

RELEVANT BACKGROUND

On December 18, 2012, Defendant John Doe, using the username “Fairfax Leaks,” posted on a public, online bulletin board, a file copied from the School Board’s computer network containing the names and report cards of over 2,100 Fairfax High School students (the “Student Report Cards File”). (Dkt. #1, Compl., ¶¶ 13, 15, 21, 22.) The file contains student names, student I.D. numbers, the grade that each student received on the final exam in each course, by teacher, and the overall final grade each student received in every course, and the number of absences recorded, by student—which information is protected from disclosure by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and Virginia Code § 22.1-287. (*Id.* ¶¶ 23, 24) The Internet bulletin board on which Doe posted this file, fairfaxunderground.com, is owned, operated, and moderated by Defendant Wiedemann. (*Id.* ¶ 8.)

The School Board made a prompt request to Wiedemann to remove the file from his online bulletin board. (Dkt. #2, Emergency Motion for TRO or Expedited Preliminary Injunction, Exhibit 4.) But he refused, opting instead to leave the Student Report Cards File available for viewing, copying, and re-publication by the general public. (Dkt. #2, Emergency Motion, Exhibit 5.) Wiedemann himself stated that the file had “already been downloaded hundreds of times.” (*Id.*) Doe also had taken measures to avoid being held accountable for this unauthorized access and disclosure by using a pseudonym and posting through a “proxy” server. (*Id.*; and Dkt. #1, Complaint, ¶ 15.)

On December 21, 2012, the School Board filed a Complaint and Emergency Motion for Temporary Restraining Order or Preliminary Injunction against Defendants Doe and Wiedemann. The School Board alleged that 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. (Dkt. #1, Complaint.) It asked the Court to order Defendants to take immediately all steps necessary to remove the Student Report Cards File from the Wiedemann's fairfaxunderground.com website. (Dkt. #2, Emergency Motion.)

Upon review of the School Board's Complaint, Emergency Motion, and Memorandum in Support, the Court, by the Honorable Claude M. Hilton, granted the Emergency Motion, and entered a TRO. (Dkt. #5.) The TRO directed Wiedemann and Doe to, among other things, "[t]ake all steps necessary to remove the Student Report Cards File from the fairfaxunderground.com website" and "[r]efrain from . . . disseminating, copying, or causing to be disseminated or copied the Student Report Card File, in any form." (*Id.* at 3.)

The School Board transmitted a copy of the TRO to Wiedemann by email at 2:34 p.m., on December 21, 2012, who confirmed receipt of the email at 3:08 p.m., the same day. (*See* Exhibits 1 and 2.) Wiedemann's response email said that the file would be removed from his website the same day. (*See* Exhibit 2.) At 5:51 p.m., Wiedemann edited Doe's original post on his bulletin board to notify his readers that the file was being removed "temporarily" pursuant to a preliminary injunction, and that the "temporary injunction expired on January 4, 2013."

Pursuant to a preliminary injunction issued by the United States District Court in Alexandria, VA I have been forced to temporarily remove the file 'fhs final grades.pdf' which was previously attached to this post. For ongoing updates regarding Fairfax Underground's legal challenges please see the thread [Fairfax County School Board v. John Doe and Cary Wiedemann](#). A copy of the injunction that preceded this removal is available here: [Mandatory Temporary Restraining Order.PDF-c.PDF](#). This temporary injunction expires on January 4th, 2013.

The file which was removed from this post had the following attributes:

File Name: fhs_final_grades.pdf

Size (bytes): 5766953

MD5 Sum: 6576f2d687f1000e491a71fead56fb32

I must also remove the "text" version of this file below, but will provide a redacted version in its place until the injunction has expired.

(Exhibit 3.)

Although the TRO ordered Wiedemann to “[r]efrain from . . . disseminating, copying, or causing to be disseminated or copied the Student Report Card File, in any form,” Wiedemann created a new, “redacted” copy of the Student Records File, which he posted in place of the original in Doe’s post:

Pursuant to a preliminary injunction issued by the United States District Court in Alexandria, VA I have been forced to temporarily remove the file 'fhs_final_grades.txt' which was previously attached to this post. For ongoing updates regarding Fairfax Underground's legal challenges please see the thread Fairfax County School Board v. John Doe and Cary Wiedemann. A copy of the injunction that preceded this removal is available here: Mandatory Temporary Restraining Order.PDF-c.PDF. This temporary injunction expires on January 4th, 2013.

The file which was removed from this post had the following attributes:

File Name: fhs_final_grades.txt

Size (bytes): 3840887

MD5 Sum: d8b09e4af76b1e604a76f10778b61be4

I have created a redacted version of the file in question which omits the sensitive information available in the original. The original file was transformed by means of the following Regular Expression:

's/^\s*d{6,7}\s*[A-Z].{35}/g'

This Regular Expression essentially searches for any line that begins with a 6 or 7 digit Student ID and replaces the first 50 characters of that line with white space. The full conversion process was performed by executing the GNU/Linux command:

```
cat fhs_final_grades.txt | perl -p -e 's/^\s*d{6,7}\s*[A-Z].{35}/g' > fhs_final_grades-redacted-20121221-1750.txt
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The redacted file 'fhs_final_grades-redacted-20121221-1750.txt' will be available at the bottom of this post in lieu of the original.

(Exhibit 3.)

In a separate thread on the same bulletin board, Weidemann informed his readers that:

Due to the content and publicity associated with the thread [Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 page PDF file](#), the Fairfax County School Board has filed suit against Fairfax Underground and was granted a temporary preliminary injunction by the US District Court of Alexandria, VA.

As the order was issued without notice I was not provided any chance to respond to the school board's petition.¹ I have a very limited time to file a Motion to Dissolve, and am currently exploring the merits of doing so, but as the injunction expires on January 4th, 2013 I may well abide by this temporary order and focus my efforts on ensuring the injunction doesn't become permanent.

In compliance with the injunction I am currently performing a full MySQL database backup to preserve all of the original records, as I need to modify the offending post in order to remove the content.

In this thread I intend to produce all of the communications I've received from the Fairfax County School Board, my responses, and all petitions filed with and returned by the courts.

- Cary (the admin)

(Exhibit 4.)

Pursuant to Federal Rule of Civil Procedure 65, the TRO was entered for a duration of 14 days, expiring at 2:00 p.m., on January 4, 2013. When entering the TRO, Judge Hilton advised the School Board that he would be unavailable to conduct a hearing on January 4, 2013, on a request for a preliminary injunction that would endure until a trial on the merits. He invited counsel for the School Board to submit a request to extend the TRO until the School Board could be heard on a request to convert the TRO into a preliminary injunction. For the reasons stated below, the School Board requests the Court to extend the TRO, an additional 14 days, until January 18, 2013, when the School Board will appear before the Court to request a preliminary injunction pending trial on the merits.

¹ In fact, Wiedemann was given notice of the School Board's Emergency Motion for the TRO before it was filed. (See Exhibit 5.) And he received such notice, because he posted on his website the email providing him advance copies of the proposed Complaint, Emergency Motion, and Memorandum in Support, along with the documents themselves. (See Exhibit 4, at 2.)

ARGUMENT

Federal Rule of Civil Procedure 65(b)(2) allows the Court, for good cause, to extend a temporary restraining order before its expiration for an additional period of up to 14 days. The School Board submits that good cause exists for extension of the TRO entered on December 21, 2012, for at least three reasons.

First, the TRO protects against further misuse and unauthorized dissemination of the School Board's confidential and highly-sensitive data pertaining to over 2,100 students. That information is protected both by federal and state law. And there is no conceivable argument that either Doe or Weidemann have any lawful claim to the scholastic records of more than 2,100 identifiable children. The School Board's original Memorandum in Support of its Emergency Motion for a Temporary Restraining Order or Expedited Preliminary Injunction, has already explained that the elements for preliminary relief under *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) are easily met or exceeded in this case. (Dkt. #3.)

Second, the TRO is set to expire by its terms on January 4, 2013, at 2:00 p.m., and Judge Hilton, to whom this case is assigned, is not available to hear a request to convert the TRO into a preliminary injunction on that date.

Third, unless the TRO is extended, it is highly likely that Wiedemann and/or Doe himself will re-post the Student Report Cards File on Weidemann's website before the School Board may be heard on why the Court should enter a preliminary injunction pending a trial on the merits. Wiedemann already has indicated on his website that he has removed the Student Report Cards File only "temporarily" and has touted the January 4, 2013, date to his audience as a temporal limit on the scope of the injunction. (Exhibits 3 and 4.) Moreover, he has proclaimed

that “as the injunction expires on January 4th, 2013 I may well abide by this temporary order and focus my efforts on ensuring the injunction doesn't become permanent.” (Exhibit 4.)

As already explained in the School Board’s original Memorandum in Support of its Emergency Motion for a Temporary Restraining Order or Expedited Preliminary Injunction, the School Board, who is likely to prevail on the merits of its claims, has already been irreparably harmed by the unauthorized publication of the Student Report Cards File. (Dkt. #3.) And the balance of equities and the public interest strongly favor preliminary relief in this instance. All of these factors weigh equally in favor of extending the TRO until a preliminary injunction hearing can be held on January 18, 2013.

CONCLUSION

For all of these reasons, the School Board requests the Court to extend the TRO entered on December 21, 2012, until January 18, 2013.

Respectfully submitted,

FAIRFAX COUNTY SCHOOL BOARD

By: _____/s/
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum was sent by electronic mail and first-class U.S. mail, on December 28, 2012, to:

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