



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Commission Secretary's Office *LES*

DATE: May 17, 2021

SUBJECT: Comments on Draft AO 2021-05 Drafts A and B
(Tally Up, LLC)

Attached are comments received from Tally Up, LLC. This matter was on the May 6, 2021 Open Meeting Agenda.

Attachment

RECEIVED

By Office of the Commission Secretary at 9:42 am, May 17, 2021

100 Mutton Hill Drive
Charlotte, VT 05445
www.gettallyup.com

Jeremy Holtzman
jeremy@gettallyup.com

Re: Comment on Advisory Opinion 2021-05
May 14, 2021

Via: email to ao@fec.gov

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

Dear Commissioners,

We submit this comment in response to the Federal Election Commission's (the "FEC's" or the "Commission's") Draft Advisory Opinions in AO 2021-05 (Tally Up, LLC), known as Draft A ("Draft A") and Draft B ("Draft B"), as well as the line of questions from the Open Meeting.

Draft A concludes that Tally Up cannot use the data as proposed, because such information would be used to solicit contributions. However, as Draft B mentions, the Commission has previously determined that the use of contributor data to produce generalized factual information that does not disclose individual contributors' contact information is not prohibited. In Advisory Opinion 2017-08 (Point Bridge Capital), and Advisory Opinion 5 2014-07 (Crowdpac), the Commission determined that the Act and Commission regulations did not prohibit their proposed uses because the resulting information would not provide "sufficient information to generate solicitations."

The Tally Up voter segments do not provide "sufficient information to generate solicitations" nor would they disclose individual contributors' contact information. The segments do not identify any individual contributor, nor do they even guarantee that any individual in a segment has been a contributor in the past, regardless of the segment score. A segment can receive a high score, even if no one in the segment has ever contributed before. This is possible because the segment scores are based on voters and other voters who are similar to them.

Draft A claims that Tally Up's use case is different from Point Bridge Capital because Point Bridge Capital "did not, however, propose to disclose individual contributors' names and contact information, or make any solicitations, let alone score individual contributors singly or as a group as Tally Up proposes to do". However, Tally Up will not disclose any individual contributor's name or contact information. Tally Up will disclose voter names, but there is no way of determining whether an individual voter has been a contributor. As mentioned in Draft B, "that Tally Up will obtain individuals' names and addresses from sources other than Commission data

is not a reason to deny Tally Up's request, because the Act's sale-and-use prohibition applies only to `information copied from . . . reports or statements` filed with the Commission.

Additionally, the primary use of this data is not even to solicit contributions. The Tally Up voter segment scores are primarily used to determine which voters support Republicans and which support Democrats for targeted outreach. While we cannot guarantee that our clients won't solicit voters in these segments, it is not the primary use.

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

Thank you.

Jeremy Holtzman