SUPREME COURT OF THE UNITED STATES

No. 92–1223

UNITED STATES DEPARTMENT OF DEFENSE, ET AL., PETITIONERS *v.* FEDERAL LABOR RELATIONS AUTHORITY ET AL.

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

[February 23, 1994]

JUSTICE GINSBURG, concurring in the judgment.

Before this Court's decision in *Department of Justice* v. *Reporters Committee for Freedom of the Press*, 489 U. S. 749 (1989), every court to consider the issue presented in this case reached a conclusion opposing the one the Court announces today: the courts uniformly enforced, against Privacy Act challenges, Federal Labor Relations Authority (Authority) orders directing agencies to disclose the names and addresses of bargaining unit employees to the employees' exclusive bargaining representative.[1] In these judgments, the Courts of Appeals deferred to the Authority's expert determination that disclosure was necessary to vindicate the public interest in promoting federal-sector collective bargain-

[1]See *Department of Navy* v. *FLRA*, 840 F. 2d 1131 (CA3), cert. dism'd, 488 U. S. 881 (1988); *Department of Air Force, Scott Air Force Base* v. *FLRA*, 838 F. 2d 229 (CA7), cert. dism'd, 488 U. S. 880 (1988); *Department of Agriculture* v. *FLRA*, 836 F. 2d 1139 (CA8 1988), vacated and remanded, 488 U. S. 1025 (1989); *Department of Health and Human Services* v. *FLRA*, 833 F. 2d 1129 (CA4 1987), cert. dism'd, 488 U. S. 880 (1988). See also *American Federation of Govt. Employees, Local 1760* v. *FLRA*, 786 F. 2d 554 (CA2 1986) (requiring FLRA to order disclosure).

ing—the interest Congress identified when it enacted the Federal Service Labor-Management Relations Statute (Labor Statute).[2]

The Privacy Act interposed no bar to disclosure under the Labor Statute, these courts reasoned, because the Privacy Act allows disclosure when the Freedom of Information Act (FOIA) so requires, see 5 U. S. C. §552a(b)(2), and the FOIA balancing of public interest in disclosure against the asserted privacy interest, see *ante*, at 7, tipped decisively in favor of disclosure. The public interest the Courts of Appeals balanced was the promotion of collective bargaining; the privacy interest, keeping employees' names and addresses from their bargaining representative.

Reporters Committee, however, changed the FOIA calculus that underlies these prodisclosure decisions. In *Reporters Committee*, the Court adopted a restrictive definition of the "public interest in disclosure," holding that interest to be circumscribed by FOIA's "core purpose": the purpose of "open[ing] agency action to the light of public scrutiny" and advancing "public understanding of the operations or activities of the government." 489 U. S., at 774–776 (internal quotation marks and emphasis omitted). As the Court observes today, disclosure of employees' home addresses to their bargaining representatives would not advance this purpose. See *ante*, at 10. With *Reporters Committee* as its guide, the Court traverses the "convoluted path of statutory cross-references," *ante*, at 7, from the Labor Statute to the Privacy Act to FOIA, and the Court's journey ends in a judgment that disclosure is impermissible.[3]

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[2]See 5 U. S. C. §7101(a) ("labor organizations and collective bargaining in the civil service are in the public interest"); §7114(b)(4) (agency must disclose information "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining," unless disclosure is "prohibited by law").

[3]The Court does not reach the issue whether the "routine use" exception to the Privacy Act, see 5 U. S. C. §552a(b)

The Court convincingly demonstrates that *Reporters Committee*, unmodified, requires this result. I came to the same conclusion as a judge instructed by the Court's precedent. See *FLRA* v. *Department of Treasury, Financial Mgmt. Service*, 884 F. 2d 1446, 1457 (CADC) (concurring opinion), cert. denied, 493 U. S. 1055 (1989), quoted *ante*, at 12. It seemed to me then and seems to me now, however, that Congress did not chart our journey's end. See 884 F. 2d, at 1457–1461.

As this Court has recognized, in enacting the Labor Statute "Congress unquestionably intended to strengthen the position of federal unions." *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 464 U. S. 89, 107 (1983). It is surely doubtful that, in the very statute bolstering federal-sector unions, Congress aimed to deny those unions information their private-sector counterparts routinely receive. See, *e.g.*, *Prudential Ins. Co. of Am.* v. *NLRB*, 412 F. 2d 77 (CA2), cert. denied, 396 U. S. 928 (1969); see also *NLRB* v. *Wyman-Gordon Co.*, 394 U. S. 759 (1969) (upholding National Labor Relations Board order requiring employer to disclose names and addresses before election). It is similarly doubtful that Congress intended a privacy interest, appraised by most courts as

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(3), might justify disclosure. See *ante*, at 6, n. 5. The "routine use" exception is not a secure one for the unions, however, because it empowers agencies, in the first instance, to determine which uses warrant the classification "routine," and because courts ordinarily defer to agency assessments of this order. But cf. *United States Postal Service* v. *National Assn. of Letter Carriers*, 9 F. 3d 138, 143 (CADC 1993) (opinion of Silberman, J.) (suggesting that National Labor Relations Act disclosure obligations might compel the Postal Service "to publish a routine use notice that would accommodate its duties under that Act").

relatively modest,[4] to trump the legislature's firmly-declared interest in promoting federal-sector collective bargaining. I do not agree with the Court, see *ante*, at 10–11, that the *Reporters Committee* rule yielding these anomalies is indubitably commanded by FOIA.[5]

The *Reporters Committee* "core purpose" limitation is not found in FOIA's language. A FOIA requester need not show in the first instance that disclosure would serve any public purpose, let alone a "core

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[4]Compare *FLRA* v. *Department of Navy, Navy Ships Parts Control Center*, 966 F. 2d 747, 759 (CA3 1992) (en banc) ("minimal" privacy interest); *FLRA* v. *Department of Navy, Navy Resale and Services Support Office*, 958 F. 2d 1490, 1496 (CA9 1992) ("minimal"); *FLRA* v. *Department of Veterans Affairs*, 958 F. 2d 503, 511 (CA2 1992) ("more than *de minimis*"); *FLRA* v. *Department of Navy, Naval Communications Unit Cutler*, 941 F. 2d 49, 56 (CA1 1991) ("modest"); *Department of Air Force, Scott Air Force Base* v. *FLRA*, 838 F. 2d 229, 232 (CA7) ("minuscule"), cert. dism'd, 488 U. S. 880 (1988); *Department of Agriculture* v. *FLRA*, 836 F. 2d 1139, 1143 (CA8 1988) ("modest"), vacated and remanded, 488 U. S. 1025 (1989); *American Federation of Govt. Employees, Local 1760* v. *FLRA*, 786 F. 2d 554, 556 (CA2 1986) ("not particularly compelling"), with *FLRA* v. *Department of Defense, Department of Navy, Pensacola Navy Exchange*, 977 F. 2d 545, 549 (CA11 1992) ("important").

[5]I do not question the result in *Reporters Committee*, shielding under FOIA exemption 7(C), 5 U. S. C. §552(b)(7)(C), scattered bits of information relevant to criminal matters compiled in FBI "rap sheets." See *FLRA* v. *Department of Treasury, Financial Mgmt. Service*, 884 F. 2d 1146, 1460 (R.B. Ginsburg, J., concurring) ("privacy invasion threatened by release [to the union] of the bare names and addresses [of bargaining unit employees] pales in comparison to the privacy invasion threatened by [public] release of the rap sheet").

purpose" of "open[ing] agency action to the light of public scrutiny" or advancing "public understanding of the operations or activities of the government." Instead, "[a]n agency must disclose agency records to any person . . . `unless [the records] may be withheld pursuant to one of the nine enumerated exemptions listed in §552(b).'" *Department of Justice* v. *Tax Analysts*, 492 U. S. 136, 150–151 (1989), quoting *Department of Justice* v. *Julian*, 486 U. S. 1, 8 (1988). In *Tax Analysts*, for example, the Court required disclosure of Department of Justice compilations of district court tax decisions to the publishers of Tax Notes, a weekly magazine. That disclosure did not notably "ad[d] to public knowledge of Government operations." 492 U. S., at 156–157 (BLACKMUN, J., dissenting) (required disclosure "adds nothing whatsoever to public knowledge of Government operations").

Just as the FOIA requester confronts no "core purpose" obstacle at the outset, no such limitation appears in the text of any FOIA exemption. The exemption asserted in this case, for example, provides that an agency may withhold information if disclosure "would constitute a clearly unwarranted invasion of personal privacy." 5 U. S. C. §552(b)(6). It is fully consistent with this statutory language to judge an invasion of personal privacy "warranted," courts held pre-*Reporters Committee*, even if the disclosure sought is unrelated to informing citizens about Government operations. Courts, on the issue before us, found disclosure in order because the information was deemed necessary by the expert Authority to vindicate an interest specifically identified by Congress in the Labor Statute—the interest in promoting federal-sector collective bargaining.

Such an interpretation is reconcilable with a main rule that the identity and particular purpose of the requester is irrelevant under FOIA. See *ante*, at 8. This main rule serves as a check against selection

among requesters, by agencies and reviewing courts, according to idiosyncratic estimations of the request's or requester's worthiness. In the matter at hand, however, it is Congress that has declared the importance of the request's purpose, and Congress that has selected a single entity—the employees' exclusive bargaining representative—as entitled to assert that purpose. Allowing consideration of the public interest Congress has recognized would distinguish among potential requesters on the basis of the interest they assert, not simply their identity or particular purpose. See *FLRA* v. *Department of Navy, Navy Resale and Services Support Office*, 958 F. 2d 1490, 1495 (CA9 1992) (cautioning against "confus[ing] the identity of the requester with the interest asserted by the requester").

I am mindful, however, that the preservation of *Reporters Committee*, unmodified, is the position solidly approved by my colleagues, and I am also mindful that the pull of precedent is strongest in statutory cases. See *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting); *Di Santo* v. *Pennsylvania*, 273 U. S. 34, 42 (1927) (Brandeis, J., dissenting). I therefore concur in the Court's judgment, recognizing that, although today's decision denies federal-sector unions information accessible to their private-sector counterparts, "Congress may correct the disparity." *Ante*, at 16.