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Illustration

- 1 Record of Outside Contact

.1 PURPOSE AND SCOPE

The purpose of this chapter is to describe the Commission's system for handling correspondence. Information about format standards for all outgoing letters and inter-office or inter-agency correspondence is in the Correspondence Manual.

This chapter explains the basic policy for responding to general inquiries, correspondence, and disclosure of information to persons outside the Commission. See OM Ch. 14 for additional information on liaison with other government agencies and OM Ch. 15 for additional information on access to Commission files and FOIA and Privacy Act procedures. Guidelines and procedures for drafting staff opinion letters and advisory opinions are found in OM Ch. 8.

.2 CONSUMER COMPLAINT SYSTEM

The Consumer Complaint System (CCS) is used to control and track correspondence received by the Commission. The system can record the identity of the person responsible for responding to the letter; name and address of the writer; name of the company complained about; type of alleged violation and product or service; Commission program related to the subject of the complaint; date of the letter; and dates on which the letter was received, assigned to staff, and answered.

.2.1 CORRESPONDENCE STATISTICS

CCS contains information about all correspondence received by the Commission, including the Chairman's correspondence and congressional inquiries. CCS data includes the statutes allegedly violated and the products or services involved with the violations. Call the Information Management Branch or the Information Center for instructions.

.3 ROLE OF PRIMARY ORGANIZATIONS PROCESSING CORRESPONDENCE**.3.1 INFORMATION SERVICES DIVISION**

The Correspondence Section in the Information Services Division, receives all correspondence addressed in a general way to the Commission at headquarters. It does not receive congressional correspondence or mail addressed to individuals or regional offices. The Section responds to letters or acknowledges and forwards the letter to the appropriate division, regional office, or staff person for response. Program advisors are responsible for providing the Section with standard format response letters and paragraphs. The Section serves as the central point of letter control, filing, and correspondence statistics.

.3.2 OFFICE OF THE SECRETARY

The Mail Room delivers all White House and congressional correspondence, except that addressed to individual Commissioners, to the Congressional Correspondence Branch in the Office of the Secretary to be opened, processed, controlled, and routed to the responsible bureau. (See Correspondence Manual Ch. 4)

.3.3 REGIONAL OFFICES

Correspondence received in regional offices is acknowledged or answered by staff in each of the regional offices. The Consumer Complaint System as described in .3.1 above is used for control, coding, processing, and filing.

.3.4 BUREAUS

The Bureau of Consumer Protection Information Processing Center and the Bureau of Competition Office of the Assistant Director for Evaluation receive and initially process correspondence addressed to each respective Director. The Consumer Complaint System is available for correspondence received by any Commission employee.

.4 TERMINOLOGY AND POLICY**.4.1 ACKNOWLEDGEMENT OF CORRESPONDENCE**

An acknowledgement should be sent when a substantive reply cannot be prepared within 17 calendar days from the day of receipt.

4.2 SUBSTANTIVE RESPONSE

A substantive response explains such things as the responsibility of the Commission, limits of involvement, current Commission action about the general nature of the matter, and possible course of action the individual might pursue. The letter should say that the FTC is not empowered to act as a private attorney nor can staff intervene on behalf of an individual.

4.3 USE OF STANDARD LANGUAGE PARAGRAPHS OR LETTERS

Staff should develop standard language paragraphs and letters for personal use when a particular question or issue recurs frequently. The Program Advisor is responsible for developing standard language paragraphs and letters for the Correspondence Section to use in responding to general complaints and inquiries concerning cases or projects. The complete collection of standard language is available to staff from the Information Management Branch.

5 PROCEDURES FOR PROCESSING WHITE HOUSE AND CONGRESSIONAL CORRESPONDENCE

See the Correspondence Manual Ch. 4.

6 PROCEDURES FOR PROCESSING COMPLAINTS AND INQUIRIES

.6.1 DEFINITION

Mail containing only the general address of the Commission is forwarded to the Correspondence Section in the Information Services Division. The staff identifies the subject matter of the letters and retains for processing in the Correspondence Section all consumer complaints; other mail is routed to the appropriate office without further attention. Requests for publications are routed to

the Public Reference Section.

.6.2 PROCESSING

When the subject matter of a letter is identified, it is assigned to a person in the Correspondence Section, particular bureau, division, or office. The content of the letter is analyzed, the alleged violation or other substantive information is noted, and a response is prepared using standard language paragraphs or letters.

Other letters not given a substantive response by the Correspondence Section are acknowledged and a copy routed to the appropriate bureau or office, where the letter is then assigned for substantive response. A transmittal is attached to the routed letter by the Correspondence Section. Also attached is a record of any previous relevant correspondence found if there was a correspondence search (see .6.3 below).

.6.3 CORRESPONDENCE SEARCH

When a letter refers directly or indirectly to a previous letter from the same writer, the Correspondence Section searches CCS and retrieves information about the processing of the other letter(s) including the content of the reply or other action taken. This information is included on or with the transmittal slip when the letter is forwarded to a bureau or office for response. Staff receiving correspondence not processed through the Correspondence Section can call the Information Management Branch or the Information Center for instructions.

.6.4 TIME LIMITS

The standard time for processing letters in the Correspondence Section is 17 calendar days from the day of receipt, whether the letter is given a response, is acknowledged and routed, or not given a response because the original copy of the letter is not addressed to the FTC.

.6.5 FILING

The original of all letters processed in the Commission are filed and retained by the processing organization for one year after the date entered on CCS. The information in the CCS is being kept indefinitely (see .2 above). Any original documents submitted by the complainant, e.g., copies of contracts, etc. must be returned to the writer.

.7 REFERRALS

.7.1 OTHER UNITS OF COMMISSION

Complaints or inquiries referred by one unit of the Commission to another should be acknowledged prior to referral with a copy of the acknowledgement serving as the transmittal to the receiving unit. The referring unit should make no commitment that the receiving office will respond or take any other action.

.7.2 OTHER GOVERNMENT AGENCIES

Complaints or inquiries that are referred to other federal, state, or local agencies should be acknowledged, with a copy of the acknowledgement serving as the transmittal to the receiving agency. Staff should refer consumer complaint letters to local or state consumer protection agencies when it appears that local or state action is warranted and when no immediate Commission action is contemplated or if consumer redress is not likely to be sought in a pending Commission proceeding. (See .8.2 below.) Rule 2.2(d)

.7.3 NONGOVERNMENTAL ORGANIZATIONS AND BUSINESS CONCERNS

Referral of complaints to nongovernmental organizations, such as the Better Business Bureau, requires the consent of the writer. It may be preferable to respond by providing the name and address of the organization and suggesting direct contact.

As resources permit, offices receiving consumer complaints may refer complaints to the subject

business concern with the suggestion that the complaint be reviewed. The referral letter should make it clear that the Commission has reached no conclusions about the merits of the complaint and reserves the right to take such further action as may be appropriate. This procedure is ordinarily appropriate only where it appears that a breakdown in communications has occurred and that the complaint will be resolved if brought to the attention of the business concern.

.8 POLICY GUIDELINES FOR PREPARING SUBSTANTIVE RESPONSES

.8.1 LEGALITY OF PRACTICES OR APPLICABLE LEGAL PRINCIPLES

In responding to inquiries regarding the legality of practices, the staff should make it clear that any views or opinions expressed are those of the staff and are not binding on the Commission. If the Commission has issued an opinion, interpretation, or other public statement on the question, a copy of the public statement should be furnished to the writer. Staff should limit their opinions to applications of the statutes or rules enforced by the Commission.

.8.2 JURISDICTION OVER SUBJECT MATTER

Because of the Commission's broad jurisdiction, staff should avoid unqualified statements that the Commission does not possess jurisdiction over the subject matter unless the Commission has been specifically excluded by law from dealing with the subject matter. Staff should make it clear, when referring a letter to another agency that has sole or concurrent jurisdiction over the subject matter, that the letter is being referred to another agency because the subject matter is of primary concern to that agency. Staff should make no commitment of action by the other agency.

.8.3 PRIVATE CONTROVERSY VS. BROAD PUBLIC INTEREST

Although the Commission has authority under Section 19 of the FTC Act to seek consumer redress, it will not, ordinarily, intervene in isolated or individual consumer disputes.

.8.4 AVAILABILITY OR LIKELIHOOD OF RELIEF

.8.4.1 U.S. District Court Proceeding for Consumer Redress

In response to inquiries regarding the likelihood of suits by the Commission for consumer redress, the staff should not venture any predictions, but may outline the general procedures followed. (See OM Ch. 11.)

.8.4.2 [Reserved]

.8.4.3 Private Civil Suit for Injury

If it appears that a complainant may have a private course of action, the suggestion may be made that a private attorney be consulted. If there is some question about the ability of the writer to afford an attorney, the suggestion may be made that the assistance of legal aid groups or other community sources of low-cost or free legal assistance be sought. The names and addresses of such sources can be furnished. The complainant may also be advised about the possibility of filing an action in small claims court, if available in the community, in instances where the

amount in dispute appears to fall within that court's monetary jurisdiction. No opinion should be expressed about the merits of the writer's case.

.8.4.4 Private Civil Suit for Treble Damages

Complainants may be advised of the availability of private enforcement actions under the antitrust laws but without any discussion of the merits of a suit.

.8.4.5 Private Class Action Suit

Complainants may be advised of the possibility of exercising their rights through a private class action but without any discussion of the merits of such suit.

.8.5 UNLIKELIHOOD OF COMMISSION ACTION ON COMPLAINT BECAUSE OF RESOURCE COMMITMENTS OR LACK OF PUBLIC INTEREST

When a complainant inquires as to the likelihood of Commission action, and it appears that a potential violation of the laws enforced by the Commission may be involved but that no action will be taken because of established priorities, lack of resources, insufficient public interest, or other reasons, the staff may advise the complainant it appears unlikely that any action will be taken at this time.

.8.6 AVAILABILITY OR APPLICABILITY OF STAFF OPINION LETTERS AND ADVISORY OPINIONS

When an inquirer requests advice about the legality of a proposed course of action, the writer should be informed that the staff may furnish a nonbinding staff opinion letter regarding such matters. Requests for staff opinion letters should be referred to the division heads. The writer may also be advised of the availability of the Commission's formal advisory opinion procedures (Rules 1.1-1.4) and furnished a copy of those procedures. (See OM Chs. 8 and 12.6.)

.8.7 FREEDOM OF INFORMATION ACT PROCEDURES

Inquirers requesting information about access under the FOIA should be sent a copy of Rule 4.11. (See OM Ch. 15.)

.8.8 STAFF ADVICE CONCERNING IMPORT OF PUBLISHED COMPLAINTS, RULINGS

Caution must be exercised in commenting on or interpreting Commission complaints, orders, trade regulation rules (TRRs), and other published rulings of the Commission. Requests for comments or interpretations should ordinarily be referred to the office or staff member directly concerned with the matter in question. In any event, any comments or interpretations must be accompanied by the caveat that the views expressed constitute staff opinion not binding on the Commission. In any instance when the Commission has issued an opinion or interpretation on the question raised, the inquiring party should be furnished a copy or advised where one can be obtained.

.9 POLICY RE: DISCLOSURE OF INFORMATION

.9.1 DISCLOSURE THAT GENERAL PRACTICES COMPLAINED OF ARE UNDER INVESTIGATION

When complaints and inquiries are received expressing concern about the existence of a general practice but not focusing upon any individual proposed respondent and the Commission has initiated an investigation into the practice in question and issued a news release announcing it, staff may advise of its existence and furnish a copy of the news release. If no announcement of the investigation has been made, staff should not indicate that an actual investigation is underway, except when necessitated by exigencies of investigation (see paragraph .9.3.4 below). The complainant or inquirer may be advised that the practice in question is of concern and the information furnished will be added to the files for appropriate consideration.

.9.2 DISCLOSURE THAT GENERAL PRACTICES COMPLAINED OF ARE SUBJECT OF PROPOSED TRADE REGULATION RULE PROCEEDINGS

If the Commission has announced a proposed TRR pertaining to the practices complained about, the complainant or inquirer should be advised that the rulemaking proceeding has commenced and of the general substance of the proposed rule.

.9.3 DISCLOSURE OF IDENTITY OF PROPOSED RESPONDENT IN AN ACTIVE INVESTIGATION**.9.3.1 In Response to General Inquiry or Complaint**

Unless the Commission has publicly announced the identity of a proposed respondent, or as otherwise provided under OM Ch. 3.3.3.1, staff may not disclose in response to complaints or inquiries that a particular proposed respondent is under investigation. When the Commission has announced an industrywide investigation, staff may not identify particular proposed respondents included in the investigation.

.9.3.2 In Response to Inquiry From Law Enforcement Agency

The identity of a proposed respondent in an active investigation may be disclosed to a federal, state, or local law enforcement agency, along with a general description of the practices under investigation, with the caveat that the information is being furnished for official use only and should not be further disclosed without Commission approval. The agency may also be advised of access procedures for law enforcement agencies. (See OM Ch. 15.)

.9.3.3 In Response to Inquiry From Better Business Bureau

Inquiries from better business bureaus (BBBs) and other non-law-enforcement agencies are treated in the same manner as inquiries from the general public. (See paragraph .9.3.1 above.)

.9.3.4 When Necessitated by Exigencies of Investigation

During the course of an investigation, it may be necessary to disclose the identity of a proposed respondent to prospective witnesses, informants, BBBs and other non-law-enforcement groups. It should be made clear that the matter is confidential, that the purpose of the investigation is merely to obtain information, and that no conclusions have been reached or inferences drawn as to whether violations of law have occurred.

.9.3.5 When Disclosed by Proposed Respondent

Even when a proposed respondent in a nonpublic investigation makes a public disclosure that an investigation is being conducted, staff may not acknowledge the existence of the investigation, or discuss its purpose and scope or the nature of the suspected violation. If certain conditions are met, however, staff may publicly acknowledge the existence of an investigation under Sections 7 and 11 of the Clayton Act if the underlying merger or other transaction has been publicly disclosed by a party to it. See OM Ch. 3.3.3.1.

.9.4 ACKNOWLEDGMENT THAT INVESTIGATION HAS BEEN CLOSED**.9.4.1 When Disclosed by Commission News Release**

After the Commission has issued a news release announcing the closing of an investigation of a particular proposed respondent, staff may disclose the existence of the investigation and the identity of the proposed respondent.

.9.4.2 When Closing Letters Were Sent

Closing letters are sent only to proposed respondents, applicants, and other parties of interest in the investigation. The fact that a nonpublic investigation has been closed may not be disclosed unless the Commission has placed a closing letter on the public record or issued a news release announcing the closing. (See OM Ch. 3.)

.9.4.3 When Disclosed by Proposed Respondent

If a proposed respondent has publicly disclosed that a nonpublic investigation has been closed, staff may acknowledge the investigation existed, but should not discuss the purpose or scope of the investigation.

.9.5 DISCLOSURE TO COMPLAINANTS OR THE PRESS OF IDENTITY OF OFFICE OR STAFF CONDUCTING INVESTIGATION

If the investigation is public, the identity of the office conducting the investigation is ordinarily disclosed in the news release announcing the investigation, and under such circumstances, it is appropriate to disclose the identity of the responsible staff members to persons making an inquiry. In all other instances, no disclosure should be made except to advise that a particular office is looking into the matter but without indicating that an actual investigation has been initiated. Inquiries regarding competition matters should be referred to the appropriate Assistant Director or Regional Director.

.10 MISCELLANEOUS POLICIES

.10.1 REQUESTING THAT CONSUMERS SUBMIT WRITTEN COMPLAINTS

Staff may request that oral complainants make a written complaint or complete a complaint form. However, if the individual requests that the complaint be taken orally, that request should be honored if possible. The staff member receiving the complaint is responsible for obtaining all information necessary for its proper evaluation and disposition.

.10.2 REQUIREMENT THAT REQUESTS FOR THE INITIATION OF AN INVESTIGATION OR TRADE REGULATION RULE BE IN WRITING

A request for the initiation of an investigation must be in the form of a signed statement as required by Rule 2.2. A request for the initiation of a TRR proceeding should be in the form of a written petition filed with the Secretary as required by Rule 1.9. (See OM Chs. 3 and 7.)

.10.3 COOPERATION WITH EXTERNAL GROUPS

.10.3.1 Cooperation With Other Agencies

The Commission cooperates with other federal, state, and local agencies in the handling of complaints. When a complaint would be of primary concern to another agency, the complainant should be advised accordingly and the complaint referred by means of an appropriate letter. (See OM Chs. 3 and 14 and section .7.2 above.)

.10.3.2 Cooperation With Public Interest Groups and Pro Bono Law Firms

Complaints and inquiries received from public interest groups and pro bono law firms should receive careful consideration because both groups are presumed to be acting in the public interest in bringing matters to the attention of the Commission. To the extent that resources permit, staff should cooperate with such parties in developing further information to support appropriate Commission action according to the restrictions on the disclosure of confidential information.

.10.4 FURNISHING COPIES OF PUBLIC RECORDS AND PUBLISHED DOCUMENTS

Detailed policies and procedures for access to public records and published documents, such as complaints, decisions, orders, and consumer and business education material, are set forth in Rules 4.8 and 4.9. Requests and inquiries should be addressed or referred to Public Reference (room 130 in the headquarters building).

.10.5 [RESERVED]

.10.6 REQUESTS FOR ACCESS TO NONPUBLIC DOCUMENTS

See OM Ch. 15.

.10.7 REQUIREMENTS CONCERNING RECORDING OF CERTAIN OUTSIDE CONTACTS OR COMMUNICATIONS

The staff is required to make and keep records of contacts (personal visits and telephone calls, but not correspondence) with "noninvolved" persons outside the Commission concerning investigations or cases pending within the Commission. The facts as to each such contact or oral communication concerning a matter pending within the Commission must be recorded on FTC Form 74, "Record of Outside Contacts," available in JetForm Filler (*Illustration 1*). Completed forms shall be placed in the file and thereafter be a part of the Commission's public record, if and when a public record of the matter is established. If the communication concerns an adjudicative proceeding, the completed form shall be transmitted to the Secretary for inclusion in the

public record, but separate from the record material that the Commission considers in reaching its decision in the case.

For purposes of this policy, a “noninvolved” person means one with whom contact would normally not be made in the routine handling of the investigation or case and includes, but is not limited to, a Member of Congress or congressional staff, an official of another government agency or the Executive Branch, a member of the press, and any other person in public or private life not directly involved in the matter. It does not include an official or employee of the Commission or a person outside the Commission with whom an employee would be expected routinely to communicate in the normal course of

handling such a matter, such as a person under investigation, an informant in an investigation, a party or witness to a proceeding or the attorney for such person, informant, party or witness. This policy does not apply to communications of applicants or complaining parties in accordance with the policy set forth in Rule 2.2(d). It does not apply to routine requests for information solely with respect to the status of a matter. Such requests for status information would include inquiries regarding when public actions were or may be taken, identification of parties or staff responsible for the matter, or availability of public information about the investigation or case. (Ref. Rule 4.7 and OM Ch. 10.11.)

Illustration 1

Ref. 16.10.7

*Record of Outside Contacts
(FTC Form 74)*

See JetForm Filler