

July 5, 1995
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
USE OF ARISTOTLE CONSTITUENT TRACKING SYSTEM IN COUNCIL OFFICES

It has come to the City Attorney's attention that San Diego Data Processing Corporation ("SDDPC") has recently been installing in Mayoral and Council offices a software package from Aristotle Software called "Constituent Services III" ("CS-III"). CS-III is designed to assist legislative officials in tracking their offices' contacts with constituents.

In terms of legal issues presented, CS-III is similar to the Monarch System computer software that was installed in Council offices several years ago. The City Attorney issued guidelines for lawful use of the Monarch System by Mayoral and Council staff when that System was first installed in 1989. Since some of the law has changed drastically since the Monarch System was first installed---especially as affecting the confidentiality of the information collected and stored---the City Attorney believes it is essential to issue an updated set of guidelines for your use.

I. Types of Data that will be Collected and Stored:

According to information provided by SDDPC, the source of the data that will be used in CS-III is voter registration records maintained by the County Registrar of Voters. The specific data elements or "fields" of potentially available information are listed on the attached sheet.

Under recently adopted state legislation, information in voter registration records is confidential and is no longer routinely available for public inspection. Elections Code Section 2194.F

As added by section 8 of 1994 Statutes chapter 1307, Elections Code section 2194 reads in relevant part:

(a) The voter registration card
information identified in subdivision (a) of
Section 6254.4 of the Government Code:

(1) Shall be confidential and
shall not appear on any computer terminal,
list, affidavit, duplicate affidavit, or other
medium routinely available to the public at
the county elections official's office.

(2) Shall be provided with
respect to any . . . person for election,
scholarly, journalistic, or political
purposes, or for governmental purposes, as

determined by the Secretary of State.

....

As added by section 12 of 1994 Statutes chapter 1207, Government Code section 6254.4(a) reads: "The home address, telephone number, occupation, precinct number, and prior registration information shown on the voter registration card for all registered voters is confidential, and shall not be disclosed to any person, except pursuant to Section 615 (sic) of the Elections Code."

Notably, this Elections Code section operates not by restricting who may obtain the voter registration information, but rather by restricting the purposes for which it may be obtained. The statute allows any person to obtain voter registration information as long as the purpose for which it is used is a permitted use. Permitted uses in the statute include: election, scholarly, journalistic, political or governmental purposes.

The Acting Registrar of Voters for San Diego County informs us that he asks persons seeking to obtain voter registration to fill out a form that was developed to comply with state law. A copy of that form is attached. Among other things, it requires the applicant to identify the uses to which the voter registration information will be put. The person seeking the information signs the form under penalty of perjury. The precise contents of the application form are prescribed in Elections Code section 2188.

To summarize this portion of the report, for purposes of Elections Code section 2194, both governmental and campaign uses of voter registration information are lawful. For other reasons discussed below, however, Mayoral or Council staff use of the information for campaign purposes may well be prohibited.

II. Ownership of Data Collected: City or Councilmember?

Just as with the Monarch System, City funds are being used to purchase and install the CS-III system. Furthermore, City staff will maintain and update the information in the database. Therefore, the CS-III system and the information contained in it will be City property.

City Council policy prohibits use of City property, equipment and staff for non-governmental purposes. Specifically, Council Policy 000-4, the Council's Code of Ethics, prohibits a public official or employee from engaging in any activity which results in:

(b) Using time, facilities, equipment, or supplies of the City of San Diego for the private gain or advantage of himself or another.

(c) Using official information not available to the general public for his private gain or advantage or that of another.

This policy would prohibit individual Councilmembers from "loaning" the information maintained in the CS-III System to a campaign committee or to someone for their private use.

III. Limitations Imposed by the Public Purpose Doctrine:

Since the CS-III system will be purchased and maintained with City funds, the California constitutional prohibition against making gifts of public funds will apply here. Calif. Const. art. XIII, Section 25. Under this prohibition, public funds may only be used for public purposes. The concept of "public purpose" is liberally construed by the courts. However, there must be a reasonable basis for the expenditure, that is, the expenditure cannot be arbitrary. See, e.g., *Mannheim v. Superior Court*, 3 Cal. 3d 678, 691 (1970). The mere fact that individuals may be incidentally benefitted by the expenditure does not defeat the public purpose. *Id.* at 691.

Although we found no case on point, keeping track of constituents' needs, desires and voting patterns would appear to be reasonably related to a public purpose. However, if the information collected were used solely to benefit an individual or campaign, the "public purpose" of the data collection and maintenance would be defeated.

IV. Limitations Imposed by SDDPC's Licensing Agreement with Aristotle Industries:

Under the standard licensing agreement between SDDPC and Council offices, which was created pursuant to the licensing agreement between SDDPC and Aristotle Industries, Mayoral and Council offices are considered licensees. Under paragraph 10 A of the standard license, the licensee is prohibited from transferring possession of any copy, modification or merged portion of the program to anyone. We interpret this licensing provision to prohibit Mayoral or Council staff from transferring the information collected and maintained in the CS-III database to another individual or group, including a campaign committee.

V. Limitations imposed by "Mass Mailing" Law and Regulations:

In June 1988, California voters adopted Proposition 73, which in part placed severe restrictions on "mass mailings" (more than 200 substantially similar documents) distributed by elected officials at public expense.^F

Although many parts of Proposition 73 have been invalidated by the courts since 1988, the "mass mailing" restrictions are still in place and are enforced.

Gov't Code Sections 82041.5; 89001. The Fair

Political Practices Commission (FPPC) has adopted a regulation which implements the statutory restriction. 2 Cal. Code of Regs. Section 18901. Essentially, this regulation prohibits distribution of more than 200 unsolicited newsletters or other mass mailings to anyone's residence, business or post office box within one calendar month at public expense. Under this regulation, City staff, time, and equipment could not be used to prepare or distribute a mass mailing to any of the names and addresses kept in the CS-III database, unless the City were fully reimbursed for its costs.

Respectfully submitted,
JOHN W. WITT
City Attorney

CCM:pev:180.1(043.1)

Attachment

RC-95-21