

Recent Decisions

U.S. Supreme Court Holds That Corporations Do Not Have a “Personal Privacy” Interest Assertable Under Freedom of Information Act Exemption

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The U.S. Supreme Court ruled today¹ in *Federal Communications Commission v. AT&T Inc.* (Mar. 1, 2011) that Freedom of Information Act Exemption 7(C)—which exempts from required public disclosure information “compiled for law enforcement purposes” the disclosure of which “could reasonably be expected to constitute an unwarranted invasion of personal privacy”—could not be invoked to protect against disclosure of records produced to an agency on the grounds that disclosure would constitute an unwarranted invasion of personal privacy of a corporation.

AT&T had provided documents to the FCC’s Enforcement Bureau in connection with an investigation that arose after AT&T voluntarily reported to the FCC that it may have overcharged the government for services provided as part of an FCC-administered program. A trade association representing some of AT&T’s competitors submitted a FOIA request seeking the FCC’s files on the investigation. AT&T objected to disclosure, and the agency agreed that some of the information the company had provided should be protected from disclosure under FOIA Exemption 4 (relating to “trade secrets and commercial or financial information”) and that other information, which related to individuals, could be protected under FOIA Exemption 7(C) on the grounds that the individuals in question had privacy rights that warranted protection.

However, the agency ruled that FOIA Exemption 7(C) did not protect asserted privacy interests of a corporation. The Court of Appeals for the Third Circuit disagreed, and ruled that a corporation may have a “personal privacy” interest protectable under Exemption 7(C).

Reversing the Third Circuit, the U.S. Supreme Court held that corporations had no “personal privacy” interests protectable under FOIA Exemption 7(C). The Court emphasized that the discrete question it was deciding was one of statutory interpretation and that it was not passing on the scope of a corporation’s “privacy” interests as a matter of constitutional or common law.

The Court’s decision serves as a reminder that corporate records submitted to government agencies, in connection with investigations or otherwise, are potentially subject to disclosure to any member of the public—even competitors or adversaries in litigation. Appropriate care should be taken when submitting records to government agencies to maximize the potential to invoke potentially applicable exemptions, including FOIA Exemption 4 (relating to “trade secrets and commercial or financial information”) as well as Exemptions 6 and 7(C), which may be invoked to protect the privacy rights of individuals identified in corporate records but not the company itself.

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¹ This memo was originally released March 1, 2011.