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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**  
8 **OF THE STATE OF WASHINGTON**

9 In re the Matter of Enforcement Action  
10 Against:  
11 FEDEX CORPORATION,  
12 Respondent.  
13

PDC CASE No. 60811  
FINAL ORDER FOR CIVIL PENALTY

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15 **I. INTRODUCTION**

16 This matter was heard remotely by the Washington State Public Disclosure Commission  
17 (PDC, Commission) on February 24, 2022, by telephonic and online streaming access. The  
18 hearing was held in accordance with Chapters 34.05 and 42.17A RCW and Chapter 390-37  
19 WAC. The hearing concerned what civil penalty, if any, was appropriate due to the  
20 Commission's finding at Summary Judgment that FedEx Corporation (FedEx, Respondent)  
21 violated RCW 42.17A.345 by failing to maintain books of account and related materials as a  
22 commercial advertiser and to timely provide them to the public upon request. Commissioners  
23 present both telephonically and online were Fred Jarrett, Commission Chair; Nancy Isserlis,  
24 Commission Vice-Chair, and Commissioners William Downing (Presiding), Allen Hayward,  
25 and Jocelyn Cooney (did not participate). Also present both telephonically and online were  
26 Assistant Attorney General John S. Meader representing the Commission, and Assistant

1 Attorney General Chad Standifer representing PDC Staff. Fed Ex was represented by their  
2 attorneys Eric Lindberg, James Frush, and Maia Robbins. The proceeding was open to the public  
3 as limited by Governor's Proclamation 20-25 *et. seq.* and recorded.

## 4 5 **II. PROCEDURAL HISTORY**

6 1. On April 22, 2021, PDC Staff issued a Notice of Administrative Charges and  
7 Report of Investigation to FedEx for PDC Case 60811.

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9 2. The Presiding Officer issued the following orders for PDC Case 60811 prior to  
10 this hearing:

- 11 • Pre-Hearing Conference Order and Notice of Hearing dated June 7, 2021,  
12 for a conference on June 15, 2021;
- 13 • Status Conference and Scheduling Order, dated June 18, 2021;
- 14 • Order on Respondent's Motion to Compel, dated September 22, 2021;
- 15 • Order Amending Case Schedule, dated November 12, 2021;
- 16 • Order on Respondent's Second Motion to Compel, dated December 3,  
17 2021;
- 18 • Order on Deposition of Stephen Finley, dated January 12, 2022;
- 19 • Order on Motion for Summary Judgment, dated January 31, 2022.

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21 3. PDC Staff's Motion for Summary Judgment, was filed October 22, 2021.  
22 Respondent's Opposition to the Motion for Summary Judgment was filed January 19, 2022, and  
23 Staff's reply was filed January 24, 2022. The Motion for Summary Judgment was granted by  
24 the Commission on January 31, 2022. The Commission found that there were no genuine issues  
25 of material fact in dispute and that the moving party was entitled to judgment as a matter of law  
26 on these issues: when it sold the service of producing and distributing campaign materials, FedEx

1 acted as a commercial advertiser subject to the requirements of RCW 42.17A.345 and when it  
2 thereafter failed to timely make its records available for public inspection upon request, it acted  
3 in violation of that statute. The question of the appropriate penalty for such violations was  
4 reserved for subsequent briefing and argument.

### 5 6 **III. FINDINGS OF FACT**

7 After reviewing the record, the briefing of the parties, and the arguments at hearing, and  
8 incorporating those matters deemed established on summary judgment, the Commission now  
9 sets forth the following Findings of Fact:

10 1. During the 2019 election a FedEx customer, Mike Cero, acting on behalf of  
11 Mercer Islanders for Sustainable Spending (MISS), brought campaign materials to FedEx in  
12 order to have them printed and mailed. FedEx staff charged Mr. Cero for providing the printing  
13 and mailing services and then directed one of their third-party vendors to perform the work.  
14

15 2. FedEx acted as a commercial advertiser when it sold MISS's agent the service of  
16 communicating messages or producing material for distribution to the general public for the  
17 purpose of appealing for votes or financial support in any election campaign, as defined by RCW  
18 42.17A.005(10).  
19

20 3. A member of the public, Stephen Finley, contacted FedEx to request inspection of the  
21 records of three political advertising orders made by MISS during the 2019 election. He made  
22 three separate requests on October 18, November 21 and December 18 of 2019.  
23

24 4. FedEx failed to timely provide books of account and related documentation as a  
25 commercial advertiser to Mr. Finley concerning the three political advertisements purchased by  
26

1 MISS. FedEx did not fully comply with Mr. Finley's three requests until the passage of 34 days,  
2 26 days and 155 days respectively.

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4 5. In determining the appropriate penalty in this matter, aggravating factors include: that  
5 the Respondent is a large and sophisticated company with ample resources and should have  
6 understood its legal obligations when performing commercial advertising services in  
7 Washington State; Respondent had no policies or procedures in place to inform staff of their  
8 obligations; the extensive delay in providing the records to Mr. Finley; and that the information  
9 was requested before the election but was not provided until after it.

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11 6. Mitigating factors in this matter include: that this is the first violation of campaign  
12 finance laws by FedEx and the first time they have dealt with these issues in Washington; that  
13 some of the delay in responding was due to FedEx working in good faith with counsel and PDC  
14 Staff as FedEx learned about their responsibilities; and that there was no intentional effort to  
15 deceive the public or violate the law by FedEx.

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17 7. The aggravating factors as cited, and as explained in oral comments on the record,  
18 outweigh the mitigating factors.

#### 19 20 **IV. CONCLUSIONS OF LAW**

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22 1. The Commission has jurisdiction over this matter and the PDC laws and rules  
23 applicable to the allegations and to imposition of civil penalties.

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25 2. On the facts as presented in this case, FedEx was acting as a commercial advertiser  
26 as defined by RCW 42.17A.005(10).

3. FedEx violated RCW 42.17A.345 on three occasions by failing to maintain books of account and related materials as a commercial advertiser and to timely make them available to the public upon request.

4. The Commission has authority to impose a civil penalty of up to \$10,000 per violation pursuant to RCW 42.17A.755 and WAC 390-37-182.

5. The Commission concludes there were three separate violations in the lack of prompt statutory compliance with respect to the three public requests. Regardless of the number of violations found, the Commission's conclusion as to the appropriate civil penalty would be the same.

## V. ORDER

1. Pursuant to these findings and conclusions and the Commission's Order on Summary Judgment of January 31, 2022, and considering the briefing and argument provided at the penalty hearing, the Commission finds by a vote of 4-0 that Respondent FedEx is hereby ordered to pay a civil penalty of \$1,500 for each of the three violations to total a \$4,500 civil penalty, with \$2,000 of that amount suspended based on the following conditions:

a. The non-suspended portion of the penalty (\$2,500) is paid within thirty days of the date of the Final Order in this matter.

b. The Respondent is not found to have committed any further violations of chapter 42.17A RCW or Title 390 WAC within four years of the date of the Final Order in this matter. The suspended penalty shall not be assessed based solely

1 upon any remediable violation, minor violation, or error classified by the  
2 commission as appropriate to address by a technical correction.  
3

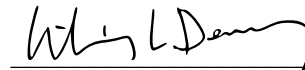
4 2. If the Respondent fails to comply with any of the conditions of this Order, the  
5 suspended portion of the penalty shall immediately become due without further action by the  
6 Commission.  
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8 ///

9 SO ORDERED this 2<sup>nd</sup> day of March, 2022.

10 WASHINGTON STATE PUBLIC  
11 DISCLOSURE COMMISSION

12 FOR THE COMMISSION:

13 

14 William L. Downing, Presiding Officer  
Commissioner, Public Disclosure Commission

15 *Copy of this Order mailed and/or emailed to:*

16 James Frush, Eric Lindberg, Maia Robbins, attorneys for Respondent FedEx;  
17 [Jfrush@correronin.com](mailto:Jfrush@correronin.com); [elindberg@correronin.com](mailto:elindberg@correronin.com); [mrobbins@correronin.com](mailto:mrobbins@correronin.com)

18 Chad Standifer, Susie Giles-Klein, Assistant Attorneys General for PDC Staff;  
19 [Chad.Standifer@atg.wa.gov](mailto:Chad.Standifer@atg.wa.gov); [Susie.gilesklein@atg.wa.gov](mailto:Susie.gilesklein@atg.wa.gov)

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21 I, John S. Meader, certify that I emailed a copy of this  
22 order to the PDC and Respondent's counsel on the date  
stated herein.

23 \_\_\_\_/S\_\_\_\_ March 2, 2022,  
Signed Date

24  
25 **NOTICE: RECONSIDERATION**  
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1 PURSUANT TO THE PROVISIONS OF RCW 34.05.470 AND WAC 390-37-150, YOU MAY  
2 FILE A PETITION FOR RECONSIDERATION WITH THE PDC WITHIN TEN (10) DAYS  
3 FROM THE DATE THIS FINAL ORDER IS SERVED UPON YOU. ANY REQUEST FOR  
4 RECONSIDERATION MUST STATE THE SPECIFIC GROUNDS FOR THE RELIEF  
5 REQUESTED. PETITIONS MUST BE DELIVERED OR MAILED TO THE WASHINGTON  
6 STATE PUBLIC DISCLOSURE COMMISSION, 711 CAPITOL WAY, ROOM 206,  
7 BOX 40908, OLYMPIA WA 98504-0908.

8 **NOTICE: PETITION FOR JUDICIAL REVIEW**

9 YOU HAVE THE RIGHT TO APPEAL THIS FINAL ORDER TO SUPERIOR COURT,  
10 PURSUANT TO THE PETITION FOR JUDICIAL REVIEW PROVISIONS OF  
11 RCW 34.05.542. ANY PETITION FOR JUDICIAL REVIEW OF THIS FINAL ORDER  
12 MUST BE FILED WITH THE COURT AND ALSO SERVED UPON BOTH THE  
13 COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL WITHIN THIRTY (30)  
14 DAYS AFTER THE DATE THIS FINAL ORDER IS SERVED UPON YOU.  
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