FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 6960
COMPLAINT FILED: 08/27/2015
NOTIFICATION: 09/01/2015
LAST RESPONSE RECEIVED: 10/21/2015

MUR: 6991
COMPLAINT FILED: 12/07/2015
NOTIFICATION: 12/14/2015
LAST RESPONSE RECEIVED: 01/19/2016

ACTIVATED: 12/20/2016

ELECTION CYCLE: 2016
EXPIRATION OF SOL: 06/01/2020 – 08/12/2020

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COMPLAINANTS:	National Republican Congressional Committee (MUR 6960) Republican National Committee (MUR 6991)
RESPONDENTS:	Roger A. Stone SW Technologies, LLC
RELEVANT STATUTE AND REGULATION:	52 U.S.C. § 30111(a)(4) 11 C.F.R. § 104.15
INTERNAL REPORTS CHECKED:	Disclosure Reports
AGENCIES CHECKED:	None

I. INTRODUCTION

These matters involve allegations that SW Technologies, LLC d/b/a Advocacy Data ("SWT"), a political marketing firm, and Roger A. Stone, SWT's founder, president, and CEO, violated the "sale and use" provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), by compiling a commercial mailing list with the names and addresses of contributors obtained from Complainants' FEC disclosure reports. Respondents admit that their "Republican

Elite Donors" mailing list contained contributor information obtained from FEC disclosure reports and, further, that SWT was using that information in connection with a separate project to identify likely contributors. Respondents contend, however, that Complainants' information was inserted into the list by mistake and that SWT has removed the offending data.

SWT's use of contributor information obtained from FEC disclosure reports in both the commercial mailing list and the separate project appears to have been for the purpose of soliciting contributions. Therefore, we recommend that the Commission find reason to believe that SWT violated 52 U.S.C. § 30111(a)(4) and propose an investigation to determine the scope of the violation and obtain additional information about Respondents' corrective and remedial measures. We also recommend that the Commission take no action at this time with regard to the allegations that Stone individually violated 52 U.S.C. § 30111(a)(4) and instead await the outcome of our proposed investigation.

II. FACTUAL SUMMARY

Complainants include "salted" names on their FEC disclosure reports to deter illegal use of their contributor information.[1] In June 2015, the Republican National Committee ("RNC"), Complainant in MUR 6991, received solicitation packages from the National Rifle Association and Jeb 2016, Inc. that were addressed to salted names.[2] The RNC contacted the mailing vendor who distributed the packages for Jeb 2016 and discovered that it had used the "Republican Elite

[1] MUR 6991 Compl. at 1 (Dec. 7, 2015); MUR 6960 Compl. at 1 (Aug. 27, 2015); *see* 11 C.F.R. § 104.3(e) (providing that political committees may submit up to ten fictitious names — *i.e.*, "salted" names — on each disclosure report for the purpose of determining whether the names and addresses of their contributors are being used without consent to solicit contributions or for commercial purposes).

[2] MUR 6991 Compl. at 2.

Donors" mailing list, and that the list was marketed by TMA Direct.[3] A "data card" for the Republican Elite Donors list states that the base price for using the list was $95 per one thousand names (there were 200,872 names on the list) with additional information about the recipients available for a premium.[4]

The RNC contacted TMA Direct and was informed that "[t]he list owner is Roger Stone, from [SWT]."[5] An RNC lawyer promptly sent SWT and Stone a written request that "[SWT] cease and desist from utilizing federally protected FEC contribution reports containing RNC contributor information, and from utilizing or selling the Republican Elite Donors list until [SWT] removes from that list all illegally obtained RNC contributor information."[6] In response, the following week, Stone left a voicemail with the RNC lawyer explaining that SWT had "taken corrective action, and that it believed whatever data problem had existed was fixed."[7]

However, several weeks later, in late June, July, and August of 2015, the RNC received additional solicitation packages from Jeb 2016 and Carson America that were addressed to salted names.[8] The RNC again contacted TMA Direct, which confirmed that it had "brokered the list orders" for the National Rifle Association, Jeb 2016, and Carson America to use the Republican

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3 *Id.* It appears that Precision Marketing, Inc. was the mailing vendor. An August 12, 2015 email from Precision Marketing to the RNC states that "Republican Elite Donors is the one that we (Precision) has [sic] been mailing for Jeb." *Id.*, Ex. A at 2. The RNC also confirmed that the Republican Elite Donors list was marketed by TMA Direct through an inquiry with Pinnacle List Company, a list brokerage and list management firm, which provided the RNC with a "data card" for the list, available on an industry website. MUR 6991 Compl., Ex. B at 1.

4 MUR 6991 Compl., Ex. B at 2-3. The data card describes the list as "comprised of donors with deep pockets, [that] all have given large amounts to campaigns across America to advance the Republican agenda. They reflect all of the aspects of the Republican Party and will support any candidate or group that supports their agenda, time and time again." *Id.* at 2.

5 MUR 6991 Compl. at 2; *id.*, Ex. C at 1.

6 MUR 6991 Compl. at 2; *id.*, Ex. D at 1; *see also* MUR Resp. 6991 at 2 (Jan. 19, 2016).

7 MUR 6991 Resp at 2; *see* MUR 6991 Compl. at 2.

8 MUR 6991 Compl. at 2.

Elite Donors list in connection with all of the mailings which resulted in solicitation packages addressed to the RNC's salted names.[9]

In August 2015, the National Republican Congressional Committee ("NRCC"), Complainant in MUR 6960, received a solicitation package addressed to a salted name from Cruz for President.[10] The NRCC contacted Cruz for President and discovered that it had used the Republican Elite Donors list, and that the list was marketed by TMA Direct (at the time, it appeared to the NRCC that TMA Direct was also the owner of the list).[11] Next, the NRCC contacted TMA Direct and learned that the "list is owned by: Roger Stone" and was provided with his contact information at SWT.[12] Per a request from the NRCC, TMA Direct agreed "to suspend marketing [the Republican Elite Donors] list until the matter is resolved."[13] An NRCC lawyer immediately sent SWT and Stone an email demanding that SWT "cease and desist from using or selling the Republican Elite Donors list until [SWT] removes all illegally-obtained NRCC contributor information," to which the NRCC has not received a response.[14]

Respondents admit that the Republican Elite Donors list contained contributor information from Complainants' disclosure reports, contending that it was "a one-time, isolated

[9] *Id.*; *id.*, Ex. G at 1. TMA Direct did not specifically confirm that the National Rifle Association, Jeb 2016, or Carson America directly contracted with TMA Direct to rent the Republican Elite Donors list, only that "these orders were processed by TMA list management." MUR 6991 Compl., Ex. G at 1. Jeb 2016 did not report any disbursements to TMA Direct, whereas Carson America reported dozens of disbursements to TMA Direct during the 2016 election cycle, including several in the fall of 2015 for "List Rental," totaling $950,311. Carson America Amended 2015 Year-End Rpt. at 31,473-74 (Mar. 28, 2016); Carson America 2015 October Quarterly Rpt. at 19,447 (Oct. 15, 2015).

[10] MUR 6960 Compl. at 1.

[11] *Id.*, Ex. C at 3. Cruz for President did not report any disbursements to TMA Direct, and the Complaint does not provide any information regarding a third-party vendor that might have contracted with TMA Direct on the committee's behalf.

[12] *Id.* at 2. TMA Direct did not explicitly state that either or both Stone and SWT were the list owners.

[13] *Id.* at 1-2.

[14] MUR 6960 Compl., Ex. D at 1; MUR 6960 Compl. at 2; *see* MUR 6991 Resp. at 2.

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and unintentional" mistake.[15] They explain that SWT "recently added some FEC data to its proprietary model for use in identifying likely Republican contributors," and that a third-party data vendor "inadvertently" copied the information into a file that would become the Republican Elite Donors list.[16] Respondents maintain that the (unidentified) data vendor's actions were in contradiction to SWT's "long-standing instructions."[17]

After receiving notification from the RNC, in June 2015, Respondents admit that SWT attempted, but failed, to delete the RNC's contributor information from the Republican Elite Donors list.[18] They explain that SWT "assumed . . . that the source . . . was a batch of donor lists that the company had obtained through another broker in April of 2015," and pulled the data originating from those lists, mistakenly believing that it would capture the RNC's contributor information.[19] After receiving notification from the NRCC, in August 2015, which revealed that the list still contained contributor information from FEC disclosure reports, Respondents claim that SWT finally solved the problem by removing all data that had originated from the file prepared by the unnamed third-party data vendor, described above.[20]

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[15] MUR 6991 Resp. at 3; *see also* MUR 6960 Resp. at 2 (Oct. 20, 2015). Because the Response in MUR 6991 contains the same and additional information as the Response in MUR 6960, we cite almost exclusively to the MUR 6991 Response in this Report. The Responses in both MURs were filed jointly.

[16] MUR 6991 Resp. at 2.

[17] *Id.* ("The FEC data is specifically segregated and not intended to be used on fundraising lists that are later marketed for solicitation or any other commercial purpose. The intent and design was for the FEC data to only be used to help create the research model, not for any contributor data on it to be distributed or sold to others for solicitation purposes.").

[18] *Id.* Specifically, Respondents state that "TMA Direct notified [SWT] of a call from the RNC relating to a list containing an RNC 'salt.'" *Id.*

[19] *Id.*

[20] *Id.* Respondents do not describe how SWT determined that the file prepared by the unnamed third-party data vendor was the true source of the RNC's and NRCC's contributor information.

Respondents contend that SWT has "fully examined" its other mailing lists; it determined that none contain the salted names referenced in either of the Complaints.[21] In addition, they claim that SWT has "implemented protective measures to better ensure that FEC data will not be used for fundraising purposes going forward," including that SWT has "pulled all FEC data from its proprietary models."[22] Moreover, Respondents maintain that using information obtained from FEC disclosure reports for list-making purposes "has never been part of [SWT's] business model or practice," and that its leadership "understands [the applicable] FEC regulation" from many years of experience in government and politics.[23]

III. LEGAL ANALYSIS

A. Relevant Law

Political committees shall disclose the identification of each person whose aggregate contributions exceed $200 within the calendar year (or election cycle in the case of an authorized committee) along with the date and amount of any such contribution.[24] The Commission shall make all reports available for public inspecting and copying.[25]

The Act's sale and use provision states that information obtained from the Commission's reports "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

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21 *Id.* at 3.

22 *Id.* Respondents do not specify any other corrective measures.

23 *Id.* at 1; MUR 6960 Resp. at 1.

24 52 U.S.C. § 30104(b)(3)(A); *see id.* § 30101(13)(A) (defining "identification," in the case of an individual, as name, mailing address, occupation, and employer).

25 *Id.* § 30111(a)(4).

contributions from such committee."[26] In accordance with congressional intent, the Commission has concluded that the sale and use provision applies to contribution information, including contributors' identifying information as well as their contribution history.[27] When determining if sale or use of information obtained from FEC disclosure reports constitutes a violation, the Commission has looked to whether the purpose was solicitation-related.[28]

B. There is Reason to Believe That SWT Violated the Sale and Use Provision

Respondents acknowledge that the Republican Elite Donors list contained contributor information obtained from Complainants' FEC disclosure reports and do not dispute that the list was sold for the purpose of soliciting contributions.[29] SWT created and then transferred the Republican Elite Donors list to TMA Direct, a list brokerage firm, which marketed the list.[30] At least four organizations, either directly or through a third-party vendor, rented the list from TMA

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[26] *Id.*; *see also* 11 C.F.R. § 104.15. The Commission's implementing regulation provides that "*soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 C.F.R. § 104.15(b) (emphasis in original).

[27] *See e.g.*, Advisory Op. 2004-24 at 2-3 (NGP); Advisory Op. 1985-16 at 2 (Weiss); Advisory Op. 1980-101 at 2 (Weinberger) ("[The sale and use provision] specifically focuses on prohibiting the use of any contributor information found in those reports."); Factual & Legal Analysis at 11, MUR 6334 (Aristotle Int'l, Inc.) (open matter); Factual & Legal Analysis at 5, MUR 5625 (Aristotle Int'l, Inc.); *see* 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981) ("[T]he purpose of this amendment is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party.");

[28] *See, e.g.*, Factual & Legal Analysis at 10, MUR 6334 (Aristotle Int'l, Inc.) (open matter); Advisory Op. 2013-16 at 6 (PoliticalRefund.org); Advisory Op. 1988-02 at 2 (Chicago Board of Options Exchange II) ("[T]he Commission has permitted the use of individual contributor information only in narrow circumstances not related to solicitation or commercial purposes."); Advisory Op. 1984-02 at 2 (Gramm); Advisory Op. 1981-05 at 2 (Findley).

[29] *See* MUR 6991 Resp. at 2-3.

[30] *See id.* at 2. There is nothing to suggest that TMA Direct was aware that the Republican Elite Donors list contained information obtained from FEC disclosure reports. As described above, the company provided assistance to both the RNC and NRCC as they tracked down the party responsible for illegally using their contributor information and, upon the request of the NRCC, TMA Direct agreed to suspend marketing the Republican Elite Donors list until the issue with illegal contributor information was resolved. *See supra* notes 5, 9, 12-13, 18. In prior matters involving the sale of commercial mailing lists, the Commission has imposed liability only with respect to those persons who acted with knowledge that the list contained names and addresses from FEC disclosure reports. *See, e.g.*, MUR 2822 (Hiner and Associates); MUR 2571 (Piedmont Communications).

Direct to solicit contributions. Respondents, however, contend that the contributor information was inserted into the list by mistake, and that the offending data appeared on the list only during the summer of 2015.[31]

In addition, Respondents acknowledge that SWT "added some FEC data to its proprietary model for use in identifying likely Republican contributors."[32] The project was designed to "find individuals with certain characteristics similar to established contributors."[33] This appears to be similar to activity that the Commission has already found to be a violation of the sale and use provision. For instance, in Advisory Op. 1985-16 (Weiss), the Commission concluded that it was impermissible to enhance the value of a commercial mailing list by comparing its pre-existing names with the names of contributors from disclosure reports.[34] Respondents maintain that SWT has since abandoned this use of contributor information.[35]

Based on this information, we recommend that the Commission find reason to believe that SWT violated 52 U.S.C. § 30111(a)(4) in connection with its sale and use of contributor information obtained from FEC disclosure reports. As described in Part IV below, there are several unanswered questions regarding the scope of the apparent violations here, *inter alia*, and we therefore propose an investigation to obtain additional information.

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31 MUR 6991 Resp. at 1, 3.

32 *Id.* at 2.

33 *Id.*

34 Advisory Op. (1985-16) (Weiss) at 2. The requestor proposed to search through FEC disclosure reports to compare names on a pre-existing list with individuals who have made a past contribution; no new names would have been added. *Id.* at 1. The Commission concluded that the resulting list "would have special commercial value," and that "[s]uch a use to increase the commercial value of [the] list is prohibited." *Id.* at 2.

35 MUR 6991 Resp. at 3.

C. The Commission Should Take No Action at This Time Regarding the Allegations that Stone Violated the Sale and Use Provision

Complainants allege that Roger A. Stone, SWT's founder, president, and CEO, should be held liable in his individual capacity.[36] The Act states that information from FEC disclosure reports shall not be sold or used by "any person" for the purpose of soliciting contributions or for commercial purposes.[37] The current factual record does not provide an adequate basis to suggest that Stone acted in a manner that warrants further enforcement proceedings against him individually. However, emails from TMA Direct, the list brokerage firm that marketed the Republican Elite Donors list, seemingly describe Stone himself as the list's owner,[38] and the Responses do not address the issue of list ownership. In light of this ambiguity, and the limited information regarding Stone's conduct with respect to SWT's apparent violations, the analysis regarding Stone's liability will benefit from additional information that we may uncover during the investigation.

Therefore, we recommend that the Commission take no action at this time with respect to the allegations that Stone violated 52 U.S.C. § 30111(a)(4).

IV. PROPOSED INVESTIGATION

Despite Respondents' admissions, there are several unanswered questions regarding the apparent violations. In particular, we have little information about their scope, including how many clients contracted with TMA Direct to purchase access to the Republican Elite Donors list; how much they paid for access and how much of that money went back to SWT and Stone; how much of the RNC's and NRCC's contributor information was inserted into the list; and whether

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36 MUR 6960 Compl. at 1; MUR 6991 Compl. at 1.

37 52 U.S.C. § 30111(a)(4).

38 *See supra* notes 5, 12,

other committees' contributor information was similarly misappropriated.[39] Further, there is only a brief explanation regarding what exactly caused the "inadvertent" copying of information from FEC disclosure reports.[40] Respondents refer to the supposedly responsible party as a "data vendor" without providing any descriptive or identifying information, and there is no available statement from that entity to corroborate Respondents' account. There are also questions regarding the legitimacy of SWT's corrective actions when it was first notified of the problems with the list. Respondents state that SWT mistakenly "assumed" that the source of the offending data was a batch of lists it had acquired from a list broker in April 2015, without explaining how it came to this determination or the steps it took to confirm this.[41] Finally, with respect to the separate project, Respondents have provided only limited details regarding how SWT used contributor information from FEC disclosure reports to identify likely contributors and it is unclear whether the company has already used that information for commercial purposes or continues to sell products that benefit from having used that information.

Because of these unanswered questions, we propose an investigation to provide the information necessary to determine the appropriate disposition for this matter. We will attempt to conduct our investigation through voluntary means, but we recommend that the Commission authorize the use of compulsory process.

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[39] Of the three political committees that we know used the Republican Elite Donors list — Jeb 2016, Carson America, and Cruz for President — only Carson America reported disbursements to TMA Direct (totaling $950,311 for "List Rental"), suggesting that the other committees rented the list through a third-party vendor. *See supra* notes 9, 11. Also, the Carson America disbursements occurred in the fall, slightly post-dating the mailings at issue (July 2015), which calls into question whether those disbursements related to the solicitation packages.

[40] MUR 6960 Resp. at 1-2; MUR 6991 Resp. at 1-2.

[41] MUR 6991 Resp. at 2. Presumably, a search through the remaining names, after SWT removed the data originating from that batch of lists, would have revealed that salted names were still present. On a related note, Respondents assert that SWT has determined that its other lists are free of illegal contributor information, based on a search of the salted names referenced in the Complaints. *See supra* note 21. However, this appears to be an overly narrow method of detecting illegal contributor information.

V. RECOMMENDATIONS

1. Find reason to believe that SW Technologies, LLC violated 52 U.S.C. § 30111(a)(4);

2. Take no action at this time as to the allegations that Roger A. Stone violated 52 U.S.C. § 30111(a)(4);

3. Approve the attached Factual and Legal Analysis;

4. Authorize the use of compulsory process; and

5. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Date: 4/18/17

Kathleen M. Guith
Associate General Counsel

Mark Shonkwiler
Assistant General Counsel

Claudio J. Pavia
Attorney

Attachment:
Factual and Legal Analysis — SW Technologies, LLC

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1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
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5 Respondent: SW Technologies, LLC MURs 6960 & 6991
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8 **I. INTRODUCTION**

9 These matters involve allegations that SW Technologies, LLC d/b/a Advocacy Data
10 ("SWT"), a political marketing firm, and Roger A. Stone, SWT's founder, president, and CEO,
11 violated the "sale and use" provision of the Federal Election Campaign Act of 1971, as amended
12 (the "Act"), by compiling a commercial mailing list with the names and addresses of contributors
13 obtained from Complainants' FEC disclosure reports. For the reasons stated below, the
14 Commission finds reason to believe that SWT violated 52 U.S.C. § 30111(a)(4).

15 **II. FACTUAL SUMMARY**

16 Complainants include "salted" names on their FEC disclosure reports to deter illegal use
17 of their contributor information.[1] In June 2015, the Republican National Committee ("RNC"),
18 Complainant in MUR 6991, received solicitation packages from the National Rifle Association
19 and Jeb 2016, Inc. that were addressed to salted names.[2] The RNC contacted the mailing vendor
20 who distributed the packages for Jeb 2016 and discovered that it had used the "Republican Elite
21 Donors" mailing list, and that the list was marketed by TMA Direct.[3] A "data card" for the

[1] MUR 6991 Compl. at 1 (Dec. 7, 2015); MUR 6960 Compl. at 1 (Aug. 27, 2015); *see* 11 C.F.R. § 104.3(e) (providing that political committees may submit up to ten fictitious names — *i.e.*, "salted" names — on each disclosure report for the purpose of determining whether the names and addresses of their contributors are being used without consent to solicit contributions or for commercial purposes).

[2] MUR 6991 Compl. at 2.

[3] *Id.* It appears that Precision Marketing, Inc. was the mailing vendor. An August 12, 2015 email from Precision Marketing to the RNC states that "Republican Elite Donors is the one that we (Precision) has [sic] been mailing for Jeb." *Id.*, Ex. A at 2. The RNC also confirmed that the Republican Elite Donors list was marketed by

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Republican Elite Donors list states that the base price for using the list was $95 per one thousand names (there were 200,872 names on the list) with additional information about the recipients available for a premium.[4]

The RNC contacted TMA Direct and was informed that "[t]he list owner is Roger Stone, from [SWT]."[5] An RNC lawyer promptly sent SWT and Stone a written request that "[SWT] cease and desist from utilizing federally protected FEC contribution reports containing RNC contributor information, and from utilizing or selling the Republican Elite Donors list until [SWT] removes from that list all illegally obtained RNC contributor information."[6] In response, the following week, Stone left a voicemail with the RNC lawyer explaining that SWT had "taken corrective action, and that it believed whatever data problem had existed was fixed."[7]

However, several weeks later, in late June, July, and August of 2015, the RNC received additional solicitation packages from Jeb 2016 and Carson America that were addressed to salted names.[8] The RNC again contacted TMA Direct, which confirmed that it had "brokered the list orders" for the National Rifle Association, Jeb 2016, and Carson America to use the Republican

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TMA Direct through an inquiry with Pinnacle List Company, a list brokerage and list management firm, which provided the RNC with a "data card" for the list, available on an industry website. MUR 6991 Compl., Ex. B at 1.

4 MUR 6991 Compl., Ex. B at 2-3. The data card describes the list as "comprised of donors with deep pockets, [that] all have given large amounts to campaigns across America to advance the Republican agenda. They reflect all of the aspects of the Republican Party and will support any candidate or group that supports their agenda, time and time again." *Id.* at 2.

5 MUR 6991 Compl. at 2; *id.*, Ex. C at 1.

6 MUR 6991 Compl. at 2; *id.*, Ex. D at 1; *see also* MUR Resp. 6991 at 2 (Jan. 19, 2016).

7 MUR 6991 Resp at 2; *see* MUR 6991 Compl. at 2.

8 MUR 6991 Compl. at 2.

Elite Donors list in connection with all of the mailings which resulted in solicitation packages addressed to the RNC's salted names.[9]

In August 2015, the National Republican Congressional Committee ("NRCC"), Complainant in MUR 6960, received a solicitation package addressed to a salted name from Cruz for President.[10] The NRCC contacted Cruz for President and discovered that it had used the Republican Elite Donors list, and that the list was marketed by TMA Direct (at the time, it appeared to the NRCC that TMA Direct was also the owner of the list).[11] Next, the NRCC contacted TMA Direct and learned that the "list is owned by: Roger Stone" and was provided with his contact information at SWT.[12] Per a request from the NRCC, TMA Direct agreed "to suspend marketing [the Republican Elite Donors] list until the matter is resolved."[13] An NRCC lawyer immediately sent SWT and Stone an email demanding that SWT "cease and desist from using or selling the Republican Elite Donors list until [SWT] removes all illegally-obtained NRCC contributor information," to which the NRCC has not received a response.[14]

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9 *Id.*; *id.*, Ex. G at 1. TMA Direct did not specifically confirm that the National Rifle Association, Jeb 2016, or Carson America directly contracted with TMA Direct to rent the Republican Elite Donors list, only that "these orders were processed by TMA list management." MUR 6991 Compl., Ex. G at 1. Jeb 2016 did not report any disbursements to TMA Direct, whereas Carson America reported dozens of disbursements to TMA Direct during the 2016 election cycle, including several in the fall of 2015 for "List Rental," totaling $950,311. Carson America Amended 2015 Year-End Rpt. at 31,473-74 (Mar. 28, 2016); Carson America 2015 October Quarterly Rpt. at 19,447 (Oct. 15, 2015).

10 MUR 6960 Compl. at 1.

11 *Id.*, Ex. C at 3. Cruz for President did not report any disbursements to TMA Direct, and the Complaint does not provide any information regarding a third-party vendor that might have contracted with TMA Direct on the committee's behalf.

12 *Id.* at 2. TMA Direct did not explicitly state that either or both Stone and SWT were the list owners.

13 *Id.* at 1-2.

14 MUR 6960 Compl., Ex. D at 1; MUR 6960 Compl. at 2; *see* MUR 6991 Resp. at 2.

Respondents admit that the Republican Elite Donors list contained contributor information from Complainants' disclosure reports, contending that it was "a one-time, isolated and unintentional" mistake.[15] They explain that SWT "recently added some FEC data to its proprietary model for use in identifying likely Republican contributors," and that a third-party data vendor "inadvertently" copied the information into a file that would become the Republican Elite Donors list.[16] Respondents maintain that the (unidentified) data vendor's actions were in contradiction to SWT's "long-standing instructions."[17]

After receiving notification from the RNC, in June 2015, Respondents admit that SWT attempted, but failed, to delete the RNC's contributor information from the Republican Elite Donors list.[18] They explain that SWT "assumed . . . that the source . . . was a batch of donor lists that the company had obtained through another broker in April of 2015," and pulled the data originating from those lists, mistakenly believing that it would capture the RNC's contributor information.[19] After receiving notification from the NRCC, in August 2015, which revealed that the list still contained contributor information from FEC disclosure reports, Respondents claim

[15] MUR 6991 Resp. at 3; *see also* MUR 6960 Resp. at 2 (Oct. 20, 2015).

[16] MUR 6991 Resp. at 2.

[17] *Id.* ("The FEC data is specifically segregated and not intended to be used on fundraising lists that are later marketed for solicitation or any other commercial purpose. The intent and design was for the FEC data to only be used to help create the research model, not for any contributor data on it to be distributed or sold to others for solicitation purposes.").

[18] *Id.* Specifically, Respondents state that "TMA Direct notified [SWT] of a call from the RNC relating to a list containing an RNC 'salt.'" *Id.*

[19] *Id.*

that SWT finally solved the problem by removing all data that had originated from the file prepared by the unnamed third-party data vendor, described above.[20]

Respondents contend that SWT has "fully examined" its other mailing lists; it determined that none contain the salted names referenced in either of the Complaints.[21] In addition, they claim that SWT has "implemented protective measures to better ensure that FEC data will not be used for fundraising purposes going forward," including that SWT has "pulled all FEC data from its proprietary models."[22] Moreover, Respondents maintain that using information obtained from FEC disclosure reports for list-making purposes "has never been part of [SWT's] business model or practice," and that its leadership "understands [the applicable] FEC regulation" from many years of experience in government and politics.[23]

III. LEGAL ANALYSIS

A. Relevant Law

Political committees shall disclose the identification of each person whose aggregate contributions exceed $200 within the calendar year (or election cycle in the case of an authorized committee) along with the date and amount of any such contribution.[24] The Commission shall make all reports available for public inspecting and copying.[25]

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20 *Id.* Respondents do not describe how SWT determined that the file prepared by the unnamed third-party data vendor was the true source of the RNC's and NRCC's contributor information.

21 *Id.* at 3.

22 *Id.* Respondents do not specify any other corrective measures.

23 *Id.* at 1; MUR 6960 Resp. at 1.

24 52 U.S.C. § 30104(b)(3)(A); *see id.* § 30101(13)(A) (defining "identification," in the case of an individual, as name, mailing address, occupation, and employer).

25 *Id.* § 30111(a)(4).

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The Act's sale and use provision states that information obtained from the Commission's reports "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."[26] In accordance with congressional intent, the Commission has concluded that the sale and use provision applies to contribution information, including contributors' identifying information as well as their contribution history.[27] When determining if sale or use of information obtained from FEC disclosure reports constitutes a violation, the Commission has looked to whether the purpose was solicitation-related.[28]

B. There is Reason to Believe That SWT Violated the Sale and Use Provision

Respondents acknowledge that the Republican Elite Donors list contained contributor information obtained from Complainants' FEC disclosure reports and do not dispute that the list was sold for the purpose of soliciting contributions.[29] SWT created and then transferred the Republican Elite Donors list to TMA Direct, a list brokerage firm, which marketed the list.[30] At

[26] *Id.*; *see also* 11 C.F.R. § 104.15. The Commission's implementing regulation provides that "*soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions. 11 C.F.R. § 104.15(b) (emphasis in original).

[27] *See e.g.*, Advisory Op. 2004-24 at 2-3 (NGP); Advisory Op. 1985-16 at 2 (Weiss); Advisory Op. 1980-101 at 2 (Weinberger) ("[The sale and use provision] specifically focuses on prohibiting the use of any contributor information found in those reports."); Factual & Legal Analysis at 5, MUR 5625 (Aristotle Int'l, Inc.); *see* 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981) ("[T]he purpose of this amendment is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party.").

[28] *See, e.g.*, Advisory Op. 2013-16 at 6 (PoliticalRefund.org); Advisory Op. 1988-02 at 2 (Chicago Board of Options Exchange II) ("[T]he Commission has permitted the use of individual contributor information only in narrow circumstances not related to solicitation or commercial purposes."); Advisory Op. 1984-02 at 2 (Gramm); Advisory Op. 1981-05 at 2 (Findley).

[29] *See* MUR 6991 Resp. at 2-3.

[30] *See id.* at 2.

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least four organizations, either directly or through a third-party vendor, rented the list from TMA Direct to solicit contributions. Respondents, however, contend that the contributor information was inserted into the list by mistake, and that the offending data appeared on the list only during the summer of 2015.[31]

In addition, Respondents acknowledge that SWT "added some FEC data to its proprietary model for use in identifying likely Republican contributors."[32] The project was designed to "find individuals with certain characteristics similar to established contributors."[33] This appears to be similar to activity that the Commission has already found to be a violation of the sale and use provision. For instance, in Advisory Op. 1985-16 (Weiss), the Commission concluded that it was impermissible to enhance the value of a commercial mailing list by comparing its pre-existing names with the names of contributors from disclosure reports.[34] Respondents maintain that SWT has since abandoned this use of contributor information.[35]

Based on this information, the Commission finds reason to believe that SWT violated 52 U.S.C. § 30111(a)(4) in connection with its sale and use of contributor information obtained from FEC disclosure reports.

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31 *Id.* at 1, 3.

32 *Id.* at 2.

33 *Id.*

34 Advisory Op. (1985-16) (Weiss) at 2. The requestor proposed to search through FEC disclosure reports to compare names on a pre-existing list with individuals who have made a past contribution; no new names would have been added. *Id.* at 1. The Commission concluded that the resulting list "would have special commercial value," and that "[s]uch a use to increase the commercial value of [the] list is prohibited." *Id.* at 2.

35 MUR 6991 Resp. at 3.