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Appeal filed in seminal student, family privacy case

University asks Seventh Circuit to overturn ruling threatening nearly 40 years of privacy safeguards and seeks to preserve millions in federal education funding

CHICAGO — The University of Illinois – determined to protect the privacy of student educational records and the federal funding upon which both students and the University rely – has formally appealed a March 2011 federal district court ruling that ordered the disclosure of student and family information that has been protected by federal privacy regulations for almost 40 years.

In its appellate brief filed Wednesday, attorneys for the University argued that the district court’s ruling “is wrong as a matter of law” and that the U of I is “subject to a compulsory, enforceable legal obligation to protect the private records of its students against unauthorized disclosure.”

The case turns on the federal Family Educational Rights and Privacy Act (FERPA) of 1974, and stems from a 2010 lawsuit filed by the Chicago Tribune. The newspaper sued the University for denying a December 2009 Illinois Freedom of Information Act (FOIA) request seeking the names and addresses of the parents of certain Urbana-Champaign campus applicants who subsequently enrolled.

The U of I had already complied with 13 previous Tribune FOIA requests regarding admissions and so-called “Category I” tracking of applicants, and provided the newspaper with nearly 5,800 pages of information related to those queries. Those previous U of I FOIA responses formed the basis for a series of articles beginning in the spring of 2009, as well as several reforms in admissions procedures that the University subsequently crafted and adopted.

The University denied the Tribune’s December 2009 request that sought the disclosure of personally identifiable student information, citing FERPA’s requirement that conditions the receipt of certain federal education funding upon the protection of such information.

In March 2011, U.S. District Judge Joan B. Gottschall ruled for the Tribune. Judge Gottschall noted that it was not clear that FERPA specifically prohibited the release of such information, and that the University could choose to forgo federal funding in order to comply with the Tribune’s state FOIA requests. In granting the University’s later request to stay the order pending appeal, Judge Gottschall welcomed an appeal so that the protections afforded by federal law could be clarified.

Should the appeals court uphold Judge Gottschall's ruling, the consequences could be dire for the Category I students and their families -- and more broadly, for students and the University as a whole, as well as the larger community of schools and students across the United States. Under FERPA rules, the University could be barred from receiving federal dollars for a wide range of initiatives, from student financial aid to academic grants.

"Although the University certainly takes no issue with FOIA's salutary goal of promoting open government and free access to information, that objective must be balanced carefully against FERPA's assurance of individual privacy," the University argued in its legal brief, noting that it receives an average of nearly 50 FOIA requests per month, many of which call for information covered by FERPA. Since a change in the state FOIA law last year removed a *per se* privacy exemption for student information, FERPA has at times provided the University's sole basis to redact or withhold the protected information.

The brief noted that public disclosure of students' personally identifiable information could subject the students to "an enormous risk of exposure, ridicule, and public embarrassment."

"These students quite reasonably expect that the information they entrust to the University will remain private, and not be shared with the world. The University's obligation under FERPA to honor the trust reposed in it by young people who want to attend college, and the families who encourage and support them in that effort, is no less important to the public good than FOIA's promotion of open government," the University asserted.

Failure to comply with the terms of FERPA could imperil hundreds of millions of dollars in federal funds to students and the University and, by extension, to schools across the nation impacted by the precedent if the district court's ruling is left to stand. More than 60% of the University of Illinois' annual student tuition and fees are provided by federal funds, which totaled \$146 million in student financial aid and other grants in 2010 alone, plus an additional \$449 million in federal student loans that same year. In addition, the University would be in danger of losing tens of millions of annual dollars in certain federal grants for research and other purposes, funds that totaled more than \$70 million in 2010.

"When the University agreed to accept funds from the federal Department of Education, it undertook an affirmative obligation to comply with FERPA's funding conditions," the University contended in its legal brief. "That obligation is mandatory and enforceable, not voluntary."

Oral arguments in the case are expected 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.