

# The Supreme Court Designates Parameters for Confidential Information Exception Under FOIA

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The Supreme Court recently reversed an Eighth Circuit opinion and held that a showing of “competitive harm” is not required to establish the confidentiality of business information and avoid Freedom of Information Act (FOIA) disclosure under FOIA Exemption 4. *Food Mkt. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019). The decision also confirmed parameters that businesses should follow when submitting sensitive information to the government in order to avoid disclosure of that information to the general public.

FOIA allows members of the public to request access to records from any federal agency. This includes records that have been submitted by private businesses to the federal government pursuant to a subpoena, or other required disclosures. FOIA has several exemptions. One such exemption is colloquially known as “Exemption 4,” and “shields from mandatory disclosure ‘trade secrets and commercial or financial information obtained from a person and privileged or confidential.’” *Id.* at 2360 (citing 5 U.S.C. § 552(b)(4)).

In this case, a newspaper sought data collected by the USDA. The USDA refused to hand over all of the data, claiming it was exempted from FOIA under Exemption 4 as confidential or trade secret material. The newspaper sued the USDA in federal court, and the case eventually went before the Court of Appeals. The Eighth Circuit found that in order for the requested information to meet the threshold of Exemption 4, the agency needed to show “competitive harm” would result from disclosure of its sensitive information to the public.

The Supreme Court reversed that decision, holding that a showing of competitive harm was not required. Rather, the Supreme Court held that so long as commercial or financial information is “both customarily and actually treated as private by its owner,” and “provided to the government under an assurance of privacy,” that information is considered confidential and cannot be disclosed pursuant to Exemption 4. *Id.* at 2365.

**TIP:** It is important for companies to think critically about protecting confidentiality of information when submitting documents to the federal government.

1 Min Read

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