



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 11, 2020

Thomas Mackel
President
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PO Box 530163
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Re: Your Request for Informal Assistance
Our File No. I-20-053

Dear Mr. Mackel:

This letter responds to your request for advice regarding advertisement disclosure provisions of the Political Reform Act (the “Act”).¹ Because your question is general in nature, we are treating your inquiry as a request for informal assistance.² Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

Is content created for Informed Delivery via the United States Post Office (“USPS”) separately subject to disclosure requirements under the Act?

CONCLUSIONS

There are no additional disclosure requirements for the USPS non-integrated Informed Delivery service. However, because senders can alter the mailer by utilizing the USPS integrated Informed Delivery campaign service there are additional disclosure requirements for senders using integrated Informed Delivery.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS AS PRESENTED BY REQUESTER

You are a mail service provider who prepares either mass mailings or advertisements for several candidates and ballot measures in California. You encourage committees to sign up for integrated Informed Delivery, offered by USPS. The committees are also encouraged to have members in their communities sign up for the non-integrated Informed Delivery option offered by the USPS. Informed Delivery is a service that allows the recipient to be sent a preview of their mail arriving that day via email sent by the USPS. Residents have an option to sign up for non-integrated and senders have the option to enter an agreement with USPS for the integrated add-on service.

Non-integrated Informed Delivery is a process where USPS sends scanned photos of the address side of each letter to Informed Delivery® subscribers each morning via email. This photo may or may not include mass mailing or campaign disclosure information because the photo is only of the outside address side of the mailing (return address information may be on the backside). There is no additional postage cost to this mailing and there is no action taken by the sender for a recipient to receive these messages. The items appearing in the scanned photos arrive in the recipient's mailbox that day.

Integrated Informed Delivery is another service offered by USPS to senders who will be mailing out either mass mailings or advertisements. The integrated Informed Delivery® add-on service allows the mailer to replace a greyscale processing scan of the letter with a colorized, representative image of the address side of the mail piece. However, the mail piece photo is often modified slightly to remove the individual's address, increase the slug line type size and remind the mailer to check their mailbox. Senders can also add links to websites of their choosing associated with each mail piece for the recipient to view. These additional items can only be displayed in conjunction with the specific mass mailing or advertisement that arrives in the mailbox to the recipient. The intent of the integrated Informed Delivery® is to elevate attention to the letter in the mailbox and provide recipients a weblink to engage on some level with the sender prior to retrieving the letter from the curbside mailbox (e.g., visit the campaign website).

Before using this service, candidates, committees, judges, major donor committees, independent expenditure committees, and slate mailers seek advice on whether the content created for both non-integrated and integrated Informed Delivery® is separately subject to disclosure requirements under the Act.

ANALYSIS

Non-integrated Informed Delivery®

“Mass mailing” means over two hundred substantially similar pieces of mail but does not include a form letter or other mail which is sent in response to an unsolicited request, letter, or other inquiry. (Section 82041.5.) Section 84305 provides that a mass electronic mailing means sending more than 200 substantially similar pieces of electronic mail within a calendar month. An “advertisement” means any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures. (Section 84501.)

You have indicated that committees will be sending out either mass mailings or advertisements to certain recipients. The recipients may have signed up with non-integrated USPS Informed Delivery where the recipient has elected to receive an email showing scanned images of the mail pieces that they will receive that day. Non-integrated Informed Delivery is where all mail pieces, including the mass mailings or advertisements sent by committees, will appear in the recipient's email as a black and white scanned image of each mail piece arriving in the mail that same day with no alteration by the sender between the scan and what will be arriving in the mail that day. So long as the physical mass mailing or advertisement appearing in the recipient's mailbox that day has the appropriate disclosures set forth in the Act,³ there are no additional disclosure requirements for the scanned image appearing in the recipient's email as the scanned image is unaltered by the sender and merely shows the recipient a scan of the same item they will be receiving in the mail that day.

Integrated Informed Delivery®

As mentioned above, a mass electronic mailing is defined as sending more than 200 substantially similar pieces of electronic mail within a calendar month. (Section 84305.) An "advertisement," as mentioned above, includes an electronic media communication including a logo, icon, writing, image, recording, video, or other data posted, broadcast, or displayed electronically. (Section 84504.3, Regulation 18450.1.) This includes but is not limited to advertisements in electronic messages, electronic message attachments or other advertisements that appear on Internet websites or webpages, social media, blogs, other generally accessible electronic communication systems. (Sections 84501 and 84504.3, Regulation 18450.1)

You have indicated that you are a mail service provider who prepares either mass mailings or advertisements within the meaning of the Act and you encourage committees to sign up for the integrated Informed Delivery service provided by the USPS. An integrated Informed Delivery mail piece that the recipient receives via email can be significantly different than the mail piece that will actually arrive in the mailbox because the sender may have altered the electronic mail piece by removing the recipient's address, adjusting the font size and adding color. Additionally, the mail piece provided in the recipient's email could include additional messages and could have a link to a committee's website or other webpage that will not be included or accessible through the mail piece arriving in the recipient's mailbox.

Accordingly, the use of integrated Informed Delivery could make the mail piece sent by the committee either a separate electronic mass mailing or a separate electronic advertisement from the item being sent in the regular mail, and thus additional or separate disclosures under the Act could be required for the electronic version.⁴ Without additional information relating to the type of mail piece going out to the recipient and without knowing the information as to where the link would take the recipient, we are unable to provide advice on the specific disclosures required or their placement.

³ Disclosures for print ads are set forth in Section 84504.2 and Section 84504.5. Requirements for mass mailings are set forth in Section 84305 and Regulation 18435.

⁴ Advertisement disclosure requirements are provided for in Section 84501 through Section 84511. Mass electronic mailing disclosures for each type of committee sending the mailing are provided for in Section 84305.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Katelyn L. Greene

By: Katelyn L. Greene
Counsel, Legal Division

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