

# A Moment of Privacy

A newsletter brought to you by the Privacy and Data Security Practice Group at Proskauer Rose

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Edited by  
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Welcome to “A Moment of Privacy,” a newsletter brought to you by the Privacy and Data Security Practice Group at Proskauer Rose LLP.

“A Moment of Privacy” addresses one legal development each month in the area of privacy and data security law. We answer the questions our clients are asking, in a way that we hope gives practical information to our readers. If you send us your question, you may find your answer in an upcoming newsletter.

## And now for this month’s question:

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Q: Since when does a legal entity have “privacy” rights?

A: Since the Third Circuit said so, in its September 22, 2009 decision in [AT&T v. Federal Communications Commission \(No. 08-4024\)](#).

Most privacy practitioners would not consider a legal entity to have privacy rights. Rather, a legal entity may have trade secrets or contractual confidentiality protections.

However, in its novel holding, the Third Circuit found that a corporation (AT&T) was protected by an exemption in the [Freedom of Information Act \(FOIA\)](#) that applies to “unwarranted invasions of personal privacy.” Specifically, FOIA exempts “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to constitute an unwarranted invasion of *personal* privacy...”(emphasis added). This exemption, combined with FOIA’s definition of “person” to include legal entities, enabled AT&T to successfully argue that a corporation has a right to privacy. (After all, the court said, “it would be very odd indeed for an adjectival form of a defined term not to refer back to that defined term.”) As a result, AT&T’s competitors have not been able to obtain information about an FCC investigation of AT&T regarding AT&T’s alleged overcharging of some of its customers.

Whether this ruling will be followed in other FOIA cases, or used to expand the concept of privacy rights under other statutes, remains to be seen. For now, when submitting information to regulators in connection with investigations, companies should consider submitting such information as confidential, since doing so could help the company to later challenge attempts by competitors or other third parties to obtain such information from the regulator under FOIA.

**Have a question? E-mail Kristen J. Mathews at [kmathews@proskauer.com](mailto:kmathews@proskauer.com).**

### Privacy and Data Security Practice

Our Privacy and Data Security Practice is an outgrowth of our Internet, intellectual property, technology media & communications, labor and employment, health law, First Amendment, international law and litigation practices. Indicative of our experience and reputation in this relatively new field of law is the fact that the venerable Practising Law Institute (PLI) asked our Firm to create its first-ever treatise on the subject of privacy and data security law, called "Proskauer on Privacy," which was published in late 2006.

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