

Corporate & Financial Weekly Digest

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Supreme Court Rules That Whistleblowers Cannot Rely on FOIA Requests in FCA Cases

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On May 16, the U.S. Supreme Court ruled that claims brought by private plaintiffs under the federal False Claims Act (FCA) could not be based on information received from Freedom of Information Act (FOIA) requests. In a 5-3 decision that reversed the U.S. Court of Appeals for the Second Circuit, the Supreme Court found that FOIA requests qualify as "reports" that trigger the public disclosure bar for qui tam actions under the FCA.

Respondent, U.S. Army veteran Daniel Kirk, filed suit against his former employer Schindler Elevator Corp., alleging that Schindler failed to meet its obligations as a government contractor. Specifically, Mr. Kirk alleged that Schindler did not comply with the reporting provisions of the Vietnam Era Veterans' Readjustment Act of 1972 (VEVRA). To support his allegations, Mr. Kirk used information obtained through FOIA requests for the company's VEVRA reports. Mr. Kirk contended that Schindler had submitted hundreds of false claims for payments under its government contracts.

Schindler argued that because these FOIA responses were administrative reports, the public disclosure bar, which generally precludes FCA claims based on public disclosure of allegations or transactions in a government report, hearing, audit or investigation, precluded Mr. Kirk's lawsuit. The district court dismissed the action, but the Second Circuit reversed, holding that an agency's response to a FOIA request is neither a "report" nor an "investigation" under the public disclosure bar.

The Supreme Court held that a federal agency's written response to a FOIA request for records constituted a report within the meaning of the FCA's public disclosure bar. Deciding that "report" in this context carried its ordinary meaning, and using several dictionary definitions, the Court ruled that a "report" is "something that gives information," a "notification," or "[a]n official or formal statement of facts or proceedings," and reversed the Second Circuit. (*Schindler Elevator Corp. v. The United States ex rel Kirk*, 2011 WL 1832825, No. 10-188 (May 16, 2011))