

The Burger Court Opinion Writing Database

Forsham v. Harris

445 U.S. 169 (1980)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 1, 1980

RE: No. 78-1118 - Forsham v. Harris

Dear Bill:

I join.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 14, 1980

RE: No. 78-1118 Forsham v. Harris

Dear Bill:

I am planning to write separately in the above.
I'll do my best not to hold you up too long.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

To: The Chief Justice
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Black
 Mr. Justice Powell
 Mr. Justice Ginsburg
 Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: JAN 25 19

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1118

Peter H. Forsham et al.,
 Petitioners.

vs
 Patricia Roberts Harris, Secretary
 Department of Health, Edu-
 cation, and Welfare, et al.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Dis-
 trict of Columbia Cir-
 cuit.

[February —, 1980]

MR. JUSTICE BRENNAN, dissenting.

I agree with the Court that “[r]ecords of a nonagency cer-
 tainly could become records of an agency as well.” *Ante*, at
 11. But the Court does not explain why such a conversion
 does not occur in this case.¹ Because I believe we should
 articulate standards under which to analyze such cases and
 because I believe that under a proper test UGDP’s data should
 be treated as “agency records,” I dissent.

I

The Court argues at length that UGDP is not an agency. But whether or not UGDP is an “agency” is simply not at issue in this case. Rather, the only question is whether data generated in the course of this UGDP study are “agency records.”

¹ The Court suggests that if a federal grant created a partnership or joint venture between the agency and the grantee, the grantee might become an agency and, thus, its records might become agency records. *Ante*, at 10. Likewise, the Court might reach a different result where the agency has chosen to buy data through a procurement contract instead of a grant. *Ibid.* But neither of these is an instance involving records of a nonagency. In the first the grantee becomes an agency, and in the second the records do not belong to the nonagency.

To: The Chief Justice
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

2nd DRAFT

From: Mr. Justice Brennan

SUPREME COURT OF THE UNITED STATES

No. 78-1118

circulated: JAN 29 1980

Peter H. Forsham et al.,
 Petitioners,
 v.
 Patricia Roberts Harris, Secretary
 Department of Health, Edu-
 cation, and Welfare, et al.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Dis-
 trict of Columbia Cir-
 cuit.

[February —, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissenting.

I agree with the Court that “[r]ecords of a nonagency certainly could become records of an agency as well.” *Ante*, at 11. But the Court does not explain why such a conversion does not occur in this case.¹ Because I believe we should articulate standards under which to analyze such cases and because I believe that under a proper test UGDP’s data should be treated as “agency records,” I dissent.

I

The Court argues at length that UGDP is not an agency. But whether or not UGDP is an “agency” is simply not at issue in this case. Rather, the only question is whether data generated in the course of this UGDP study are “agency records.”

¹ The Court suggests that if a federal grant created a partnership or joint venture between the agency and the grantee, the grantee might become an agency and, thus, its records might become agency records. *Ante*, at 10. Likewise, the Court might reach a different result where the agency has chosen to buy data through a procurement contract instead of a grant. *Ibid.* But neither of these is an instance involving records of a nonagency. In the first the grantee becomes an agency, and in the second the records do not belong to the nonagency.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 14, 1980

Re: No. 78-1118, Forsham v. Harris

Dear Bill,

I am glad to join your opinion
for the Court in this case.

Sincerely yours,

?S.

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 14, 1980

Re: No. 78-1118 - Forsham v. Harris

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 17, 1980

Re: No. 78-1118 - Forsham v. Harris

Dear Bill:

I await further writing in this case.

Sincerely,

T.M.
T.M.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 28, 1980

Re: No. 78-1118 - Forsham v. Harris

Dear Bill:

Please join me in your dissent.

Sincerely,

JM
T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 14, 1980

Re: No. 78-1118 - Forsham v. Harris

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 15, 1980

78-1118 Forsham v. Harris

Dear Bill:

Please join me.

Sincerely,

L Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From: Mr. Justice Rehnquist
 Circulated: 10 JAN 1980

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1118

Peter H. Forsham et al., Petitioners, v. Patricia Roberts Harris, Secretary Department of Health, Edu- cation, and Welfare, et al.	} On Writ of Certiorari to } the United States Court } of Appeals for the Dis- } trict of Columbia Cir- } cuit.
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[January —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The Freedom of Information Act, 5 U. S. C. § 552 empowers federal courts to order an "agency" to produce "agency records improperly withheld" from an individual requesting access. § 552 (a)(4)(B). We hold here that written data generated, owned, and possessed by a privately controlled organization receiving federal study grants are not "agency records" within the meaning of the Act when copies of that data have not been obtained by a federal agency subject to the FOIA. Federal participation in the generation of the data by means of a grant from HEW does not make the private organization a federal "agency" within the terms of the Act. Nor does this federal funding in combination with a federal right of access render the data "agency records" of HEW, which is a federal "agency" under the terms of the Act.

I

In 1959, a group of private physicians and scientists specializing in the treatment of diabetes formed the University Group Diabetes Program (UGDP). The UGDP conducted a

15-8, 10-13, 16

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated:

Circulated: 5 JAN 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1118

Peter H. Forsham et al.,
Petitioners,
v.
Patricia Roberts Harris, Secretary
Department of Health, Edu-
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 15, 1980

Re: 78-1118 - Forsham v. Harris

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference