

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 10–188

SCHINDLER ELEVATOR CORPORATION, PETI-
TIONER *v.* UNITED STATES EX REL.
DANIEL KIRK

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

[May 16, 2011]

JUSTICE THOMAS delivered the opinion of the Court.

The False Claims Act (FCA), 31 U. S. C. §§3729–3733, prohibits submitting false or fraudulent claims for payment to the United States, §3729(a), and authorizes *qui tam* suits, in which private parties bring civil actions in the Government’s name, §3730(b)(1). This case concerns the FCA’s public disclosure bar, which generally forecloses *qui tam* suits that are “based upon the public disclosure of allegations or transactions . . . in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation.” §3730(e)(4)(A) (footnote omitted).¹ We must decide whether a federal agency’s written response to a request for records under the Freedom of Information Act (FOIA), 5 U. S. C. §552, constitutes a “report” within the meaning of the public disclosure bar.

¹During the pendency of this case, the Patient Protection and Affordable Care Act, 124 Stat. 119, amended the public disclosure bar. Because the amendments are not applicable to pending cases, *Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson*, 559 U. S. ___, ___, n. 1 (2010) (slip op., at 1, n. 1), this opinion refers to the statute as it existed when the suit was filed.

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fraudulent claims for payment to the United States. 31 U. S. C. §3729(a). The FCA authorizes both civil actions by the Attorney General and private *qui tam* actions to enforce its provisions. §3730. When, as here, the Government chooses not to intervene in a *qui tam* action, the private relator stands to receive between 25% and 30% of the proceeds of the action. §3730(d)(2).

In an amended complaint filed in June 2007, Kirk alleged that Schindler had submitted hundreds of false claims for payment under its Government contracts. According to Kirk, Schindler had violated VEVRAA's reporting requirements by failing to file certain required VETS-100 reports and including false information in those it did file. The company's claims for payment were false, Kirk alleged, because Schindler had falsely certified its compliance with VEVRAA. Kirk did not specify the amount of damages he sought on behalf of the United States, but he asserted that the value of Schindler's VEVRAA-covered contracts exceeded \$100 million.

To support his allegations, Kirk pointed to information his wife, Linda Kirk, received from the Department of Labor (DOL) in response to three FOIA requests. Mrs. Kirk had sought all VETS-100 reports filed by Schindler for the years 1998 through 2006. The DOL responded by letter or e-mail to each request with information about the records found for each year, including years for which no responsive records were located. The DOL informed Mrs. Kirk that it found no VETS-100 reports filed by Schindler in 1998, 1999, 2000, 2002, or 2003. For the other years, the DOL provided Mrs. Kirk with copies of the reports filed by Schindler, 99 in all.

Schindler moved to dismiss on a number of grounds, including that the FCA's public disclosure bar deprived the District Court of jurisdiction. See §3730(e)(4)(A). The District Court granted the motion, concluding that most of Kirk's allegations failed to state a claim and that the

remainder were based upon the public disclosure of allegations or transactions in an administrative “report” or “investigation.” 606 F. Supp. 2d 448 (SDNY 2009).

The Court of Appeals for the Second Circuit vacated and remanded. 601 F. 3d 94 (2010). The court effectively held that an agency’s response to a FOIA request is neither a “report” nor an “investigation” within the meaning of the FCA’s public disclosure bar. See *id.*, at 103–111 (agreeing with *United States ex rel. Haight v. Catholic Healthcare West*, 445 F. 3d 1147 (CA9 2006), and disagreeing with *United States ex rel. Mistick PBT v. Housing Auth. of Pittsburgh*, 186 F. 3d 376 (CA3 1999)). We granted certiorari, 561 U. S. ____ (2010), and now reverse and remand.

II

Schindler argues that “report” in the FCA’s public disclosure bar carries its ordinary meaning and that the DOL’s written responses to Mrs. Kirk’s FOIA requests are therefore “reports.” We agree.⁴

A

1

Adopted in 1986, the FCA’s public disclosure bar provides:

“No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of

⁴Because we conclude that a written response to a FOIA request qualifies as a “report” within the meaning of the public disclosure bar, we need not address whether an agency’s search in response to a FOIA request also qualifies as an “investigation.”

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the information.” 31 U. S. C. §3730(e)(4)(A) (footnote omitted).

Because the statute does not define “report,” we look first to the word’s ordinary meaning. See *Gross v. FBL Financial Services, Inc.*, 557 U. S. ___, ___ (2009) (slip op., at 7) (“Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose” (internal quotation marks omitted)); *Asgrow Seed Co. v. Winterboer*, 513 U. S. 179, 187 (1995) (“When terms used in a statute are undefined, we give them their ordinary meaning”). A “report” is “something that gives information” or a “notification,” Webster’s Third New International Dictionary 1925 (1986), or “[a]n official or formal statement of facts or proceedings,” Black’s Law Dictionary 1300 (6th ed. 1990). See also 13 Oxford English Dictionary 650 (2d ed. 1989) (“[a]n account brought by one person to another”); American Heritage Dictionary 1103 (1981) (“[a]n account or announcement that is prepared, presented, or delivered, usually in formal or organized form”); Random House Dictionary 1634 (2d ed. 1987) (“an account or statement describing in detail an event, situation, or the like”).

This broad ordinary meaning of “report” is consistent with the generally broad scope of the FCA’s public disclosure bar. As we explained last Term, to determine the meaning of one word in the public disclosure bar, we must consider the provision’s “entire text,” read as an “integrated whole.” *Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson*, 559 U. S. ___, ___, ___, n. 12 (2010) (slip op., at 8, 12, n. 12); see also *Tyler v. Cain*, 533 U. S. 656, 662 (2001) (“We do not . . . construe the meaning of statutory terms in a vacuum”). The other sources of public disclosure in §3730(e)(4)(A), especially “news media,” suggest that the public disclosure bar pro-

vides “a broa[d] sweep.” *Graham County, supra*, at ____ (slip op., at 8). The statute also mentions “administrative hearings” twice, reflecting intent to avoid underinclusiveness even at the risk of redundancy.

The phrase “allegations or transactions” in §3730(e)(4)(A) additionally suggests a wide-reaching public disclosure bar. Congress covered not only the disclosure of “allegations” but also “transactions,” a term that courts have recognized as having a broad meaning. See, e.g., *Moore v. New York Cotton Exchange*, 270 U. S. 593, 610 (1926) (“‘Transaction’ is a word of flexible meaning”); *Hamilton v. United Healthcare of La., Inc.*, 310 F. 3d 385, 391 (CA5 2002) (“[T]he ordinary meaning of the term ‘transaction’ is a broad reference to many different types of business dealings between parties”).

2

Nor is there any textual basis for adopting a narrower definition of “report.” The Court of Appeals, in holding that FOIA responses were not “reports,” looked to the words “hearing, audit, or investigation,” and the phrase “criminal, civil, [and] administrative hearings.” It concluded that all of these sources “connote the synthesis of information in an investigatory context” to “serve some end of the government.” 601 F. 3d, at 107; cf. Brief for Respondent 30, n. 15 (“Each is part of the government’s ongoing effort to fight fraud”). Applying the *noscitur a sociis* canon, the Court of Appeals then determined that these “‘neighboring words’” mandated a narrower meaning for “report” than its ordinary meaning. 601 F. 3d, at 107.

The Court of Appeals committed the very error we reversed in *Graham County*. Like the Fourth Circuit in that case, the Second Circuit here applied the *noscitur a sociis* canon only to the immediately surrounding words, to the exclusion of the rest of the statute. See 601 F. 3d, at 107,

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n. 6. We emphasized in *Graham County* that “all of the sources [of public disclosure] listed in §3730(e)(4)(A) provide interpretive guidance.” 559 U. S., at ____ (slip op., at 8). When all of the sources are considered, the reference to “news media”—which the Court of Appeals did not consider—suggests a much broader scope. *Ibid.*

The Government similarly errs by focusing only on the adjectives “congressional, administrative, or [GAO],”⁵ which precede “report.” Brief for United States as *Amicus Curiae* 18. It contends that these adjectives suggest that the public disclosure bar applies only to agency reports “analogous to those that Congress and the GAO would issue or conduct.” *Ibid.* As we explained in *Graham County*, however, those three adjectives tell us nothing more than that a “report” must be governmental. See 559 U. S., at ____, n. 7 (slip op., at 7, n. 7). The governmental nature of the FOIA responses at issue is not disputed.

Finally, applying the ordinary meaning of “report” does not render superfluous the other sources of public disclosure in §3730(e)(4)(A). Kirk argues that reading “report” to mean “something that gives information” would subsume the other words in the phrase “report, hearing, audit, or investigation.” Brief for Respondent 23. But Kirk admits that hearings, audits, and investigations are processes “to *obtain* information.” *Ibid.* (emphasis added). Those processes are thus clearly different from “something that *gives* information.” Moreover, the statute contemplates some redundancy: An “audit,” for example, will often be a type of “investigation.”

We are not persuaded that we should adopt a “different, somewhat special meaning” of “report” over the word’s

⁵Although the statute refers to the “Government Accounting Office,” it is undisputed that Congress meant the General Accounting Office, also known as GAO and now renamed the Government Accountability Office. See *Graham County*, 559 U. S., at ____, n. 6 (slip op., at 6, n. 6).

“primary meaning.” *Muscarello v. United States*, 524 U. S. 125, 130, 128 (1998). Indeed, we have cautioned recently against interpreting the public disclosure bar in a way inconsistent with a plain reading of its text. In *Graham County*, we rejected several arguments for construing the statute narrowly, twice emphasizing that the sole “touchstone” in the statutory text is “public disclosure.” 559 U. S., at ___, ___ (slip op., at 11, 19). We chose in that case simply to give the text its “most natura[l] read[ing],” *id.*, at ___ (slip op., at 5), and we do so again here.

B

A written agency response to a FOIA request falls within the ordinary meaning of “report.” FOIA requires each agency receiving a request to “notify the person making such request of [its] determination and the reasons therefor.” 5 U. S. C. §552(a)(6)(A)(i). When an agency denies a request in whole or in part, it must additionally “set forth the names and titles or positions of each person responsible for the denial,” “make a reasonable effort to estimate the volume of any [denied] matter,” and “provide any such estimate to the person making the request.” §§552(a)(6)(C)(i), (F). The DOL has adopted more detailed regulations implementing FOIA and mandating a response in writing. See 29 CFR §70.21(a) (2009) (requiring written notice of the grant of a FOIA request and a description of the manner in which records will be disclosed); §§70.21(b)–(c) (requiring a “brief statement of the reason or reasons for [a] denial,” as well as written notification if a record “cannot be located or has been destroyed” (*italics deleted*)). So, too, have other federal agencies. See, *e.g.*, 28 CFR §16.6 (2010) (Dept. of Justice); 43 CFR §2.21 (2009) (Dept. of Interior); 7 CFR §1.7 (2010) (Dept. of Agriculture). Such an agency response plainly is “something that gives information,” a “notification,” and an “official or formal statement of facts.”

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Any records the agency produces along with its written FOIA response are part of that response, “just as if they had been reproduced as an appendix to a printed report.” *Mistick*, 186 F. 3d, at 384, n. 5. Nothing in the public disclosure bar suggests that a document and its attachments must be disaggregated and evaluated individually. If an allegation or transaction is disclosed in a record attached to a FOIA response, it is disclosed “in” that FOIA response and, therefore, disclosed “in” a report for the purposes of the public disclosure bar.⁶

The DOL’s three written FOIA responses to Mrs. Kirk, along with their attached records, are thus reports within the meaning of the public disclosure bar. Each response was an “official or formal statement” that “[gave] information” and “notif[ied]” Mrs. Kirk of the agency’s resolution of her FOIA request.

III

A

In interpreting a statute, “[o]ur inquiry must cease if the statutory language is unambiguous,” as we have found, and “the statutory scheme is coherent and consistent.” *Robinson v. Shell Oil Co.*, 519 U. S. 337, 340 (1997) (quoting *United States v. Ron Pair Enterprises, Inc.*, 489 U. S. 235, 240 (1989)). We are not persuaded by assertions that it would be anomalous to read the public disclosure bar to encompass written FOIA responses.

1

The drafting history of the public disclosure bar does not contradict our holding. As originally enacted in 1863, the FCA placed no restriction on the sources from which a *qui tam* relator could acquire information on which to base a

⁶It is irrelevant whether a particular record is itself a report. The attached records do not “becom[e]” reports, 601 F. 3d, at 109, but simply are part of a report.

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quotation marks omitted). Although Kirk alleges that he became suspicious from his own experiences as a veteran working at Schindler, anyone could have filed the same FOIA requests and then filed the same suit. Similarly, anyone could identify a few regulatory filing and certification requirements, submit FOIA requests until he discovers a federal contractor who is out of compliance, and potentially reap a windfall in a *qui tam* action under the FCA. See Brief for Chamber of Commerce of the United States of America et al. as *Amici Curiae* 20 (“Government contractors . . . are required to submit certifications related to everything from how they dispose of hazardous materials to their affirmative action plans” (citing 40 U. S. C. §3142 and 29 U. S. C. §793)).⁷

2

Nor will extending the public disclosure bar to written FOIA responses necessarily lead to unusual consequences. FOIA requires agencies to release some records even absent a request. See 5 U. S. C. §§552(a)(1), (2). Kirk argues that it would be strange that two relators could obtain copies of the same document but that only the relator who got the document in response to a FOIA request would find his case barred.

This argument assumes that records released under FOIA, but not attached to a written FOIA response, do not fall within the public disclosure bar. We do not decide that question. But even assuming, as Kirk does, that such records are not covered by the public disclosure bar, we

⁷There is no merit to the suggestion that the public disclosure bar is intended only to exclude *qui tam* suits that “ride the investigatory coattails of the government’s own processes.” Brief for Taxpayers Against Fraud Education Fund as *Amicus Curiae* 25, 26; see *Graham County*, 559 U. S., at ____ (slip op., at 19) (rejecting the argument that the public disclosure bar applies only to allegations or transactions that “have landed on the desk of a DOJ lawyer”).

are not troubled by the different treatment. By its plain terms, the public disclosure bar applies to some methods of public disclosure and not to others. See *Graham County, supra*, at ___ (slip op., at 4) (“[T]he FCA’s public disclosure bar . . . deprives courts of jurisdiction over *qui tam* suits when the relevant information has already entered the public domain through *certain channels*” (emphasis added)). It would not be anomalous if some methods of FOIA disclosure fell within the scope of the public disclosure bar and some did not.

We also are not concerned that potential defendants will now insulate themselves from liability by making a FOIA request for incriminating documents. This argument assumes that the public disclosure of information in a written FOIA response forever taints that information for purposes of the public disclosure bar. But it may be that a relator who comes by that information from a different source has a legitimate argument that his lawsuit is not “based upon” the initial public disclosure. 31 U. S. C. §3730(e)(4)(A). That question has divided the Courts of Appeals, and we do not resolve it here. See *Glaser v. Wound Care Consultants, Inc.*, 570 F.3d 907, 915 (CA7 2009) (describing the split in authority). It may also be that such a relator qualifies for the “original source” exception.⁸

In any event, the notion that potential defendants will make FOIA requests to insulate themselves from liability

⁸An “original source” is “an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.” §3730(e)(4)(B). Some Courts of Appeals have narrowly construed the exception to limit “original sources” to those who were the cause of the public disclosure, while others have been more generous. See *United States ex rel. Duxbury v. Ortho Biotech Prods., L. P.*, 579 F.3d 13, 22 (CA1 2009) (describing a three-way split among the Courts of Appeals). That question is not before us, and we do not decide it.

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is pure speculation. Cf. *Graham County*, 559 U. S., at ____ (slip op., at 19) (rejecting as “strained speculation” an argument that local governments will manipulate the public disclosure bar to escape liability). There is no suggestion that this has occurred in those Circuits that have long held that FOIA responses are “reports” within the meaning of the public disclosure bar.

B

Even if we accepted these extratextual arguments, Kirk and his *amici* have provided no principled way to define “report” to exclude FOIA responses without excluding other documents that are indisputably reports. The Government, for example, struggled to settle on a single definition. Compare Brief for United States as *Amicus Curiae* 19 (“report” must be read to “reflect a focus on situations in which the government is conducting, or has completed, some focused inquiry or analysis concerning the relevant facts”) with *id.*, at 21 (“A FOIA response is not a ‘report’ . . . because the federal agency is not charged with uncovering the truth of any matter”), and Tr. of Oral Arg. 33 (“[T]he way to think about it is whether or not the agency . . . is engaging in a substantive inquiry into and a substantive analysis of information”). It is difficult to see how the Department of Justice’s “Annual Report” of FOIA statistics—something that is indisputably a Government report—would qualify under the latter two definitions. See Dept. of Justice, Freedom of Information Act Annual Report, Fiscal Year 2010, http://www.justice.gov/oip/annual_report/2010/cover.htm (as visited May 12, 2011, and available in Clerk of Court’s case file); see also Tr. of Oral Arg. 19 (Kirk conceding that the DOJ annual report is a report). And even if the first definition arguably encompasses that report, it would seem also to include FOIA responses, which convey the results of a Government agency’s “focused inquiry.”

