

»Business Alert

March 2011— Don't Take It Personally: "Personal Privacy" Under the Freedom of Information Act Does Not Encompass Corporations

In *Federal Communications Commission v. AT&T*, 131 S. Ct. 1177 (2011), the United States Supreme Court held that "personal privacy," as defined by Exemption 7(C) of the Freedom of Information Act ("FOIA"), which exempts from disclosure "records or information compiled for law enforcement purposes" that "could reasonably be expected to constitute an unwarranted invasion of personal privacy," does not encompass corporations. By limiting the concept of "personal privacy," the Court provides clarification on which FOIA protections apply to business entities.

This case arose when AT&T, in 2004, voluntarily reported that it may have overcharged for work provided for the FCC-run Education-Rate Program, which seeks to enhance schools' access to advanced telecommunications and information services. The FCC's Enforcement Bureau launched an investigation, pursuant to which AT&T produced an array of internal documents. The matter was resolved after both sides entered into a consent decree.

Soon thereafter, CompTel, a trade association representing communication companies, submitted a FOIA request for "all pleadings and correspondence" relating to the Enforcement Bureau's investigation of AT&T. AT&T formally opposed the request, claiming that Exemption 7(C) of the FIOA applies to corporations and thus bars the requested information from disclosure. The FCC disagreed, stating that businesses do not have personal privacy rights as intended by the exemption. However, the Court of Appeals for the Third Circuit overruled the FCC's opinion, and the U.S. Supreme Court subsequently granted certiorari to hear the case.

Etymology served as the basis of AT&T's primary argument. AT&T claimed that, because the statute defined the word "person" to include corporations, the adjective form of that word must also encompass corporations. Therefore, AT&T claimed, FOIA

Exemption 7(C) protects corporations from disclosing information that violates their "personal privacy."

The Supreme Court disagreed based on a four-pronged argument. First, the Court noted that, in ordinary usage, adjectives and their corresponding nouns do not necessarily share a common meaning. Second, because the statute does not define "personal," the Court must assign meaning based on the word's ordinary and legal usage, both of which refer to individuals, not business entities. Third, statutory language must be interpreted based on the surrounding words and, in this case, the phrase "personal privacy" suggests a type of privacy unique to humans. Finally, statutory phrases should be consistently defined, and the Court had previously interpreted "personal privacy" provisions of other FOIA exemptions as referring to an individual's right of privacy.

The broad implications of *FCC v. AT&T* remain unclear. The Court may be attempting to limit the general concept of corporate privacy, with further limitations to come. However, if that is true, *FCC v. AT&T* certainly represents a small and restrained first step. Considering that the Court specifically refused to address "the scope of a corporation's 'privacy' interests as a matter of constitutional or common law," this view appears unlikely. Rather, the effect on corporate privacy most likely goes no further than Exemption 7(C). However, by limiting the "personal privacy" language of Exemption 7(C) to apply only to individuals, corporations submitting documents pursuant to a government investigation must consider that any disclosed information may be obtainable by third parties via a FOIA request.

This alert was authored by Mark Jackson, an Associate in the Firm's Transaction Group. His practice focuses on the formation and taxation of business entities, while his real estate practice centers on facilitating the acquisition and lease of commercial property, as well as the resolution of complex title issues. For more information, contact Mr. Jackson by sending a message to: Mark.Jackson@GreshamSavage.com or calling (909) 890-4499.

The foregoing information is intended to provide information on recent legal developments and issues of significant interest. This alert is not intended as, and should not be regarded as, legal advice or a legal opinion. If you have any questions about the topics covered by this alert, please consult an attorney.

© 2011 Gresham Savage. All rights reserved.