(a), which speaks for itself, and therefore no response is necessary.

24. ADMIT that the Commission has not issued an advisory opinion in response to the October 7, 2011, Greenberg letter.

25. ADMIT that the Commission did not issue an advisory opinion in response to the October 7, 2011, Greenberg letter because that letter's request for an advisory opinion was withdrawn on November 10, 2011. DENY the suggestion in this paragraph that the Commission has stated that it was unable to approve an advisory opinion in response to the Greenberg letter.

26. ADMIT that the Commission removed the October 7, 2011, Greenberg letter from the FEC website without public explanation, as no such explanation was required.

27. The Commission ADMITS that plaintiff Mark W. Miller tendered a FOIA request to the FEC via letter dated November 23, 2011. The remainder of the paragraph contains plaintiff's characterizations of the FOIA request, which speaks for itself, and therefore no response is necessary.

28. ADMIT that Exhibit B to plaintiff's complaint is a true and accurate copy of the FOIA request from Mr. Miller to the Commission dated November 23, 2011. DENY that the FOIA request was transmitted to the Commission by email on November 13, 2011. The Commission states that it has no record that it received the FOIA request by email, and states that its records show that it received the request only by regular mail on December 5, 2011.

29. This paragraph quotes 11 C.F.R. § 4.7(c), which speaks for itself, and therefore no response is necessary.

30. DENY. Twenty working days after November 23, 2011, was December 22, 2011. The Commission notes that it received plaintiff's FOIA request on December 5, 2011, and that twenty working days after December 5, 2011, was January 4, 2012.

31. ADMIT that the Commission did not specifically notify Mr. Miller that additional time would be "required," but note that the Commission informed Mr. Miller on December 5, 2011, in writing that it "may be able to respond to you more quickly if you are able to state your request more specifically or narrowly. . . ."

32. This paragraph quotes 11 C.F.R. § 4.7(h), which speaks for itself, and therefore no response is necessary.

33. DENY. The Commission fully responded to plaintiff's FOIA request on April 18, 2012.

34. This paragraph quotes 11 C.F.R. § 4.8(a), which speaks for itself, and therefore no response is necessary.

35. ADMIT that on January 9, 2012, Mr. Miller submitted an “appeal” to the Commission (plaintiff’s Exhibit C), but DENY that the Commission had failed to respond to his FOIA request before that date.

36. ADMIT.

37. ADMIT that the plaintiff re-submitted his appeal on February 14, 2012, but DENY that the Commission had failed to respond to his FOIA request before that date.

38. ADMIT.

39. This paragraph quotes 11 C.F.R. § 4.8(f), which speaks for itself, and therefore no response is necessary.

40. ADMIT.

41. ADMIT that the Commission did not specifically notify Mr. Miller that additional time would be “required,” but note that the Commission informed Mr. Miller in writing on April 18, 2012 that it “will process your appeal and will inform you as soon as a decision on the appeal has been made.”

42. ADMIT that plaintiff complied with the requirements of FOIA in making his request dated November 23, 2011, but DENY that he is entitled to the production of any documents beyond those already provided to him by the Commission on April 18, 2012.

43. DENY.

44. DENY the first sentence. This paragraph also contains plaintiff’s requests for relief and proposed conclusions of law, to which no response is necessary. The Commission DENIES that plaintiff is entitled to any relief in this matter.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.

2. This Court lacks subject matter jurisdiction over plaintiff's claim because the Federal Election Commission fully responded to plaintiff's FOIA request on April 18, 2012, rendering plaintiff's claim moot.

WHEREFORE, the FEDERAL ELECTION COMMISSION respectfully requests that this Honorable Court dismiss the Complaint in this matter.

Respectfully submitted,

Anthony Herman
General Counsel

David Kolker
Associate General Counsel

Harry J. Summers
Assistant General Counsel


Benjamin A. Streeter III
Attorney

FOR THE DEFENDANT FEDERAL
ELECTION COMMISSION
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April 27, 2012

CERTIFICATE OF SERVICE

Benjamin A. Streeter III, hereby certifies that on April 27, 2012, he filed the foregoing Defendant Federal Election Commission's Answer to Plaintiff's Complaint for Declaratory and Injunctive Relief with the Clerk of the United States District Court for the Southern District of Ohio by UPS Next Day Air service and that he served a copy via electronic mail delivery on that date to the following counsel of record:

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