



Written by [Bob Adelman](#) on January 18, 2011

Freedom of Information Act: Shield or Bludgeon?

The Supreme Court is about to hear arguments in the case of FCC v. AT&T which could have significant negative impacts on privately-held companies as well as public and private corporations.



It began in 2004 when AT&T discovered that it might have overcharged the federal government for some work it was doing under the E-Rate program (to bring technology to classrooms) in New London, Connecticut. When it notified the FCC of the possible overbilling, the FCC launched a full investigation, requiring (and receiving) all manner of private company documents and records, including invoices, internal emails, billing information, names of employees possibly involved, and the company's own assessment as to whether such employees violated any of its internal codes of conduct.

After the investigation was complete, the matter was settled through a consent decree. And that should have been the end of the matter.

But in 2005, CompTel, a trade association made up of AT&T's competitors, filed a request for all of AT&T's documents under the Freedom of Information Act (FOIA). This was so obviously a misuse of the original intent of the FOIA that AT&T filed a notice with the FCC not to release the information, claiming that [under FOIA rules](#) (specifically Exception 7C) such release would "constitute an unwarranted invasion of personal privacy."

The FCC, in direct contravention of the [ruling by the Supreme Court in *Citizens United*](#), that corporations had privacy rights just as those enjoyed by individuals, rejected AT&T's notice. AT&T then [filed suit](#) in the United States Court of Appeals for the Third Circuit, which ruled against the FCC. According to the Third Circuit Court's opinion:

The Freedom of Information Act requires a federal agency to disclose certain documents within its possession. But FOIA exempts from mandatory disclosure "records or information compiled for law enforcement purposes ... to the extent that the production of such enforcement records or information ... could reasonably be expected to constitute an unwarranted invasion of personal privacy."

AT&T [has successfully] argued that the Federal Communications Commission (FCC) could not lawfully release documents obtained...on the ground that disclosure would likely invade the company's "personal privacy."

The FCC rejected AT&T's argument and held that a corporation...has no "personal privacy"....



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FOIA does not define “personal,” but it does define “person” to “include an individual, partnership, corporation, association, or public or private organization other than an agency....”

AT&T argues that the plain text of Exemption 7C indicates that it applies to corporations. After all, “personal” is the adjectival form of “person,” and FOIA defines “person” to include a corporation. We agree.

The larger issue here is obvious. If the FOIA can be turned from a shield to a sword — to harass, intimidate or damage corporations who don’t slavishly follow the FCC’s ever-changing and expanding rules regarding any form of communication — then it becomes one more tool of totalitarianism. True to form, liberal (*The New American’s* Freedom Index rating: 3) Senator Patrick Leahy (D-Vt.) entered the statist’s position into the *Congressional Record* on November 15, 2010, by holding that, if the Supreme Court doesn’t reverse the Third Circuit’s decision, then this will “vastly expand the rights of corporations to shield their activities from public view.”

I also fear that extending this exemption to corporations would permit corporations to shield from public view critical information about public health and safety, environmental dangers, and financial misconduct, among other things — to the great detriment of the people’s right to know and to our democracy [sic].

Business lawyer [David Johnson](#) is optimistic that the Supreme Court will uphold the Third Circuit Court’s decision and, if it does, then “this ruling [will] provide corporations with one more arrow in their quiver that they can use to protect corporation documents from competitors or others who might [wish to] do them harm.” On the other hand, “Conservatives who are paying attention,” [writes](#) Joshua Trevino, “know the real score here:

FCC v. AT&T is only about the extent of corporate personhood in the strict legal sense. In the larger sense, it’s about whether the left gets to use FOIA to pry open and terrorize American businesses at will. That, friends, is a big deal.

Photo: AT&T’s corporate headquarters in Dallas, Texas



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