

A STATUTE'S DEFINITION OF "PERSON" TO INCLUDE CORPORATIONS DOES NOT MEAN THAT THE TERM "PERSONAL" ALSO REACHES CORPORATIONS

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Today, The United States Supreme Court issued a decision in *FCC v. AT&T Inc.*, Case No. 09-1279, in which it decided that corporations do not have "personal privacy" for the purposes of the Freedom of Information Act (FOIA). The Court's basic textual rationale could be applied to portions of the Indiana Code.

In this case, the FCC investigated AT&T after AT&T had voluntarily reported to the FCC that it might have overcharged the Government for services it provided. At the conclusion of that investigation, the FCC and AT&T entered into a consent agreement. Several months later, a trade association representing some of AT&T's competitors filed a FOIA request for "[a]ll pleadings and correspondence" on the AT&T investigation. Exemption 7(C) within FOIA exempts the disclosure of "records or information compiled for law enforcement purposes" that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). The FCC concluded that this exemption could not apply to AT&T, but the Third Circuit reversed, holding that Exemption 7(C) extends to the "personal privacy" of corporations, since "the root from which the statutory word [personal] . . . is derived" is the defined term "person."

The United States Supreme Court disagreed with the Third Circuit.

Adjectives typically reflect the meaning of corresponding nouns, but not always. Sometimes they acquire distinct meanings of their own. The noun "crab" refers variously to a crustacean and a type of apple, while the related adjective "crabbed" can refer to handwriting that is "difficult to read," Webster's Third New International Dictionary 527 (2002); "corny" can mean "using familiar and stereotyped formulas believed to appeal to the unsophisticated," *id.*, at 509, which has little to do with "corn," *id.*, at 507 ("the seeds of any of the cereal grasses used for

food"); and while "crank" is "a part of an axis bent at right angles," "cranky" can mean "given to fretful fussiness," *id.*, at 530.

Because the term "personal" is not ordinarily used to describe the "correspondence, influence, or tragedies of" corporations, courts should be wary of applying that term to corporations. The Court then looked to the use of the term "personal" in the context of the surrounding language and the statute as a whole and found no support for the idea that the term "personal" should be applied to corporations.

We reject the argument that because "person" is defined for purposes of FOIA to include a corporation, the phrase "personal privacy" in Exemption 7(C) reaches corporations as well. The protection in FOIA against disclosure of law enforcement information on the ground that it would constitute an unwarranted invasion of personal privacy does not extend to corporations. We trust that AT&T will not take it personally.

Many portions of the Indiana Code define the word "person," but use the undefined word "personal." Counsel are well served to look into whether there is some reason to make this difference clear in their cases.

Lessons:

1. Although a corporation may be a "person" under a statute, this does not mean that the statute's use of the term "personal" applies to the corporation.