



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 15, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-25

Benjamin A. Goldman
Executive Vice President
Public Data Access, Inc.
30 Irving Place, 9th Floor
New York, N.Y. 10003

Dear Mr. Goldman:

This responds to your letters of March 21, 1986, and June 24, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed sale of contributor information copied from reports filed with the Commission.

You state that Public Data Access ("PDA") is a for-profit corporation, incorporated in January 1986 under the laws of New York. Its principal owners include the Council on Economic Priorities, a nonprofit public service research organization, and four individuals including PDA's three principal personnel who are database experts in processing government information for public use. You state that none of the stockholders are active in partisan politics, political consulting, or fundraising. You explain that PDA's corporate purpose is to provide ready access to government information that is open for public inspection by collecting and organizing that information in accessible, affordable, and easy-to-use packages.

You state that PDA seeks to make contributor information reported to the Commission and on file for public inspection more readily accessible to the public. In this regard, PDA has expended approximately \$35,000 in programming and in tapes of reports filed with the Commission to compile contributor information for the 1984 election cycle by congressional district and by employer. You note that this data is not currently available from the Commission in these compilations. You state that PDA has compiled information on 250,000 contributors who made contributions of \$500 or more into 1135 separate compilations or packages, one for

each of the 435 congressional districts and one for each of 700 companies with whom contributors reported an association. In these compilations, PDA has deleted the street or mailing addresses from the information obtained from the Commission's public files, corrected zip code errors, and standardized the spelling of corporate names. As a result, individual contributors are identified by name, city, and zip codes, by employer or by the congressional district of the reported addresses, and by their contributions. You have submitted sample pages from these compilations that consist of alphabetical listings of contributors and their contributions in the following manner:

Jones, John	New York	Smith for President	\$1,000
	NY 10021		

You state, however, that PDA's compilations will also be in the form of books and their computer equivalents, although you submitted no samples of such formats.

You state that PDA's purpose in publishing and selling these compilations is to advance knowledge of the patterns of political contributions and to generate research into these patterns. You state that much of the information in PDA's database is not related to individual contributors. You specifically note that a summary of PDA's compilations by congressional districts shows that 10 districts comprising 2 percent of the nation's population accounted for 20 percent of all individual contributions in the 1984 election cycle. You also make similar references to PDA's compilations by employer. You add that PDA's compilations, such as these, provide a starting point for further research by investigative reporters and public interest researchers as well as by local citizen groups and nonprofit organizations.

Thus, you describe PDA's primary market for these compilations as public interest and nonprofit groups, researchers, and journalists. You state, however, that PDA will sell them to "all who wish to buy them." PDA's charge for its compilations will vary according to the size of each list at a price level that will permit PDA to recover its investment costs but still make these compilations affordable by nonprofit organizations. You state that PDA will "custom tailor" the particular compilation requested by a user with the user's name appearing on each page of the list along with this statement:

**THIS REPORT MAY NOT BE SOLD OR USED BY ANY PERSON
FOR THE PURPOSE OF SOLICITING CONTRIBUTIONS OR FOR
ANY COMMERCIAL PURPOSE.**

You state that PDA will also "explicitly and forcefully" inform buyers and users of the Act's restrictions on the sale or use of contributor information. You add that PDA's Compilations will be prepared for use in researching and analyzing patterns of contributions to candidates and will not be usable for solicitation or other commercial purposes. You state that PDA intends to provide these compilations as long as individual contributor data from future election cycles remain in the public domain.

You also state that PDA plans to use its database for research in conjunction with nonprofit organizations who will supply personnel and assist with funding. You add that PDA

will not control the results of such joint research. It will, instead, make its material available without charge or at a reduced charge to nonprofit, nonpartisan groups proposing a serious academic or public education project without imposing any ideological or policy tests. You add that PDA will not engage in such joint projects with any candidate or political committee.

You ask whether the Act permits the proposed sale of PDA's compilations that include individual contributor information from reports filed with the Commission (without individual contributor addresses) and accompanied by a warning against the sale or use of this information for solicitations or commercial purposes.

The Act provides that each political committee must report the "identification" of each person who makes a contribution to the committee and whose aggregate contributions to the committee exceed \$200 for the calendar year. 2 U.S.C. 434(b)(3)(A). In the case of an individual, the Act defines "identification" to mean the name, mailing address, occupation, and name of the individual's employer. 2 U.S.C. 431(13)(A). The Act requires the Commission to make these reports available for public inspection and copying "except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." 2 U.S.C. 438(a)(4).

The Commission has previously stated that the principal, if not sole, purpose of restricting the sale or use of information copied from reports is to protect individual contributors from having their names sold or used for commercial purposes. see Advisory Opinions 1981-38 and 1981-5. PDA has copied the names and other identifying information of individual contributors from reports filed with the Commission and has compiled these names into lists by congressional district and by employer. It now plans to sell such lists to "all who wish to buy them." Since PDA is organized as a for-profit corporation, its sales of these lists are presumably made for commercial purposes. Its statement that it plans to sell these lists at cost or at a price to recover its investment costs does not negate this presumption of commercial purpose.

Commission regulations provide that the "use" of information, copied or obtained from these reports, in "newspapers, magazines, books or other similar communications, is permissible as long as the "principal purpose" of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes. 11 CFR 104.15(c). The "commercial purpose" prohibition does not preclude the use of contributor information by newspapers, magazines, books, or other similar communications such as in news stories, commentaries, or editorials, although such use may be incident to the sale of such communications. See 117 Cong. Rec. 30,058 (daily ed. Aug. 5, 1971) (remarks of Sen. Nelson), reprinted in FEC, Legislative History of the Federal Election Campaign Act of 1971 at 582 (1981). See also, National Republican Congressional Committee v. Legi-Tech Corp., No. 85-6037 (D.C. Cir. July 15, 1986). PDA's intended use of contributor information is not merely incident to their sales but is the primary focus of PDA's activity.

PDA's lists are compilations composed primarily, if not exclusively, of individual contributor information and incorporating nearly all of the identification of individual contributors reported to the Commission (i.e., name, city and zip code, amount and recipient of

contribution, and employer, omitting only street addresses). The Commission has considered PDA's statements that its purpose is to further research and reporting of the patterns of political contributions and its promise that a warning relating to the Act's sale or use restriction will be printed on each page of the lists or packages, but does not view them as determinative of the principal purpose requirement. The Commission concludes that lists that compile individual contributor information by congressional district and by employer will have commercial value to list owners, managers, brokers, and others, even though street addresses are omitted. The format and content of PDA's lists are essentially indistinguishable from those of a list broker used for soliciting contributions or for commercial purposes.*

Accordingly, the Commission concludes that PDA's proposed activity that involves the copying and selling of compilations comprised primarily of individual contributor names is prohibited by the Act. PDA's use of the contributor information in its database for academic research projects may be permissible as long as this activity does not involve the sale or use of contributor information for the purpose of soliciting contributions or for other commercial purposes. See, 11 CFR 104.15(c); Advisory Opinion 1985-16. Since PDA has not described a specific research project, however, this opinion should not be relied upon as approving any particular research activity. See 11 CFR 112.1(b) and 112.5.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1985-16, 1981-38, and 1981-5)

* The "commercial purpose" provision has been held to prohibit the copying and selling of contributor information when such lists incorporate nearly all of the identification of individual contributors contained in reports filed with the Commission, thus making such information commercially valuable to list owners, managers, brokers, or those who use such lists. See, e.g., FEC v. American International Demographic Services Inc., 629 F.Supp. 317 (E.D. Va. 1986), appeal pending sub nom, Halter v. FEC, No. 86-1560 (4th Cir.). Also, in order to give effect to the statutory prohibition on the sale or use of this information for "commercial purposes," the Commission has interpreted this provision to prohibit the use of contributor information to update or correct solicitation or mailing lists or otherwise to enhance their commercial value as well as the sale or use of this information to solicit contributions. See Advisory Opinion 1985-16.