

*Elyse Johnson*  
RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

APR 9 3 21 PM '98



FEDERAL ELECTION COMMISSION

Washington, DC 20463

April 9, 1998

**AGENDA ITEM**  
For Meeting of: 4-16-98

**MEMORANDUM**

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael G. Marinelli  
Staff Attorney

SUBJECT: Draft AO 1998-04

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 16, 1998.

Attachment

# DRAFT

1  
2 **ADVISORY OPINION 1998-4**

3  
4 **Alan J. Broder, President**  
5 **White Oak Technologies, Inc.**  
6 **10907 Wheeler Drive**  
7 **Silver Spring, MD 20901**

8  
9  
10 **Dear Mr. Broder:**

11  
12 **This refers to your letter dated February 5, 1998, and subsequent submissions**  
13 **which request an advisory opinion concerning the application of the Federal Election**  
14 **Campaign Act of 1971, as amended ("the Act"), and Commission regulations to your**  
15 **proposed use of FEC contributor data.**

16 **You state that you are the president of White Oak Technologies Inc. ("WOTI").**  
17 **WOTI, you explain, develops software systems to perform specialized analyses of**  
18 **transaction databases (which you refer to as "data mining"). One area of particular**  
19 **emphasis is the system's ability to detect, in databases, hidden patterns of collaborations**  
20 **among people or organizations.**

21 **In order to demonstrate its software capabilities to potential clients, WOTI has**  
22 **applied its pattern detection technologies to FEC contributor record databases.**  
23 **This has been done to illustrate WOTI's ability to identify collaborative, and possibly**  
24 **improper, behavior among individuals represented in FEC records. You have provided**  
25 **exhibits displaying results obtained from this process. You specifically state that the use**  
26 **of FEC information will be for illustrative purposes only. WOTI does not intend to**  
27 **distribute or publish FEC data beyond the limited use made in its marketing materials.**  
28 **The principal purpose of this display would be, again, to demonstrate WOTI's**

1 technological approach to processing comparable data bases. You state that the use of  
2 actual data (including full names, dates, and contribution amounts extracted from FEC  
3 databases) is important to establishing the veracity of its detection technologies, since the  
4 potential clients are free to independently obtain FEC data and validate WOTI results.<sup>1</sup>  
5 However, you affirm that work products delivered to clients would not include any  
6 information derived from FEC reports.

7 You would offer WOTI's services to private sector organizations with an interest  
8 in fraud control (such as financial and health-care institutions), as well as government  
9 organizations concerned with fraud control or law enforcement. While you are not  
10 actively marketing your services to any "politically oriented organizations" you anticipate  
11 that your services may be utilized in the future by such organizations.<sup>2</sup> You ask that the  
12 issue of marketing to such clients be considered as a separate question from the marketing  
13 to non-political clients.

14 To potential political clients, you would offer WOTI's services for fraud detection  
15 applications and fundraising applications. For fraud detection applications, the political  
16 client might wish to apply WOTI's technology to discover patterns of improper  
17 fundraising practices by opposing parties or candidates. WOTI would provide a license  
18 to the client for WOTI's data mining software that would be installed and operated at the  
19 client's own facilities on the client's own computer equipment. WOTI would not provide  
20 any FEC data or data derived from FEC data. The software would be used by WOTI staff

---

<sup>1</sup> In your March 9, 1998, letter you state that WOTI will not display the full addresses of  
of contributors in its marketing materials, but would display the city and zip codes.

<sup>2</sup> The Commission interprets your term "politically oriented organizations" to mean political organizations,  
political committees, and candidates. See 2 U.S.C. §431(2) and (4); see also 26 U.S.C. §527(e).

1 at the client facility under a separate professional services contract and at the direction of  
2 the client's staff.

3 The client would be responsible for independently obtaining from the FEC any  
4 data to be analyzed. The client would also make the decision whether to initiate any  
5 compliance complaints against individuals or organizations that were identified by  
6 WOTI's software.

7 There are also certain fundraising applications as well. The client might wish to  
8 apply WOTI technology to detect collaborative patterns of giving among its own  
9 contributor base for the purpose of identifying legitimately influential contributors. The  
10 data used for such an application would be limited to the client's own data regarding its  
11 own contributors, or data legitimately obtained by the client directly from other  
12 cooperating campaigns.

13 You state that WOTI believes that regulations prohibiting "commercial use" of  
14 contributor information taken from FEC reports were not intended to prohibit the display  
15 of results typical of the exploratory analyses that WOTI is performing, even if the display  
16 of such analyses has the beneficial, commercial side effect of increasing the sales of  
17 WOTI's services. You, therefore, request that the Commission issue an advisory opinion  
18 to determine if WOTI's proposal to display or publish contributor information from FEC  
19 reports, when used for the purpose of marketing its data mining services and technologies  
20 to political and non-political clients, would be permitted by the Act and Commission  
21 regulations.

22 The Act requires the Commission to make available for public inspection and  
23 copying committee reports containing the name and mailing address of individual

1 contributors giving over \$200 per calendar year. The Act further provides that "any  
2 information copied from such reports or statements may not be sold or used by any  
3 person for the purpose of soliciting contributions or for commercial purposes, other than  
4 using the name and address of any political committee to solicit contributions from such  
5 committee." 2 U.S.C. §438(a)(4); see also 11 CFR 104.15.

6 Based on the legislative history of the Act, the Commission has previously stated  
7 that the principal purpose of restricting the sale or use of information copied from reports  
8 is to protect individual contributors from having their names sold or used for commercial  
9 purposes. See *Federal Election Commission v. Legi-Tech, Inc.*, 967 F.Supp. 523 (D.D.C.  
10 1997) and Advisory Opinions 1995-5, 1989-19, 1986-25, 1981-38, and 1980-101.<sup>3</sup> See  
11 also *Federal Election Commission v. Political Contributions Data, Inc.*, 943 F.2d 190  
12 (2nd Cir. 1991).<sup>4</sup>

13 A comparison between your proposal and the situation in the recent case, *Legi-*  
14 *Tech*, is relevant to understanding your proposal. In *Legi-Tech*, a corporation reproduced,  
15 in an electronic format, information drawn from FEC reports which included the name  
16 and address of persons making political contributions. For a fee, political committees and  
17 other interested parties received access to this information, and it was used by various  
18 committees and organizations to improve their own fundraising activities. *Legi-Tech*, at  
19 530. The DC District Court, supporting the Commission's previous advisory opinions

---

<sup>3</sup> The sponsor of the amendment creating this restriction stated that the purpose was the protection of the privacy of the "very public-spirited citizens" who make contributions to campaigns. 117 *Cong. Rec.* 30057-58 (1971) (remarks of Senator Bellmon).

<sup>4</sup> *Political Contributions Data*, a 2nd Circuit appellate decision, is in conflict with *Legi-Tech* and several past Commission advisory opinions regarding the application of section 438(a)(4). However, your limited use of FEC contributor information would not be a prohibited use under either *Legi-Tech* or *Political Contributions Data*.

1 and enforcement actions, found that Legi-Tech had violated section 438(a)(4) "by selling  
2 or using information copied from reports filed with the FEC for commercial purposes in  
3 that the sale of such information was the principal purpose and primary focus of Legi-  
4 Tech's actions." *Legi-Tech*, at 535.

5 Your proposal is distinguishable, since you would use contributor information  
6 only to illustrate your general methodology to prospective clients, and would not be  
7 selling contributor information drawn from FEC reports. Unlike the clientele of *Legi-  
8 Tech*, your clients would not access this information through your services.

9 Therefore, the Commission concludes that your proposed use of data drawn from FEC  
10 reports is not prohibited by the Act or Commission regulations. This conclusion remains  
11 the same should political organizations or committees or candidates seek to use your  
12 services in the manner you describe above. The fraud detection applications of your  
13 software would not be prohibited by section 438(a)(4) since you would not be giving  
14 your political client any data derived from FEC reports. Furthermore, the use of such  
15 data to detect fraud on the part of another campaign would fall outside of the commercial  
16 use restriction. See Advisory Opinions 1984-2 and 1981-5.<sup>5</sup> The fundraising  
17 applications of your proposal also would not contravene section 438(a)(4) since, again, no  
18 FEC contributor information would pass to a client; rather, the client would use WOTI-  
19 developed technology to analyze, organize or research its own contributor data or lists.

---

<sup>5</sup> In Advisory Opinion 1984-2 a candidate was permitted to contact contributors to an unauthorized campaign committee to tell those contributors that the committee was unauthorized and to suggest that they seek refunds. The candidate was not permitted, however, to solicit contributions to the authorized committee. In Advisory Opinion 1981-5, a candidate was permitted to send a letter to his opponent's contributors, using information taken from FEC reports, to correct allegedly defamatory statements made by his opponent.

1 This would also be the case if the client used your technology on other information  
2 legitimately obtained in a manner not prohibited by 2 U.S.C. §438(a)(4). See Advisory  
3 Opinions 1979-3 and 1977-66.<sup>6</sup>

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

7 Sincerely,

8  
9 Joan D. Aikens  
10 Chairman

11  
12 Enclosures (AOs 1995-5, 1989-19, 1986-25, 1984-2, 1981-5, 1981-38,  
13 1980-101, 1979-3 and 1977-66).

---

<sup>6</sup> In these opinions, the Commission concluded that a political committee's use of its own contributor list is not prohibited by 2 U.S.C. §438(a)(4).