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U of I challenges Tribune attack on student privacy
Latest round of court filings in case that threatens loss of federal funds

CHICAGO — Attorneys for the University of Illinois filed a brief today in the Seventh Circuit Court of Appeals arguing that the Chicago Tribune is seeking to recast federal privacy law and distort facts in the newspaper’s attempt to obtain student and parent names and addresses, information currently protected by federal privacy law.

The University, which has made more than 5,000 pages of information available to the Tribune to date in response to more than a dozen Freedom of Information Act (FOIA) requests related to the case, argues that exposing the personal information of students and families will thwart 40 years of vital protections of student privacy rights.

“The Tribune attributes all manner of ill motives to the University, reproaching it for allegedly using FERPA (the Family Educational Rights and Privacy Act) as a ‘secrecy statute’ to ‘hide’ public records that it finds embarrassing,” asserts the U of I in its brief, a response to the Tribune’s argument to the court. “Simple, unavoidable facts refute these harsh words.”

The case pivots on legal interpretations of the 1974 federal law, which affords legal protections to the privacy rights of students. The U of I is appealing a March 2011 federal district court ruling that FERPA has no relevance to requests made under FOIA. The court ordered the disclosure of student and family information protected by FERPA, potentially putting hundreds of millions of dollars in federal funds at risk because FERPA bars federal funds to institutions that violate the law’s privacy protections.

In July, nine Illinois public universities, the American Council on Education, the United States Department of Justice and EPIC — the Electronic Privacy Information Center — agreed, filing amicus briefs supporting the University of Illinois’ position.

The University has complied with 13 Tribune FOIA requests about admissions records from its Urbana-Champaign campus. In late 2009, the University cited FERPA in denying two Tribune FOIA requests demanding parents’ names and addresses for certain “Category I” University applicants who subsequently enrolled. The Tribune sued, and in March a U.S. District Judge ruled for the paper, saying that the University could choose to forgo federal funding to comply with the Tribune’s FOIA requests. But the judge stayed her own ruling and the case is now being appealed.

“The University has already produced more than 5,200 pages of FERPA-compliant Category I records in response to more than a dozen prior FOIA requests,” the University argues in its brief. “The Chicago Tribune used these documents to write the ‘Clout Goes to College’ series, ultimately leading to the resignation of the University’s President, Chancellor and six Trustees.”

Moreover, the University notes that many of the “Sponsors” and university officials who were involved in the Category I process “have already been exposed by name, with detailed descriptions of their roles.” “If anything,” the University argues, “this case shows the right approach to the FOIA/FERPA balance.” The University “complied with its duties under FOIA, disclosing even ‘embarrassing’ records, but still safeguarded the privacy of its students under FERPA.”

“Students are entitled to have their identities remain private under FERPA so they are not subjected to public ridicule for being admitted under a process they did not commence and many likely did not even know existed,” argues the University, calling the Tribune’s arguments to the contrary “wrong.”

The University argues that the Tribune is essentially asking the appeals court to “add new terms to the statute” in reinterpreting FERPA’s requirements, ignore FERPA’s compulsory obligations, including the revocation of funding, and turn a blind eye to the “tangible and serious” potential consequences of the district court’s ruling.

“The University would be forced to disclose not just the ‘discrete’ records sought in this case, but many other FERPA-protected records in the future, substantially intruding upon student privacy,” argues the University. It cited as an example another lawsuit brought by the Tribune against the University, pending in state court in Sangamon County, in which the Tribune demands the production of college applicants’ high school grade point averages (GPAs) and standardized (ACT) test scores.

“The district court foresaw this danger when it stayed its judgment, finding that these students would suffer ‘overwhelming,’ ‘catastrophic,’ and ‘irreparabl[e]’ injury... Moreover, because the DOE cannot secure voluntary compliance with FERPA under these circumstances, it could be forced to revoke the University’s federal funding, the University brief argues.

“Whatever interest the public may have in the disclosure of misconduct by elected officials or University employees has been vindicated by the more than 5,200 pages of documents the University has already disclosed,” and “there is no First Amendment right to access the remaining, FERPA-protected education records that the Tribune seeks,” argue University lawyers.

Oral arguments in the case are expected to be scheduled for this fall.

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The University of Illinois is a world leader in research and discovery, the largest educational institution in the state with more than 76,000 students, 24,000 faculty and staff, and campuses in Urbana-Champaign, Chicago and Springfield. The U of I awards more than 19,000 undergraduate, graduate and professional degrees annually.