



FEDERAL ELECTION COMMISSION

Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Office of the Commission Secretary *LC*

**DATE:** March 08, 2021

**SUBJECT:** AO 2021-01 (Aluminate, Inc.) Comment on Draft A

Attached is a comment received from Robert Fealy. This matter is on the March 11, 2021 Open Meeting Agenda.

Attachment

**RECEIVED**

By Office of the Commission Secretary at 3:33 pm, Mar 08, 2021

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**ALUMinate**  
Data matchmakers for *your* fundraising success

March 8, 2021

RE: AO 2021-01

Via: email to [ao@fec.gov](mailto:ao@fec.gov)

Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

Dear Commission:

This letter is in response to Agenda Document No. 21-15-A dated March 5, 2021. On January 11, 2021 Aluminate, Inc. (“Aluminate”) filed a request (“Request”) seeking the Commission’s guidance on Aluminate’s intent to provide “flags” on spreadsheets delivered to the advancement operations of its college, university and nonprofit clients. As explained in the Request, Aluminate is engaged by its clients to provide up-to-date contact information (i.e., addresses, phone numbers, email addresses) and background information (i.e., demographics, wealth indicators, employment status and history, educational history, social media presence, personal interests, and the like) on the donors and prospects included in client’s databases, which may total hundreds of thousands of individual records. Clients own all their information and confidentially provide Aluminate with the names, addresses (primary, second home and even dozens of previous addresses), phone numbers (multiple), email addresses, birthdays, wealth ratings, giving histories, degrees and graduation dates, and the like (“Profiles”) of all or a subset of their constituents. Aluminate has agreements with multiple data vendors which deliver to Aluminate updated, missing or supplemental data (i.e., over 500 different data fields are available) for these individual Profiles.

Aluminate is not a “list broker.” Aluminate is a service provider and conducts the difficult task of matching the identities of client’s constituents with vendor data to ensure the personal information returned to a client is for the intended constituent. The enriched data appends are delivered back to a client in the form of a .CSV formatted spreadsheet and supplemental .CSV files for individual data fields as the client may request. The master spreadsheet may have hundreds of columns of discrete information depending on the scope of the assignment. Not every client contracts for all available fields of information, as some may require only updated email addresses or professional status and histories. They may acquire information from other data service providers or directly from data vendors.

It is likely that virtually every donor or prospect in the client’s database has been solicited in the past and is solicited through multiple communications on a regular basis for annual fund drives, focused

campaigns, one-on-one engagements, and more. **It is important to note that today donors and prospects can opt out of receiving communications from the client and can even request that all their personal data included in the client’s database be expunged consistent with requirements in statutes like the California Consumer Privacy Act, which many clients have adopted in their donor privacy policies (e.g., see attached policy).** These options were not available or even contemplated when the section 438(a)(4) amendment was “grudgingly accepted” (as characterized by the Second Circuit Court of Appeals in *Federal Election Commission v. Political Contribution Data, Inc.*), or when the Commission’s interpretive Regulations were promulgated in 1980. Indeed, today extensive public and private personal information is readily available and used commercially for virtually every conceivable type of personal interaction, including marketing and sales of “cars, credit cards, magazine subscriptions, cheap vacations, and the like.” One can only muse at the thought of Senator Henry Bellmon (rest his soul) standing before his fellow Senators today and suggesting that the prohibition on “commercial use” of FEC data would have a meaningful impact on protecting the privacy or deterring the “harassment” of contributors. Senator Nelson even questioned this during the discussion on the Senate floor about the section 438(a)(4) amendment:

Mr. Nelson: “Do I understand that the only purpose is to prohibit the lists from being used for commercial purposes?”

Mr. Bellmon: “That is correct.”

Mr. Nelson: “The list is a public document, however.”

To give the Commission a sense for the results of a test Aluminate ran internally against a live data set, approximately 50,000 client records were compared against the FEC database of 65,000 records to identify any matches. A high confidence match under Aluminate’s proprietary scripts requires that the full name and address be identical in both datasets. Contributors were segmented by their respective annual contributions. Out of 50,000 records, the number of individuals who contributed:

\$5,000 or more but less than \$10,000	26 individuals (.00052 of population screened)
\$10,000 or more but less than \$20,000	7 individuals (.00014 of population screened)
\$20,000 or more	5 individuals (.00010 of population screened)

By contrast, a master spreadsheet for a full-service client with 50,000 records could contain millions of separate data points. That is why we conclude that the flags we propose to include are “interesting” but not conclusive or dispositive. The names and addresses of the donors and prospects associated with these flags do not come from FEC records, but from the client’s database. Aluminate does not itself engage in soliciting contributions and is prohibited by contract with its clients from using any individual client data. Aluminate cannot sell a flag separately to anyone because it relates only to a small number of a specific client’s constituents and is not accompanied by a name, address or other personally identifiable data that would facilitate its broader use.

The FEC's seeding of its records with pseudonyms is clearly targeted at "list brokers" that Senator Bellmon seemingly disdained. The Commission's draft opinion cites two earlier opinions in support of its disapproval of Aluminate's use cases which date back many years, well before the current age of data transparency and the vast availability of personal information (i.e., AO1985-16 and AO2004-24). In AO1985-16, Weiss clearly was a "list broker". In AO2004-24, NGP proposed to integrate actual donor contribution histories derived from FEC online public records into its Campaign Office product. Presumably NGP intended to maintain this data in a master database that could then be accessed by its clients through its Campaign Office product. Aluminate maintains no such database nor makes any individual FEC information available to its clients. Aluminate's proposed flags are best characterized as allowing clients "to make inferences," as the draft opinion states (page 7, lines 8-11). This is a far cry from the danger and concern expressed by Senator Bellmon. It also should be noted that one of Aluminate's use cases is to flag individuals for possible leadership, advisory and mentoring roles. This obviously has nothing to do with soliciting contributions. The draft opinion also cites several earlier opinions, none of which is directly relevant, describing commercial uses that ostensibly pass muster.

Only a passing mention is made of the leading court case dealing with section 438(a)(4), *Federal Election Commission v. Political Contributions Data, Inc.*, 943 F.2d 190 (2d Cir.1991), which analyzed the legislative history and intent of the solicitation and commercial purposes exceptions. As the Court noted:

"It is true, as the FEC reminds us, that 'a court may not substitute its construction of a statutory provision for a reasonable interpretation by the agency charged with administering the statute...'...but neither should it bow and curtsy to every interpretation an agency can invent. The FEC's interpretation, however, does not serve the congressional purposes of furthering the openness and disclosure purposes of the FECA, **while avoiding—to the extent possible—the invasions of contributor privacy that would be occasioned by all kinds of solicitations.** We thus cannot say that FEC advisory opinion 1986-25 offered a 'reasonable interpretation' of either its own regulation or section 438(a)(4)."

The Court continued later in its opinion:

"Without the guidance of a reasonable agency interpretation, we must again seek further guidance outside the FECA itself. When we look to the legislative history of the section 438(a)(4) prohibition, we find that Senator Bellmon, in proposing the amendment, was concerned with the possibility that contributors would have their personal lives interrupted by unwanted solicitations. **The purpose of this restriction, he said, was 'to protect the privacy of campaign contributors by insulating them, as best as possible, from all kinds of solicitations.**

These remarks seem to offer the best guidance for interpreting section 438(a)(4)'s prohibitions; clearly indicate that the overarching goal of the prohibitions was to protect campaign contributors from 'all kinds' of unwanted solicitations...Since those prohibitions extend to 'the purpose of soliciting contributions' and 'commercial purposes,' **we read the latter prohibition to encompass only those commercial purposes that could make contributors 'prime prospects for all kinds of solicitations', Cong. Rec. 30,057 (emphasis added).**"

There is no danger that the flags proposed to be added to a client's Profiles would allow or encourage a client to make "all kinds of solicitations" noted by the Court. Colleges, universities and nonprofit institutions have tens of thousands or even hundreds of thousands of Profiles in their databases, many of which contain only minimal contact information. These institutions engage face-to-face with a very small percentage of their donor bases, and the very last thing they want to do is be intrusive or a nuisance to this important group by pelting them with solicitations. Therefore, they carefully guard access to donor information and ensure that only those who have a need to know have access, and then they limit the information released on a "need to have" basis. No school or nonprofit is going to rush out and act on the flags Aluminate provides. No legislative intent will be frustrated.

In fact, it can be argued that C.F.R. section 104.15(b), which extends the prohibition to charitable contributions, is an overreach and not consistent with, or supported by, any statutory purpose, intent, or history contemplated by Senator Bellmon when he submitted the amendment in 1971. Nowhere in the record are charitable contributions mentioned or included as a concern.

For these reasons and others cited in the Request, Aluminate respectfully requests that the Commission approve Aluminate's limited use of FEC data. We would be pleased to provide any additional information you may need. Thank you.

Respectfully submitted,



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## Attachment

### Privacy Statement (university name redacted)

Your privacy and the safeguarding of your personal data (defined below) is very important to ABC University (referred to here as "ABC" or "the University") and its Institutional Advancement Division. This Privacy Statement was developed to provide you information on how we collect and process your personal data.

### Why We Collect Your Personal Data

The University collects your personal data so that in the future we may pass along to you information about ABC and its programs, and provide you with University services – such as educational opportunities, information and news, alumni activities, events and experiences, mailings, charitable giving opportunities, social media, the ABC alumni community and other ABC educational and research related goods and services – that may be of interest to you ("ABC Services"). In addition, as a public charity under the US Internal Revenue Code, ABC relies on funds raised from a variety of different sources in support of furthering its core mission of advancing the humanities and arts, as well as social, natural and physical sciences. For these fundamental reasons, your personal information is collected and stored on ABC servers and/or ABC contracted servers in the US.

### What Personal Data We Collect

We may collect, use, store and transfer different kinds of personal information about you, which we have grouped together in the following general categories:

1. Basic biographical/contact information – such as your street and email addresses, and your phone numbers
2. Demographic information – such as gender, birth, and death dates
3. Information obtained from ABC student records – such as your degree, major, and ABC activities
4. Employment data – such as job titles, industry information and company names
5. Alumni information – showing your event attendance, organization affiliations, committee participation, and volunteer interests
6. Family information – such as the names and birth dates of your spouse (or partner),

children, or other family relationships

7. Analytical data—such as information related to web visitor frequency and email marketing activity
8. Donor information—such as information about your prior donation history, wealth assessment information, and any pertinent indicators of your interest in giving to ABC

## How We Collect Your Personal Data

The personal data of ABC students and alumni is transferred from the University's student record system (when you enroll at ABC) to the Institutional Advancement database. In addition, a significant portion of the information we collect is that which you have previously provided to us when you registered for an event, communicated with us either by updating your profile online, or made a donation. In some cases, we may also gather information from targeted internet searches or third party sources.

## Retention of Your Personal Data and ABC's Legitimate Interest

ABC retains your personal data in accordance with applicable international, federal, state and local laws. Toward this end, ABC is relying on the fact that it is in the University's legitimate interest to retain or process your personal data for the following reasons:

- ◆ It benefits you insofar as it enables ABC to provide you with important information about ABC Services and programs that may be of interest to you and, in addition, it facilitates the University's ability to raise charitable contributions which, in turn, are necessary so that ABC can continue to carryout its core educational and research mission in support of the public interest (together, the "University's Purpose")
- ◆ It is a reasonable way, as well as a necessary and appropriately targeted and proportionate way, to achieve the University's Purpose
- ◆ As a graduate or friend of ABC, you have a pre-existing relationship with the University and therefore would reasonably expect ABC to retain this information
- ◆ Processing your information in futherance of the University's Purpose has no, or only a minimal privacy impact on you

Because we consider our relationship with alumni, donors and other stakeholders to be lifelong, we will maintain a record for you until such time as you tell us that you no longer wish us to keep in touch. Of course, you may also make changes to communication preferences by contacting us at ABC@ABC.edu

## Our Commitment to Data Security

Under state law, ABC has in place a comprehensive information security program applicable to any records containing "Personal Information." This comprehensive information security program is reasonably consistent with industry standards, and contains administrative, technical, and physical safeguards to ensure the security of such records.

## Transfers of Personal Data

ABC is a global university offering education and services worldwide. From time to time we enter into third-party agreements for the purpose of providing you with ABC Services that may be of interest to you, and in that process we may need to transfer your personal data to these third-party affiliates and vendors. Any such entity that we transfer your personal data will not be permitted to process your personal data other than as described in this Privacy Statement without providing you notice and, if required by applicable laws, obtaining your consent.

All ABC affiliates and vendors are required to follow the privacy practices set forth in this Privacy Statement.

## Other Disclosures

ABC may disclose personal data about you: (i) if we have your valid consent to do so; (ii) to comply with a valid subpoena, legal order, court order, legal process, or other legal obligation; (iii) to enforce any of our terms and conditions or policies; or (iv) as necessary to pursue available legal remedies or defend legal claims.

## Privacy Statement Updates

ABC may update this Privacy Statement from time to time as we add new ABC Services and as we improve our current offerings and as technologies and laws change. You can determine when this Privacy Statement was last revised by referring to the "Last updated" legend at the top of this page. Any changes will become effective upon our posting of the revised Privacy Statement.

We will provide notice to you if these changes are material and, where required by applicable law, we will obtain your consent. This notice will be provided by email or by posting notice of the changes on the ABC websites and apps that link to this Privacy Statement.

## Your Rights

If you reside in the European Union, you have rights under the General Data Protection Regulation. Regardless of where you reside, if you would rather not receive any ABC Services, or if you prefer that the University not retain your personal data, please contact our office by email at [ABC@ABC.edu](mailto:ABC@ABC.edu)

ABC Alumni – login to your ABC account to change the display preferences of your Profile information in the alumni directory and to inform the University of your desire to not receive further emails by changing your email subscription preferences. You may also unsubscribe from email through the unsubscribe link at the bottom of our emails.

ABC is excited about the future and would love you to be a part of it!