

The Burger Court Opinion Writing Database

FBI v. Abramson

456 U.S. 615 (1982)

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

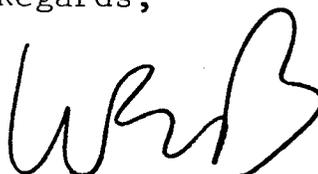
May 20, 1982

Re: 80-1735 - FBI v. Abramson

Dear Byron:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W White', written in a cursive style.

Justice White

Copies to the Conference

85 MAY 20 1982

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 25, 1982

MEMORANDUM TO: Justice Marshall
Justice Blackmun
Justice O'Connor

RE: No. 80-1735 Federal Bureau of Investigation v.
Abramson

We four are in dissent in the above. Sandra has
agreed to undertake the dissent.



W.J.B.Jr.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 19, 1982

RE: No. 80-1735 F.B.I. v. Abramson

Dear Harry:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Blackmun".

Justice Blackmun

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice Souter
Justice White

Numbered: 80-1735-1

Circulated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1735

FEDERAL BUREAU OF INVESTIGATION, ET AL.,
PETITIONERS *v.* HOWARD S. ABRAMSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[March —, 1982]

JUSTICE WHITE delivered the Opinion of the Court.

The Freedom of Information Act (FOIA), 5 U. S. C. § 552 (1976) does not require the disclosure of "investigatory records compiled for law enforcement purposes" when the release of such records would interfere with effective law enforcement, impede the administration of justice, constitute an unwarranted invasion of privacy, or produce certain other specified consequences. § 552(b)(7).¹ The sole question

¹ Section 552(b) in its entirety provides:

"This section does not apply to matters that are—

"(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

"(2) related solely to the internal personnel rules and practices of an agency;

"(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

"(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with

DRW

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice [unclear]
Justice [unclear]
Justice [unclear]
Justice [unclear]

STATISTICAL CHANGES THROUGHOUT.
SEE PAGES: 10

From: [unclear]
Circulated: _____
Recirculated: 8 MAR 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1735

FEDERAL BUREAU OF INVESTIGATION, ET AL.,
PETITIONERS v. HOWARD S. ABRAMSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[March —, 1982]

JUSTICE WHITE delivered the Opinion of the Court.

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"(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with

5/17
Jan

To: The Chief Justice
 Justice Brennan
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

pp. 7, 9-10, ¹²⁻13; stylistic
 changes; footnotes renumbered

Circulated: _____

Recirculated: 19 MAY 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1735

FEDERAL BUREAU OF INVESTIGATION ET AL.,
 PETITIONERS *v.* HOWARD S. ABRAMSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE WHITE delivered the *Opinion* of the Court.

The Freedom of Information Act (FOIA), 5 U. S. C. § 552 (1976), does not require the disclosure of "investigatory records compiled for law enforcement purposes" when the release of such records would interfere with effective law enforcement, impede the administration of justice, constitute an unwarranted invasion of privacy, or produce certain other specified consequences. § 552(b)(7).¹ The sole question

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"(2) related solely to the internal personnel rules and practices of an agency;

"(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

"(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 12, 1982

Re: No. 80-1735 - FBI v. Abramson

Dear Byron:

I await the dissent.

Sincerely,

T.M.
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

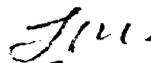
May 19, 1982

Re: No. 80-1735 - FBI v. Abramson

Dear Sandra:

Please join me in your dissent.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 12, 1982

Re: No. 80-1735 - FBI v. Abramson

Dear Byron:

You have written a persuasive opinion. At conference I voted tentatively the other way, so I shall await the dissent.

Sincerely,



Justice White

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Blackmun

Circulated: MAY 18 1982

Recirculated: _____

No. 80-1735 Federal Bureau of Investigation v. Abramson

JUSTICE BLACKMUN, dissenting:

Exemption 7 of the Freedom of Information Act, 5 U.S.C.

§552(b)(7), permits agencies to withhold "investigatory records

compiled for law enforcement purposes, but only to the extent

that the production of such records would ... (C) constitute an

unwarranted invasion of personal privacy." (Emphasis added.) The

Court today holds that this language authorizes petitioner to

withhold investigatory records not compiled for law enforcement

purposes simply because some information contained in those

records was compiled for such purposes. The Court declares that

"[o]nce it is established that information was compiled pursuant

to a legitimate law enforcement investigation and that disclosure

of such information would lead to one of the listed harms [in

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Blackmun**

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1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1735

FEDERAL BUREAU OF INVESTIGATION, ET AL.,
 PETITIONERS *v.* HOWARD S. ABRAMSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE BLACKMUN, dissenting.

Exemption 7 of the Freedom of Information Act, 5 U. S. C. § 552(b)(7), permits agencies to withhold “investigatory *records* compiled for law enforcement purposes, but only to the extent that the production of such *records* would . . . (C) constitute an unwarranted invasion of personal privacy.” (Emphasis added.) The Court today holds that this language authorizes petitioner to withhold investigatory records *not* compiled for law enforcement purposes simply because some information contained in those records was compiled for such purposes. The Court declares that “[o]nce it is established that *information* was compiled pursuant to a legitimate law enforcement investigation and that disclosure of such *information* would lead to one of the listed harms [in Exemption 7], the *information* is exempt.” *Ante*, at 15 (emphasis added).

I cannot escape the conclusion that the Court has simply substituted the word “information” for the word “records” in Exemption 7(C). Yet we have earlier recognized that “[t]he Freedom of Information Act deals with ‘agency records,’ not information in the abstract.” *Forsham v. Harris*, 445 U. S. 169, 185 (1980). I agree with JUSTICE O’CONNOR’s assessment that the legislative history reveals that Congress chose the term “records,” rather than the word “information,” ad-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 4, 1982

80-1735 Federal Bureau v. Abramson

Dear Byron:

Please join me.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 5, 1982

Re: No. 80-1735 Federal Bureau v. Abramson

Dear Byron:

Please join me.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 4, 1982

Re: 80-1735 - FBI v. Abramson

Dear Byron:

Please join me. (I assume there is no hidden meaning in the garbled sentence on page 15.)

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 8, 1982

No. 80-1735 FBI v. Abramson

Dear Byron,

In due course, I shall be circulating
a dissent in the referenced case.

Sincerely,



Justice White

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: MAY 17 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1735

FEDERAL BUREAU OF INVESTIGATION, ET AL.,
PETITIONERS *v.* HOWARD S. ABRAMSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE O'CONNOR, dissenting: Justice Frankfurter once explained the limits of statutory construction as follows:

"[T]he courts are not at large. . . . They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. . . . A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction. . . . [T]he only sure safeguard against crossing the line between adjudication and legislation is an alert recognition of the necessity not to cross it and instinctive, as well as trained, reluctance to do so." Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 533, 535 (1947).

The Court does not approach this case in that spirit. Instead, it redrafts the statutory phrase "investigatory records

PP. 3, 5, 6, 7

Footnotes Renumbered

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall —
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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Recirculated: MAY 21 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1735

FEDERAL BUREAU OF INVESTIGATION, ET AL.,
PETITIONERS v. HOWARD S. ABRAMSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May —, 1982]

JUSTICE O'CONNOR) dissenting.

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The Court does not approach this case in that spirit. In-

With Whom Justice
MARSHALL Joins