

SCOTUS Opinion: Court Clarifies What Confidential Information is not Subject to a Freedom of Information Act Request

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In [Food Marketing Institute v. Argus Leader Media](#), a newspaper filed a request under the [Freedom of Information Act](#) (FOIA) to the Department of Agriculture requesting information about retail stores who participate in the national food stamp program. The Department declined to provide store-level data on the basis that it was confidential and thus precluded from disclosure under FOIA's Exemption 4. The newspaper sued, and the district court ruled that the information had to be disclosed because disclosure was not, in its view, likely to cause substantial harm in the competitive position of those stores. A trade association representing grocery retailers intervened and appealed, arguing that the substantive competitive harm test should be discarded. The Eighth Circuit rejected that argument. Justice Gorsuch, for a 6-3 Court, reversed and remanded. First, the majority established that the trade association had standing to appeal because its members might be financially harmed by the result of the case. Second, the majority held that where 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 confidential under the FOIA exemption. The Court rejected the substantial competitive harm test fashioned by the D.C. Circuit in a 1974 case, finding its reasoning back by a casual disregard of the rules of statutory interpretation. Justice Breyer, joined by Justices Ginsburg and Sotomayor, concurred on standing, but dissented as to the confidentiality analysis, arguing that some form of genuine private harm should be shown to qualify for the exemption. A link to the opinion is [here](#).

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