



Government Contracts Advisory

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Supreme Court Narrows FOIA Exemptions Available to Corporations

On March 1, 2011, the U.S. Supreme Court issued an opinion in *Federal Communications Commission v. AT&T Inc.*¹ precluding corporations and other organizations from relying on Freedom of Information Act ("FOIA") Exemption 7(C),² which exempts "records or information compiled for law enforcement purposes" that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." The *AT&T* decision leaves contractors (and all corporate entities that submit information to the government) with fewer weapons to institute "reverse FOIA" actions and prevent the disclosure of sensitive information to third parties.

FOIA defines the term "person" broadly, including "an individual, partnership, corporation, association, or public or private organization other than the agency."³ Thus, prior to the *AT&T* decision, there was a reasonable argument that the term "personal privacy," as used in Exemption 7(C), contemplated an equally broad scope. In rejecting this argument, the Supreme Court observed that "[p]erson" is a defined term in the statute; "personal" is not" and noted that "a noun and its adjective form may have meanings as disparate as any two unrelated words." Relying on this distinction and the legislative history of FOIA, the Court determined that "personal" as used by Exemption 7(C) is limited to an individual's privacy interests and, thus, is significantly narrower than the term "person," as defined by FOIA. In an attempt at humor, the Court counseled AT&T not to take the decision "personally."

The *AT&T* decision results in an artificial and somewhat arbitrary distinction between parties that can and cannot employ Exemption 7 (C) to prevent the disclosure of information under FOIA. Although corporations and individuals generally are treated in a similar manner throughout FOIA, the Court in this instance chose to draw a line between the term "person" (which includes corporations) and the term "personal" (which, it held, is inapplicable to corporations).

Absent congressional action, which is extremely unlikely in the present context, the Supreme Court's decision will limit future reverse FOIA actions involving Exemption 7(C). Although unavailable to corporations themselves, however, Exemption 7(C) remains available to shield corporate employees from disclosures that might intrude on their "personal privacy." The FCC's withholding of certain information on this basis was not challenged in *AT&T*. In addition, the decision did not examine the scope of Exemption 6, which has been broadly interpreted by courts to protect from disclosure "personnel and medical files and similar files" that, if disclosed, would invade personal privacy.

If you have questions regarding the *AT&T* decision or reverse FOIA actions generally, please contact the authors or the MLA attorney

that you typically work with.

¹ 562 U.S. ____ (2011).

² 5 U.S.C. § 552(b)(7)(C).

³ 5 U.S.C. § 551(2).

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