

SCOTUS Expands Scope of FOIA Trade Secrets and Commercial Information Exemption

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The Supreme Court has updated an important Freedom of Information Act (“**FOIA**”) exemption for the digital age. In [*Food Marketing Institute v. Argus Leader Media*](#), the Supreme Court this week significantly expanded the scope of FOIA Exemption 4. FOIA Exemption 4 is the exemption most commonly claimed by private-sector entities when seeking to protect competitively sensitive information that must be disclosed to a federal agency. It shields from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” Beginning with a D.C. Circuit decision in 1974, *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), courts have interpreted FOIA Exemption 4 narrowly. For commercial or financial information to be “confidential,” a number of federal courts of appeals have required a showing of “substantial competitive harm” from disclosure. Proving “substantial competitive harm” has proven difficult in practice, and, in this digital age, there is an increasing awareness that information and data are valuable. The majority opinion in *Food Marketing*, written by Justice Gorsuch, squarely repudiated the “substantial competitive harm” test in favor of a less difficult standard, thereby broadening Exemption 4.

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