Court Addresses Access to Parent E-Mail Addresses Under Public Records Law

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The Wisconsin Court of Appeals, in *Gierl v. Mequon-Thiensville School District*, decided lists of email addresses maintained by the District were public records that must be disclosed under the Public Records Law. School districts should be aware of this court ruling, considering it may impact their responses to future requests for records.

Facts and Procedural History

On June 24, 2020, the Mequon-Thiensville School District (District) sent an email inviting "parents and guardians in our school community to participate in a webinar this Friday on the topic of privilege and race." Based on this email, Gierl then requested the list of e-mail addresses to which the invitation was sent.

In response, the District informed the requester by letter, that the invitation was sent to "all parents and staff members" of the District. The District provided the requester with a list of all staff e-mail addresses to which the invitation was sent. However, the District refused to provide the list of parent e-mail addresses. The District's response letter stated in part that "the District does not believe that there is a statute or case explicitly requiring or prohibiting disclosure of the list of parent email addresses." In its response letter, the District also cited a 2010 letter by an assistant attorney general which stated that it was not unreasonable for a school district to deny a request for parent e-mail addresses on the basis that disclosing parent e-mail addresses would inhibit parent-school communication by discouraging parents from providing their e-mail addresses.

The requester filed a petition for a writ of mandamus with circuit court asking the court to decide whether such e-mail addresses must be disclosed. The circuit court ruled in favor of the requester, and the District appealed that decision to the Wisconsin Court of Appeals.

Decision

The Wisconsin Court of Appeals concluded that the circuit court was correct and ruled in favor of the requester. The Court of Appeals concluded that the District had failed to meet its burden of demonstrating that the public interest in keeping the parent e-mail addresses confidential outweighs the strong public policy in favor of releasing these public records.

The Court of Appeals first reviewed whether the list of parent e-mail addresses was a "record" under the Public Records Law. The law recognizes that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." Wis. Stat. s. 19.31. The District argued that the parent e-mail addresses did not relate to the "affairs of government and the official acts of those officers and employees who represent them." The Court of Appeals disagreed, stating that the District used government resources to collect e-mail address of parents and then used those e-mail addresses for a multitude of communications. These communications included not only student-focused communications (school closures, parent surveys, etc.), but also other communications that included community outreach (inviting persons to public events, encouraging voting on referendum, sending its newsletter, etc.).

The Court of Appeals then reviewed the District's reasons for refusing access to the list. In particular, the District contended the balancing test favored keeping the list of parent e-mail addresses confidential because it would have a chilling effect on parents' willingness to provide their e-mail addresses to the District and would stifle District-parent communications. The Court of Appeals noted, however, that there was nothing in the record to support that a chilling effect would occur. Further, it noted that, in 2015, the District released its parent e-mail addresses list to another requester, and there was no proof a chilling effect was observed following that release. As a result, the Court of Appeals concluded that the speculative chilling effect was insufficient to overcome the strong presumption of complete openness.

The Court of Appeals also discussed a prior Wisconsin Supreme Court case, *Hathaway v. Joint School District*, 116 Wis. 2d 388 (1984). In *Hathaway*, the requester (the Green Bay Education Association) sought a copy from the district of a list of the names and addresses of district parents. The list was created for the district's use in mailing information to the parents of students. The Supreme Court decided that the list of names and addresses was a public record that the district must disclose. The Court of

Appeals noted that the circuit court correctly observed that the release of e-mail addresses was far less intrusive than the release of phone numbers and home addresses in *Hathaway*.

Finally, the Court of Appeals addressed the District's concern that the requester may use the e-mail addresses to "SPAM [the parents] with his political ideology." However, the Court discounted that concern, stating that the District essentially wanted to use government resources to collect e-mail addresses and then utilize those e-mail addresses to promote and advance particular community outreach, but then wanted to deny others in the community the opportunity to use the e-mail addresses to share differing opinions. The requester had stated: "If the District had the discipline to limit itself to emails about bus schedules, enrollment, office closures, and the like, then the public interest in accessing the Distribution List would not be as high." The Court agreed and concluded that the balancing test did not tolerate the District using taxpayer resources for an ideological monopoly.

Conclusion

In light of this case, school districts should be aware that e-mail addresses maintained by a district, even parent e-mail addresses, may be subject to disclosure in certain instances. If a district utilizes parent e-mail addresses for purposes beyond just school-focused matters, such email addresses may be subject to disclosure. In those instances, a court may be reluctant to be persuaded by reasons to withhold such addresses, such as concerns with outside parties contacting the parents and concerns with disrupting district-parent relations. As a result, a district should carefully consider how it is using parent e-mail addresses and whether such use may subject such e-mail addresses to disclosure.

In this case, the District did not appear to raise specific concerns with parent e-mail addresses being prohibited from disclosure under state or federal student records law. Under the Family and Educational Rights to Privacy Act (FERPA), "personally identifiable information" includes, but is not limited to, "the name of the student's parent or other family members" and "the address of the student or student's family." Arguably, a parent's home address or email address could be considered personally identifiable information, and as a result, such laws must be considered before disclosing either of them. In many instances, a district may notify families that certain student information is directory information that may be disclosed. However, at least under Wisconsin law, e-mail addresses of parents may not be something that can be identified as directory information. Further, even if it is identified as directory information by a district, some parents may opt out of such disclosure. As a result, the impact of state and federal student records laws must also be considered.

Schools should contact their legal counsel when faced with any questions related to the disclosure of records, including e-mail addresses, under the law.

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