

As alleged in the School Board's Complaint, the Student Report Cards File was obtained and copied from the School Board's computer network in violation of the federal Computer Fraud and Abuse Act, and Virginia's Computer Crimes Act. The School Board is likely to prevail on the merits of these claims. A TRO or expedited preliminary injunction is necessary to mitigate the irreparable harm the School Board has already incurred and will continue to incur. The balance of equities clearly favors the School Board in this instance, and the public interest lies in protecting the private student academic records of the more than 2,000 students served by the School Board. The Court should enter a TRO directing Doe and Wiedemann to remove the Student Report Cards File from the fairfaxunderground.com website, and enjoining them from disseminating the file to any other person.

II. FACTUAL BACKGROUND

On December 18, 2012, at 6:11 p.m., Defendant Doe, using the username "Fairfax Leaks" initiated a new thread on the General Forum bulletin board entitled: "Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 Page PDF file." (*See* Exhibit 1.) Doe's message stated that he was attaching a PDF file containing "report cards for every single student at Fairfax High School for the 2011-2012 school year, grouped by teacher." He indicated that he was posting "from a proxy just in case" and asked "Is this against the rules?" (*Id.*) Proxy servers are servers that act as intermediaries to allow users to connect indirectly to another network or server, thereby allowing the user to hide his identity and location.

As the title of his message indicated, the PDF attachment to Doe's posting was the Student Report Cards File, a file containing 2,166 student names, student ID numbers, absences, final exam grades, and final grades, for the 2011-2012 school year. (Nie Aff. ¶ 4.) The Student Report Cards File posted by Doe apparently contains the names, student I.D. numbers, absences,

final exam grades, and final grades for all Fairfax High School students, except those in the 2012 graduating class (*Id.*)

Fourteen minutes after his original post, at 6:25 p.m., on December 18, 2012, Doe posted a second message in which he stated that he was attaching a TXT file of the same information that he had created from the PDF format file. (*See* Exhibit 1.) Both the PDF and TXT versions of the Student Report Cards File were posted in a format that allows them to be viewed, downloaded, and republished by anyone accessing the fairfaxunderground.com website. (Affidavit of Yuan "Connie" Nie, ¶ 6, attached as Exhibit 2.)

On December 19, 2012, Fairfax County Public Schools administrators were alerted that a file containing the grades of thousands of students had been posted on the fairfaxunderground.com website. (Affidavit of Anne M. Murphy, ¶ 2, attached as Exhibit 3.) School Board personnel reported the matter to the Fairfax City Police, and immediately launched an investigation. (*Id.* ¶ 3.) While the investigation is still ongoing, the School Board has determined that the Student Report Cards File is a report generated on June 18, 2012, on the School Board's Schools Administrative Student Information (SASI) system, that was stored on the School Board's computer network. Access to the School Board's network is limited to School Board employees and members, each of whom must use a login and password to access the network. (Nie Aff. ¶ 7.)

The Student Report Cards File was stored on a secure server, and in a location to which only Fairfax High School teachers and administrators were authorized to have access. (*Id.* ¶ 10.)

All public school employees in Virginia, including teachers and administrators, are prohibited under Va. Code §§ 22.1-287 from publicly disclosing the grades and absences of personally identifiable students, except under limited circumstances not applicable here. The

Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, further prohibits public disclosure of personally identifiable student information , except under limited circumstances not applicable here. Unauthorized disclosures of FERPA-protected information can cause public school systems like the Fairfax County Public Schools to lose their federal funding from the U.S. Department of Education. *See* 20 U.S.C. §1232(b)(1).

While the School Board and police investigations are ongoing, the School Board believes, based upon the information uncovered thus far, that Doe was not authorized to access the Student Report Cards File. Doe was certainly never authorized to publish the Student Report Cards File to the public on the FairfaxUnderground.com website. (Nie Aff. ¶ 10.)

At 2:26 p.m. on December 19, 2012, the School Board, through counsel, sent an email to the administrator of FairfaxUnderground.com, “Cary,” at the email provided on the website. The email advised that two files containing the names and grades of thousands of students were posted on FairfaxUnderground.com, and that “these disclosures were made illegally, and in violation of the privacy rights of the thousands of students who are each identified by name on your website.” (Exhibit 4.) The School Board requested that the administrators immediately remove the files from the website, as well as preserve any records about those who posted, downloaded, or accessed these files. (*Id.*)

At 6:52 p.m., on December 20, 2012, Wiedemann sent an email response, acknowledging that he has the ability to remove the Student Report Cards File from the website, but stated that he is not inclined to do so. (Exhibit 5.) He confirmed that he “[has] and will retain full logs of this incident indefinitely, however, I do not intend to ever reveal them without a valid court order.” (*Id.*) Wiedemann also stated that the Student Report Cards File had already been downloaded “hundreds of times.” (*Id.*) To date, the Student Report Cards File remains

available, both in PDF and TXT form, on the fairfaxunderground.com website. According to the website, the message thread has been viewed over 5,500 times since Doe's original posting on December 18, 2012.

II. ARGUMENT

A. Standard for granting a temporary restraining order or expedited preliminary injunction.

The Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney if “(1) specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (2) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b). The affidavit of the Division Counsel, Anne M. Murphy, Esq., and the affidavit of the School Board’s Network Security Manager, Connie Nie, clearly show that immediate and irreparable harm will result to the School Board absent emergency relief. Moreover, the School Board’s counsel has certified in the accompanying Motion the efforts made to notify Defendant Weidemann and Doe of this Motion.

“The standard for granting either a [temporary restraining order (“TRO”)] or a preliminary injunction is the same.” *Western Indus.-N., LLP v. Lessard*, No. 1:12cv177, 2012 U.S. Dist. LEXIS 33683, at **10-11 (E.D. Va. Mar. 13, 2012) (Cacheris, J.)¹ (citing *Moore v. Kempthorne*, 464 F. Supp. 2d 519, 525 (E.D. Va. 2006). “A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. Natural Res. Def.*

¹ *Subsequent history available at* 2012 U.S. Dist. LEXIS 38697 (E.D. Va. Mar. 21, 2012), *reconsideration denied by* 2012 U.S. Dist. LEXIS 78206 (E.D. Va. June 5, 2012).

Council, Inc., 555 U.S. 7, 20 (2008); *see also Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 346 (4th Cir. 2009) (citing *Winter*, 555 U.S. at 20)), *vacated on other grounds*, 130 S. Ct. 2371, 176 L. Ed. 2d 764 (2010), *reinstated in relevant part*, 607 F.3d 355 (4th Cir. 2010). All four prongs of the test must be satisfied. *Real Truth About Obama*, 575 F.3d at 346.

While preliminary injunctions are used in the usual case to protect the status quo, a mandatory preliminary injunction may be obtained where it is necessary “both to protect against irreparable harm in a deteriorating circumstance created by the defendant and to preserve the court's ability to enter ultimate relief on the merits of the same kind.” *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 526 (4th Cir. 2003). The circumstances presented here plainly satisfy the standards for such a temporary restraining order.

B. The School Board is Likely to Succeed on the Merits.

1. The School Board is Likely to Prevail on its CFAA Claim.

Under the Computer Fraud Abuse Act (the “CFAA”), a person “who suffers damage or loss by reason of a violation of [the statute]” may bring a civil action “to obtain compensatory damages and injunctive relief or other equitable relief.” 18 U.S.C. § 1030(g). The CFAA imposes liability upon any person who: (1) “intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains . . . information from any protected computer;” 18 U.S.C. § 1030(a)(c)(2); or (2) “intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage and loss.” 18 U.S.C. § 1030(a)(5)(C).

The School Board’s network is a “protected computer” as that term is defined in the CFAA. 18 U.S.C. § 1030(e)(2)(B) (defining protected computer as one “which is used in or affecting interstate or foreign commerce...”). Courts have found that a connection to the internet

meets this element under the CFAA. *See, e.g., Continental Group, Inc. v. KW Property Mgmt., LLC*, 622 F. Supp. 2d 1357, 1370 (S.D. Fla. 2009); *Paradigm Alliance, Inc. v. Celeritas Technologies, LLC*, 248 F.R.D. 598, 602 and n. 5 (D. Kan. 2008) (computer providing access to world-wide communications satisfies the element of interstate communications in the CFAA).

The School Board's computer network is connected to the internet. It is made available to its members and employees who can, and often do, access it from various states outside Virginia. (Nie Aff. ¶ 8.) Furthermore, School Board employees routinely utilize the network to communicate with and transact business with vendors and contractors in other states, as well as with persons at other public and private entities, both within and outside Virginia. (*Id.* at ¶ 9.). Thus, the School Board's network is a "protected computer."

Because a user must enter a username and password to access the School Board's network, one cannot access the School Board's network without taking affirmative steps to circumvent those security measures. (*Id.* at ¶ 7.) Moreover, access to the Student Report Cards File was further limited to only those teachers and administrators assigned to Fairfax High School. (*Id.* at ¶ 10.) The School Board is still investigating the precise means by which Doe obtained access to its network, but there is little doubt that Doe's access was "unauthorized" within the meaning of the CFAA. Furthermore, Doe's unauthorized access caused "damage" because it "impaired the integrity or availability of data, a program, a system, or information." 18 U.S.C. § 1030(e)(8).

Doe's access also caused a "loss" as defined in the statute,² for, as set forth below, the School Board has incurred significant expense in responding to Doe's unauthorized access.

² 18 U.S.C. § 1030(e)(11) (defining "loss" as "any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service").

(Murphy Aff. ¶ 6.) The CFAA defines “loss” as “any reasonable cost to any victim, *including the cost of responding to an offense*, conducting a damage assessment, and restoring . . . the system . . . to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.” 18 U.S.C. § 1030(e)(11) (emphasis added). “This broadly worded provision plainly contemplates consequential damages . . . [such as] costs incurred as part of the response to a CFAA violation, including the investigation of an offense.” *A.V. v. iParadigms, LLC*, 562 F.3d 630, 646 (4th Cir. 2012); *Modis, Inc. v. Bardelli*, 531 F. Supp. 2d 314, 320 (D. Conn. 2008) (noting that “the costs of responding to the offense are recoverable” including “costs to investigate and take remedial steps” (internal quotation marks omitted)); *SuccessFactors, Inc. v. Softscape, Inc.*, 544 F. Supp. 2d 975, 980-81 (N.D. Cal. 2008) (holding that the cost of investigating and identifying the CFAA offense, including “many hours of valuable time away from day-to-day responsibilities, causing losses well in excess of \$5,000,” qualified as “cost[s] of responding to an offense” under § 1030(e)(11)); *see also EF Cultural Travel BV v. Explorica, Inc.*, 274 F.3d 577, 585 (1st Cir. 2001) (holding that “Congress intended the term ‘loss’ to target remedial expenses borne by the victims that could not properly be considered direct damage caused by a computer hacker”), quoting *In re DoubleClick Inc. Privacy Litig.*, 154 F. Supp.2d 497, 521 (S.D.N.Y. 2001).

The School Board has initiated an investigation to assess the scope of the data breach and attempt to restore the integrity of the network. Many hours of staff and employee time have already been diverted from day-to-day responsibilities to investigating and responding to this breach, and more of such losses are anticipated. (Murphy Aff. ¶ 5.) The School Board has also engaged outside counsel to assist in the investigation and to advise the School Board in responding to the incident. (*Id.* at ¶ 4.) The School Board further has had to issue notifications

to the students whose personally identifiable information was accessed. (*Id.* at ¶ 3.) The cost of these measures already has exceeded \$5,000 and further “loss” is anticipated. (*Id.* at ¶ 6.) These losses alone easily exceed the \$5,000 statutory threshold for bringing a civil action under the CFAA. 18 U.S.C. § 1030(g).

The School Board thus is likely to prevail on the merits of its CFAA claim.

2. The School Board is Likely To Prevail on its Claim Under The VCCA.

The VCCA provides a civil remedy to “any person whose property or person is injured by reason of any provision of [the VCCA] or by any act of computer trespass set forth in subdivisions A 1 through A 6 of § 18.2-152.4 regardless of whether such act is committed with malicious intent . . .” Va. Code § 18.2-152.12(A). One of the acts of computer trespass enumerated in § 18.2-152.4(A) is “use [of] a computer or computer network to make or cause to be made an unauthorized copy, in any form, including, but not limited to, of any printed or electronic form of computer data . . . residing in , communicated by, or produced by a computer or computer network.” Va. Code §18.2-152.4(A)(6).

The Student Report Cards File generated by the School Board’s SASI software on its network and stored on its computer network is an “electronic form of computer data . . . residing in, communicated by, or produced by a computer or computer network.” The copies of the Student Report Cards File posted by Doe were unauthorized. And those acts of computer trespass by Doe have injured the School Board’s property by impairing the integrity of the School Board’s network, and causing the School Board to expend funds to investigate and remedy the breach.

Section 18.2-152.12 allows the School Board to “recover for any damages sustained and the costs of suit.” Consequential economic damages from responding to and investigating a

computer trespass are recoverable under the VCCA. *iParadigms*, 562 F.3d at 647. As discussed above, the School Board has already incurred, and will continue to incur, significant expense in investigating and remedying Doe's computer trespass.

The School Board thus is likely to prevail on the merits of its VCCA claim.

C. The School Board will be irreparably harmed if the Court does not grant preliminary injunctive relief.

Irreparable harm is generally found "when monetary damages are difficult to ascertain or are inadequate" to remedy the harm alleged. *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994). Courts in this Circuit have recognized, "the public disclosure of confidential information is irreparable." *Senior Execs. Ass'n v. United States*, No. 8:12-cv-02297-AW, 2012 U.S. Dist. LEXIS 130572, at *27 (D. Md. Sept. 13, 2012) (citing *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1317 (1983)). Here, the information at issue pertains to some 2,000 high school students, the vast majority of whom are minors. The Student Reports Cards File contains personally-identifiable student information that both Congress and the Virginia General Assembly have deemed to be confidential and subject to disclosure only under very limited circumstances, none of which apply here. 20 U.S.C. § 1232g; Va. Code § 22.1-287.

Likewise, the loss of trust and goodwill is an irreparable harm that cannot be remedied by money damages. For example, in *Fidelity Global Brokerage Group, Inc. v. Gray*, No. 1:10cv1255, 2010 U.S. Dist. LEXIS 119121 (E.D. Va. Nov. 9, 2010), a former employee of Fidelity converted a customer list and began soliciting Fidelity's customers for his new employer. *Id.* at *1. Judge Cacheris granted Fidelity's motion for a temporary restraining order against the former employee, observing that irreparable harm arose from the fact that Fidelity's "loss of clients' goodwill and future business is difficult, if not impossible, to measure fully." *Id.*

at *8 (internal citations and marks omitted). Moreover, he concluded that it is “difficult to quantify is the loss of customers’ trust in the security of Fidelity as a custodian of their private information.” *Id.*

The same is true for the School Board. This year, approximately 180,000 students have entrusted the School Board with their scholastic records and they and their parents rightfully expect that information to remain private. As in *Gray*, each breach of a student’s privacy “is a potential example of lost business, lost goodwill, and lost trust—the amounts of which cannot be forecasted precisely.” 2010 U.S. Dist. LEXIS 119121, at *8.

Monetary damages will be inadequate to remedy the harm that the School Board has incurred, and will continue to incur, absent preliminary and immediate injunctive relief.

D. The balance of equities favors the School Board.

The balance of equities clearly tips in favor of a TRO or preliminary injunction. The School Board has described the substantial and irreparable harm that it will suffer if the Student Report Cards File is allowed to remain in the public domain. On the other side of the balance, there is no imaginable harm that would befall Doe or Weidemann if the student report cards are removed from the fairfaxunderground.com website. As the Court in *Hunter Consulting, Inc. v. Beas*, No. SACV 12-1947, 2012 U.S. Dist. LEXIS 176317, at *11-12 (C.D. Cal. Dec. 10, 2012) noted, an injunction here would “merely prohibit[] Defendants from using improperly obtained proprietary information. Defendants cannot claim that such ‘harm’ tips the equities in their favor.”

Moreover, an Order enjoining the website from continuing to post information that is likely in violation of the CFAA and the VCCA cannot qualify as harm to the Defendants. In *Perry v. Judd*, 840 F. Supp. 2d 945 (E.D. Va. 2012), this Court considered whether to order that certain presidential candidates be listed on the ballot for the Republican primary. *Id.* at 949.

The candidates argued, and the Court agreed, that Virginia's regulations regarding ballot inclusion were likely unconstitutional. *Id.* at 958. Accordingly, when balancing the equities of an injunction, the Court concluded that the balance favored the candidates because "[a]n injunction enjoining the Commonwealth from enforcing a regulation that the Court has determined is likely to be found unconstitutional cannot qualify as harm." *Id.* at 960. Put differently, if a defendant's actions are illegal, the balance of equities cannot tip in favor of supporting the defendant's continued disregard for the law.

Here, the School Board has shown that Doe likely obtained the Student Report Card File in violation of federal and state law. Neither Doe nor Weidemann can claim hardship from being denied use of a file belonging to the School Board and that was improperly obtained from its network. Neither will they suffer any hardship if the file is temporarily ordered to be removed from the fairfaxunderground.com website, and they are restrained from further disseminating information that does not rightfully belong to them.

E. Injunctive relief is in the public interest.

Finally, the public interest strongly favors a temporary restraining order requiring Doe and Wiedmann, as the host, moderator, administrator, and owner of the fairfaxunderground.com, to take all steps necessary to remove the Student Report Cards File. *See Winter*, 555 U.S. at 20.

Courts have recognized that the public interest favors the protection of confidential information. *See ABT, Inc. v. Juszczuk*, No. 5:09CV119, 2010 U.S. Dist. LEXIS 91613, at *26 (W.D.N.C. Aug. 9, 2010) (granting motion for preliminary injunction against further dissemination of, among other things, customer and supplier contacts and preferences); *Vacation Club Services, Inc. v. Rodriguez*, No. 6:10-cv-247, 2010 U.S. Dist. LEXIS 25151, at *8-*9 (M.D. Fla. Feb. 24, 2010) (converting a temporary restraining order to a preliminary injunction against distribution of stolen customer information); *see also Wells Fargo Bank, N.A. v. Clark*, No.

6:11-cv-06248, 2012 U.S. Dist. LEXIS 145145 (D. Or. Oct. 5, 2012) (granting permanent injunctive relief against a disgruntled former employee who posted “customer names, addresses, loan numbers and other confidential information” to a public, and finding that defendant had “no legitimate interest in publishing the confidential information”). *Id.* at *11.

The public interest is best-served by a TRO requiring the Student Report Cards file to be removed from the public fairfaxunderground.com website. The data in the file pertains to more than 2,000 students—the majority of whom are still minors. Because of the strong public interest in safeguarding the privacy of such information, both Congress and the General Assembly of Virginia have enacted legislation strictly regulating to whom and under what circumstances such information may be disclosed. Doe had no legitimate interest in publishing those students’ academic report cards on a public website, and the general public has no legitimate interest in being able to view the report cards of individual students. The public interest can only be served by a TRO requiring that Doe and Wiedemann take all necessary steps to immediately remove the Student Report Cards file from Wiedemann’s public website.

CONCLUSION

For all of these reasons, the School Board requests the Court to issue an order that requires Defendants Doe and Wiedemann to take immediately all steps necessary to remove the Student Report Cards File from the fairfaxunderground.com website, and enjoining them from further disseminating the file to any third-party.

Respectfully submitted,

FAIRFAX COUNTY SCHOOL BOARD

By: _____/s/
Sona Rewari (VSB No. 47327)
Thomas J. Cawley (VSB No. 04612)
HUNTON & WILLIAMS LLP
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102
(703) 714-7512
(703) 918-4018 (fax)
srewari@hunton.com
tcawley@hunton.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum was sent by electronic mail on
December 21, 2012, to:

Cary Wiedemann
8665 Sudley Road, #167
Manassas, VA 20110
cary@fairfaxunderground.com

_____/s/
Sona Rewari (VSB No. 47327)
HUNTON & WILLIAMS LLP
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102
(703) 714-7512
(703) 918-4018 (fax)
srewari@hunton.com
tcawley@hunton.com

EXHIBIT 1

Fairfax Underground

Fairfax County General : Fairfax Underground

Welcome to Fairfax Underground, a project site designed to improve communication between residents of Fairfax County, VA. Feel free to post anything Northern Virginia residents would find interesting.

Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 page PDF file

Posted by: Fairfax Leaks ()

Date: December 18, 2012 06:11PM

I found a thread here a few weeks ago that had an attachment named fhs final grades.pdf on it. I can't find the thread it came from anymore, and I looked around a lot.

This .pdf appears to contain report cards for every single student at Fairfax High School for the 2011-12 school year, grouped by teacher.

Have we talked about this yet? Did the original thread get deleted? Posting this from a proxy just in case. Is this against the rules? The file should be attached below.

Attachments:

fhs final grades.pdf

Re: Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 page PDF file

Posted by: Fairfax Leaks ()

Date: December 18, 2012 06:25PM

I just used Acrobat to OCR the .pdf. A text version is attached to this message.

Attachments:

fhs final grades.txt

Re: Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 page PDF file

Posted by: Why? ()

Date: December 18, 2012 06:29PM

I don't understand any reasonable cause for posting student's grades online. I find this to be pathetic that you actually spent enough time to get this file, then use a proxy just so you could post it on the internet. Does mother not give you anything to do in the basement?

Re: Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 page PDF file

Posted by: Dave Goldfarb ()

Date: December 18, 2012 07:04PM

Why? Wrote:

- > I don't understand any reasonable cause for
- > posting student's grades online. I find this to be
- > pathetic that you actually spent enough time to
- > get this file, then use a proxy just so you could
- > post it on the internet. Does mother not give you
- > anything to do in the basement?

He used a proxy so that if the cops attempt to track him down, they'll have a harder time, because I'm fairly certain that this information was obtained illegally.

Your Name:

Your Email (Optional):

Subject:

[Attach a file ...](#)

Spam prevention:

Please, enter the code that you see below in the input field. This is for blocking bots that try to post this form automatically.

hM49K

Enter code:

[Preview](#)

[Post message](#)

This forum powered by Phorum.

EXHIBIT 2

FAIRFAX COUNTY SCHOOL BOARD)
)
Plaintiff,)
)
v.) Case No. _____
)
JOHN DOE, a/k/a “FAIRFAX LEAKS,”)
CARY WIEDEMANN)
8665 Sudley Rd #167)
Manassas, Virginia 20110)
)
Defendant.)

I, Yuan ("Connie") Nie, having been placed under oath, affirm that the following facts are true and correct to the best of my knowledge and belief:

2. On Wednesday, December 19, 2012, I was alerted by Fairfax County Public Schools administrators that a file purporting to contain the grades of identifiable Fairfax High School students had apparently been posted on a public website, ww.fairfaxunderground.com, and was asked to investigate the potential source of that file.

3. I went to the website and personally observed that, on December 18, 2012, at 6:11 p.m., an unknown person using the username “Fairfax Leaks” (“John Doe”) had initiated a new thread on the General Forum bulletin board entitled: “Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 Page PDF file.”

4. The PDF attachment to Doe's posting was the Student Report Cards File, a file containing 2,166 student names, student I.D. numbers, absences, final exam grades, and final grades, of all Fairfax High School students, except the Class of 2012, for the 2011-2012 school year. The student enrollment at Fairfax High School during the 2011-2012 school year was 2,436 students.

5. Fourteen minutes after his original post, at 6:25 p.m. on December 18, 2012, Doe posted a second message in which he stated that he was attaching a TXT file of the same information that he had created from the PDF format file.

6. Both the PDF and TXT versions of the Student Report Cards File were posted in a format that allows them to be viewed, downloaded, and saved by anyone accessing the fairfaxunderground.com website.

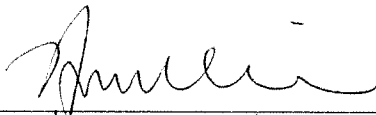
7. While my investigation is still ongoing, I have determined that the Student Report Cards File is a report generated on June 18, 2012, on the School Board's School Administrative Student Information ("SASI") system, which was stored on the School Board's computer network. Access to the School Board's network is limited to School Board employees and members, each of whom must use a username and password to access the network. Because a user must enter a username and password to access the School Board's network, one cannot access the network without taking affirmative steps to circumvent those security measures.

8. The School Board's computer network is connected to the internet. It is made available to School Board members and employees who can, and often do, access it from various states outside Virginia.

9. School Board employees routinely utilize the network to communicate with and transact business with vendors and contractors in other states, as well as with persons at other

public and private entities, both within and outside Virginia.

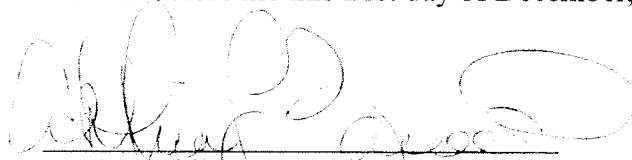
10. The Student Report Cards File was stored on a secure server, in a location that only Fairfax High School teachers and administrators were authorized to access. Based on the information that we have thus far obtained in our investigation, Doe was not authorized to access the School Board's network, or at a minimum, exceeded any authorization he had by copying the Student Report Cards File from the School Board's network.



Yuan (Connie) Nie

COMMONWEALTH OF VIRGINIA:
COUNTY OF FAIRFAX:

The foregoing affidavit was subscribed and sworn to before me this 21st day of December, 2012,
by Yuan ("Connie") Nie.



Notary Public #7306004

My commission expires: 12/31/13

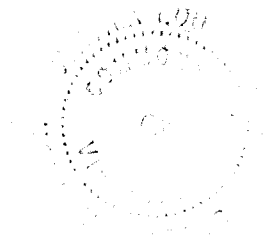


EXHIBIT 3

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

FAIRFAX COUNTY SCHOOL BOARD

Plaintiff,

v.

JOHN DOE, a/k/a "FAIRFAX LEAKS,"
CARY WIEDEMANN
8665 Sudley Rd #167
Manassas, Virginia 20110

Defendant.

Case No. _____

**AFFIDAVIT OF ANNE McCULLY MURPHY, ESQ. IN SUPPORT OF PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR
EXPEDITED PRELIMINARY INJUNCTION**

I, Anne McCully Murphy, Esq., having been placed under oath, affirm that the following facts are true and correct to the best of my knowledge and belief:

1. I am employed by the Fairfax County School Board (the "School Board") as its Division Counsel.

2. On Wednesday, December 19, 2012, my office was alerted to a posting on the website www.fairfaxunderground.com, purporting to contain the names, Student ID numbers, and grades of thousands of students enrolled in our schools. I, and others in my office, viewed the posting and confirmed that it appeared to contain confidential educational records of students, which are protected by federal and state law from public disclosure except under very limited circumstances, none of which applied here.

3. My office, in coordination with other FCPS departments, immediately responded to the data breach. The Department of Information Technology initiated an

investigation of the potential source of the information, as well as any technological issues associated with the data breach. Fairfax High School staff filed a complaint with the City of Fairfax Police, and is participating in the investigation. Further, the Department of Communications and Community Outreach, in conjunction with Fairfax High School staff, implemented notification systems to advise students and parents in the affected school community about the unauthorized disclosure of confidential student information. The notifications were made within hours of our knowledge of the breach.

4. The School Board also engaged outside counsel to advise and assist the School Board in remedying and responding to the breach.

5. Many hours of staff and employee time have already been, and will continue to be, diverted from day-to-day responsibilities in order to investigate and respond to this breach.

6. The cost of all of these remedial and response measures already has exceeded \$5,000, and that cost is expected to multiply.

7. The incident has harmed the School Board's goodwill among students, parents, and the citizens of Fairfax County, many of whom have already contacted school system employees and staff to express their concerns about the fairfaxunderground.com posting. Without an injunction requiring that the Student Report Cards file be removed from the fairfaxunderground.com website, we believe that this unquantifiable harm to the School Board, as well as to the students who are identified by name in the Student Report Cards file, will continue to grow.


Anne McCully Murphy, Esq.

COMMONWEALTH OF VIRGINIA:
COUNTY OF FAIRFAX:

The foregoing affidavit was subscribed and sworn to before me this 21st day of
December, 2012, by Anne McCully Murphy Esq.

Lizette Torres-Barthel
Notary Public

My commission expires: 11/30/2015

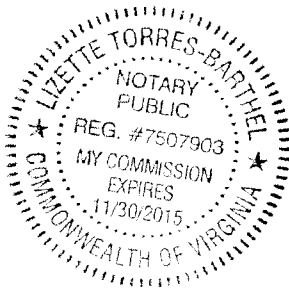


EXHIBIT 4

Rewari, Sona

From: Rewari, Sona
Sent: Wednesday, December 19, 2012 2:26 PM
To: 'cary@fairfaxunderground.com'; 'ben@fairfaxunderground.com'
Cc: Cawley, Tom
Subject: Urgent Request

Importance: High

Filed: -1
NRTID: !nrtdms:0;!session:EMF_US;!database:HW_US;!document:43293773,1:

Dear Cary and Ben:

Our firm represents the Fairfax County School Board. Fairfax County Public Schools administrators were alerted today that two electronic files containing the grades of thousands of Fairfax County Public Schools' students were posted yesterday on your website www.fairfaxunderground.com. These files were posted by someone identified as "Fairfax Leaks" under the message: "Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 page PDF file."

We are contacting you in your capacity as the moderators of Fairfax Underground to notify you that these disclosures were made illegally, and in violation of the privacy rights of the thousands of students who are each identified by name on your website. We request that you immediately remove these files from your website, and preserve the records and other evidence in your possession, including all user accounts, IP addresses, and any other information about those who posted, downloaded, or accessed these files. Please advise us in writing that you have done so.

The School Board is committed to protecting and preserving the privacy rights of its students. We will take all steps necessary to do so and to limit the continuing damage that this unlawful disclosure has caused.

If you would like to discuss this matter, please feel free to contact me, or my partner, Tom Cawley (703.714.7424/tcawley@hunton.com). Your prompt cooperation in this matter is greatly appreciated.

Sincerely,

Sona Rewari

[Home](#) | [vCard](#) | [Bio](#)

Sona Rewari
Partner
rewari@hunton.com

**HUNTON
& WILLIAMS**

Hunton & Williams LLP
1751 Pinnacle Drive
Suite 1700
Falls Church, VA 22102
Phone: (703) 714-7512
Fax: (703) 915-4013
www.hunton.com

EXHIBIT 5

Rewari, Sona

From: carywiedemann@gmail.com on behalf of Cary W <cary@fairfaxunderground.com>
Sent: Thursday, December 20, 2012 6:52 PM
To: Rewari, Sona
Cc: Cawley, Tom
Subject: Re: Urgent Request

Hello Sona,

First let me apologize for the delay in responding to your request. For clarity, the discussion thread in question resides here: <http://www.fairfaxunderground.com/forum/read/2/1069819.html>

This is an interesting legal and moral dilemma and I am unsure of exactly how to proceed. Fairfax Underground has a rich history of free speech and as such the standard operating procedures are to NEVER delete any legitimate content from the forums, regardless of how mundane or childish, so long as the claims made therein are true, and it doesn't violate one of the extremely simple rules which are: No spam, no complete garbage, no personal attacks, and no impersonation.

With that said, however, Fairfax Underground also takes the security and privacy of its users very seriously, and routinely removes content that was posted specifically to harass or embarrass other users. The motivation for this post does not seem to be malicious, rather intellectually curious, and as such doesn't qualify for moderation based on a personal attack.

Do you know of a Virginia law that explicitly prohibits the disclosure of this information? The federal Family Educational Rights and Privacy Act (FERPA) applies only to schools themselves, not necessarily non-authoritative third party sources. If you can identify a section of the Code of Virginia that explicitly prohibits the disclosure of this information I will certainly remove it, but without such a clear prohibition my gut instinct is to allow the thread and attached files to remain.

Can you confirm that this file truly does contain accurate information regarding the grades of students at Fairfax High School? As I have no way to verify the authenticity of such this file I assume it could just as easily be a hoax. Similarly, as this .pdf file comes from an anonymous source, and is hosted on a server that has no relation to the school system whatsoever, the material contained therein should never be trusted as authoritative information by any college or employer.

If this document exposed private information such as social security numbers or home addresses I would certainly remove it immediately; but as it stands there's nothing intrinsically dangerous about the information revealed, only embarrassing.

Please rest assured that I have and will retain full logs of this incident indefinitely, however, I do not intend to ever reveal them without a valid court order. Please note that the thread in question was posted from a "Tor" exit node, a sophisticated anonymizing network, which makes it very unlikely that the original author will ever be positively identified.

With all of that said, most of the damage has already been done. As this file has been posted on Fairfax Underground for over 48 hours and has already been downloaded hundreds of times removing the file and/or thread would not halt the redistribution of this information. Removing the thread in question at this point would only serve to inconvenience the casual browser, and may even lead to individuals altering the original file to

disparage or glorify a student or teacher, and then passing off their modified version as the true original.

As I type this message I understand that various media outlets have picked up the story, as there is a discussion underway in the thread in question itself discussing the merits of retaining vs deleting this information. At this point I intend to allow the discussion to play out, listening to the concerns of the community (both for and against removing the content) and will come to a decision regarding this issue tomorrow.

I sincerely apologize for the trouble this issue has caused. While Fairfax Underground does strive to be a free place for whistle blowers to share sensitive and embarrassing information, it certainly does not intend to play host to the unnecessary exposure of innocent people.

If you have any further questions or requests please don't hesitate to ask.

Thanks and enjoy!

- Cary Wiedemann
--Curator, FairfaxUnderground.com
+1 703 592 6498

On Wed, Dec 19, 2012 at 2:25 PM, Rewari, Sona <srewari@hunton.com> wrote:

Dear Cary and Ben:

Our firm represents the Fairfax County School Board. Fairfax County Public Schools administrators were alerted today that two electronic files containing the grades of thousands of Fairfax County Public Schools' students were posted yesterday on your website www.fairfaxunderground.com. These files were posted by someone identified as "Fairfax Leaks" under the message: "Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 page PDF file."

We are contacting you in your capacity as the moderators of Fairfax Underground to notify you that these disclosures were made illegally, and in violation of the privacy rights of the thousands of students who are each identified by name on your website. We request that you immediately remove these files from your website, and preserve the records and other evidence in your possession, including all user accounts, IP addresses, and any other information about those who posted, downloaded, or accessed these files. Please advise us in writing that you have done so.

The School Board is committed to protecting and preserving the privacy rights of its students. We will take all steps necessary to do so and to limit the continuing damage that this unlawful disclosure has caused.

If you would like to discuss this matter, please feel free to contact me, or my partner, Tom Cawley ([703.714.7424](tel:703.714.7424)/tcawley@hunton.com). Your prompt cooperation in this matter is greatly appreciated.

Sincerely,

Sona Rewari

[Home](#) • [VCard](#) • [Bio](#)

Sona Rewari
Partner
arewari@hunton.com

**HUNTON
WILLIAMS**

Hunton & Williams LLP
1751 Pinnacle Drive
Suite 1700
McLean, VA 22102
Phone: (703) 714-7512
Fax: (703) 918-4018
www.hunton.com
