



State of Washington
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908
(360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • Email: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

October 18, 2018

The Honorable Bob Ferguson
Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

RE: Referral of PDC Case 41024—*complaint filed against Facebook (2)*

Dear Attorney General Ferguson:

This letter shall serve, pursuant to RCW 42.17A.755 and WAC 390-37-042, as a referral of the above-cited matter, PDC Case 41024, from the PDC to your office for appropriate action under Chapter 42.17A RCW. My referral, in which Judge Anne Levinson (ret.), Chair of the Commission, concurs, is based on PDC staff's assessment of a complaint received by the PDC on September 19, 2018, filed by Eli Sanders against Facebook, as discussed herein (see attached copy).

On September 19, 2018, Mr. Sanders, a reporter with *The Stranger*, filed a formal complaint with the PDC alleging that Facebook did not honor his request for “all information you are legally required to disclose” regarding political advertisements that were “purchased on Facebook’s platforms, including Instagram, with the aim of influencing Seattle’s 2018 referendum on the ‘Employee Hours Tax.’ (Commonly known as the ‘head tax’)” and thus failed to comply with RCW 42.17A.345.

As part of his complaint, Mr. Sanders stated:

- On May 29, 2018, he sent an email to Facebook spokesperson Andy Stone and Facebook’s outside counsel Ben Stafford requesting, in accordance with RCW 42.17A.345 and Seattle Municipal Code 2.04.280, all political ads purchased on Facebook’s platforms with the purpose of supporting or opposing the “head tax.”
- On May 30, 2018, Mr. Sanders received an email response from Mr. Stone directing him to Facebook’s online “archive of ads with political content.” Mr. Sanders reviewed the archived ads, which he stated disclosed some information about the head tax political ads. However, he sent an email responding to Mr. Stone the same day stating that Facebook archived ads “did not offer all of the information a commercial advertiser like Facebook

is required to disclose under Washington State code” and again requesting the information.

- After not receiving a response, Mr. Sanders sent another email on July 12, 2018, following up on his May 29 and 30, 2018, requests for all information Facebook is legally required to disclose about political ads purchased concerning the “head tax.”
- Mr. Sanders stated that, to date, he has not received the required political advertising information from Facebook and they have not responded to his follow-up inquiries other than to suggest he “look at Facebook’s Archive of Political Content Ads.”

As you know, on April 11, 2018, a citizen action notice was filed with the Attorney General's Office (AGO) and the PDC, by a party other than Mr. Sanders, against Facebook, alleging violations of RCW 42.17A.345 for failing to provide political advertising information for Facebook advertisements that were purchased to support or oppose 2017 candidates for Seattle City Council.

The allegations contained in that citizen action notice and associated PDC complaint (PDC Case 34055) were substantially similar to those raised by Mr. Sanders in this complaint. In that matter, your office initiated a lawsuit in Superior Court in the name of Washington State against Facebook, and accordingly PDC staff dismissed the similar complaint pending with the PDC.

Based on PDC staff’s initial assessment of the Sanders complaint, it appears that Facebook may have committed multiple violations of RCW 42.17A, involving matters related to or substantially similar to your office’s pending lawsuit against Facebook. Because of the likely relevance of this complaint to the litigation, and the fact that these allegations, if proven, may warrant additional authority to ensure compliance and reach an appropriate resolution, particularly in light of that litigation, I am referring this matter to your office, pursuant to RCW 42.17A.755(4).

If you have any questions, please do not hesitate to contact me directly at (360) 664-2735.

Sincerely,



Peter Lavalley
Executive Director

cc: PDC Commissioners
Linda Dalton, Sr. Assistant Attorney General, Campaign Finance Unit
Ben Stafford, Counsel for Respondent
Eli Sanders, Complainant
Wayne Barnett, Executive Director, Seattle Ethics and Elections Commission

Complaint Description

File a Formal Complaint - Eli Sanders

Eli Sanders (Wed, 19 Sep at 3:09 PM)

On May 29, 2018, I sent a formal request by e-mail to Facebook spokesperson Andy Stone and Facebook attorney Ben Stafford asking for "all information you are legally required to disclose, under Seattle Municipal Code 2.04.280 and Washington State law (RCW 42.17A.345), regarding... all [political] ads purchased on Facebook's platforms, including Instagram, with the aim of influencing Seattle's 2018 referendum on the 'Employee Hours Tax.' (Commonly known as the 'head tax.')

Seattle Ethics and Elections Director Wayne Barnett was also included on this e-mail.

The next day—May 30, 2018—Facebook spokesperson Stone responded by e-mail and pointed me to Facebook's online "archive of ads with political content," which, while offering some transparency around political ads, does not offer all of the information a commercial advertiser like Facebook is required to disclose under Washington State code.

I informed Stone, Stafford, and Barnett of this by e-mail that same day. (May 30, 2018.)

Facebook did not offer me any additional information beyond what's available in its online "archive of ads with political content."

On July 12, 2018, I sent another e-mail to Stone, Stafford, and Barnett. It read:

"Hi Andy,

I wanted to follow up on my May 29, 2018 request (below) for all information Facebook is legally required to disclose about political ads purchased to influence Seattle's 2018 "head tax" referendum.

To date, I've received no response beyond your suggestion that I look at Facebook's Archive of Political Content Ads.

As I've pointed out (also below), Facebook's Archive of Political Content Ads does not provide all the information that's legally required to be disclosed under Seattle and Washington State laws (SMC 2.04.280 and RCW 42.17A.345).

Recent disclosures by the "No Tax on Jobs" campaign, which opposed Seattle's head tax, show that the campaign purchased Facebook ads through a Pennsylvania-based firm called Awareness Analytics Partners.

<http://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100843255>

Without modifying my May 29, 2018 request, I would point out that this particular disclosure by the "No Tax on Jobs" campaign concerns merely \$1,250 in Facebook political ads.

Are you able to give me all legally required information on these specific purchases of Facebook ads, in accordance with the above-mentioned Seattle and Washington State laws?"

Facebook never responded to this e-mail, so on July 23, 2018 I shared the entire e-mail chain with Public Disclosure Commission spokesperson Kim Bradford and asked: "Is there something the PDC can do to encourage their prompt compliance?"

On or around July 25, 2018, the PDC sent a letter to Facebook outlining the requirements of state code. "We ask that you promptly provide the information to Mr. Sanders that is required by Washington state law and rule," the letter from the PDC to Facebook said.

Still, Facebook never contacted me.

On September 7, 2018, in response to a demand from Seattle Ethics and Elections Executive Director Wayne Barnett, Facebook attorney Ben Stafford e-mailed Barnett specific details about Seattle "head tax"-related ad purchases.

These details are not available to the public in Facebook's "archive of ads with political content."

Facebook did not provide any of these details to me, although I had requested them more than three months earlier.

By this point, Facebook had been urged by the PDC to respond to my May 29, 2018 request and had been reminded by Barnett (in an August 1, 2018 letter) that Seattle law "requires that this information be provided in the first place to the public."

On September 17, 2018 I published the following story on the web site of *The Stranger*, where I work as associate editor:

<https://www.thestranger.com/slog/2018/09/17/32469432/facebook-continues-to-defy-washington-state-law-on-political-ad-disclosure>

As that story explains:

More than three months ago, *The Stranger* asked Facebook for all the information it's **legally required to disclose** about political ads that were purchased to influence this spring's raging fight over the Seattle "Amazon Tax."

Since then, election officials in Seattle and Olympia have made clear to Facebook that it needs to turn over the data. But despite these demands, the company still hasn't sent *The Stranger* anything—even though recent communications between Facebook and the Seattle Ethics and Elections Commission make clear the company is able to provide the data in question.

As the Public Disclosure Commission stated in its July 25, 2018 letter to Facebook, Washington State law and rule require commercial advertisers like Facebook to provide information about political ads to members of the public "promptly upon request."

Given that I've still received no response from Facebook, and given that it's now been well over three months since I first requested this particular political ad information from Facebook, I am concerned that the "promptly upon request" provision of Washington State code is being violated by Facebook.

To promote the public's right to inspect commercial advertisers' documents and books of account related to local political ads, I request that the PDC determine whether Facebook has responded "promptly" in this instance.

If Facebook has not responded "promptly," I request that the PDC act in the public interest to enforce compliance with Washington State rule and law.

What impact does the alleged violation(s) have on the public?

Under Washington State law, the public is entitled to review a commercial advertiser's documents and books of account relating to political advertising the commercial advertiser has sold targeting this state's elections.

As the Public Disclosure Commission itself explained in a July 25, 2018 letter to Facebook:

"Pursuant to the statute, commercial advertisers are required to allow public inspection of documents and books of account that show:

The names and addresses of persons from whom it accepted political advertising or electioneering communications;

The exact nature and extent of the service rendered; and

The total cost and the manner of payment for the services.

The commission identified specific requirements for digital communication platforms in its emergency rules that took effect June 7. WAC 390-18-050 requires that such platforms must provide an approximate description of the geographic locations and audiences targeted, and total number of impressions generated by the advertisement or communication.

The commission further required commercial advertisers to provide this information promptly upon request, if it is not available in person during normal business hours or online at the advertiser's website."

List of attached evidence or contact information where evidence may be found.

I've already shared relevant evidence with PDC spokesperson Kim Bradford:
kim.bradford@pdc.wa.gov.

List of potential witnesses with contact information to reach them.

Kim Bradford, PDC spokesperson: kim.bradford@pdc.wa.gov

Ben Stafford, attorney for Facebook: BStafford@perkinscoie.com

Wayne Barnett, Executive Director of the Seattle Ethics and Elections Commission:
wayne.barnett@seattle.gov

Andy Stone, Facebook spokesperson: astone@fb.com

Complaint Certification:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.