

Let's Go To The Videotape: Can School Security Videos Be Subject To Disclosure Under FOIA?

Education Law Notes

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School districts usually deny requests to view school video recordings, such as security tapes, in light of concerns about the privacy rights of students featured on these recordings. In a recent decision, the Freedom of Information Commission ["FOIC"] threw us all a curveball in ordering disclosure of a school video recording.

In *Lambeck v. Chairman, Board of Education, Bridgeport Public Schools*, #FIC 2013-677 (October 22, 2014), the complainant (a reporter with the *Connecticut Post*) requested that a school district provide her with copies of security videotapes that were submitted as evidence in a highly-publicized termination hearing involving a school principal. These videos were recordings of certain events involving the principal and two elementary school students. The school district declined to produce the requested videos, asserting that they were exempt from disclosure pursuant to the federal Family Educational Rights and Privacy Act ["FERPA"], which protects the confidentiality of student records and "personally identifiable information." Records protected from disclosure under FERPA are likewise exempt from disclosure under the Freedom of Information Act ["FOIA"].

The reporter then filed a complaint with the FOIC. The reporter asserted that the video recordings should be released because they were not exempt "education records," as they did not relate to or focus on the students who appear in them, but rather relate to the conduct of the principal. The reporter also argued that the images in the recordings were of such low quality that they could not identify the students, and that the videos still could have been edited to conceal the identity of the students. Conversely, the school district asserted that FERPA prevented the disclosure of the tapes because the reporter knew of or could have discovered the identity of the students involved. Copies of the video recordings had been previously obtained by a parent of one of the children depicted in the recordings and had been widely distributed by some news organizations on news media websites (including News Channel 12); indeed, the videos had actually been previously viewed by the *Post* reporter.

The FOIC agreed with the reporter and ordered the disclosure of the tapes. The FOIC agreed that the recordings directly relate to the conduct of the school principal and not to the students who appear in them. While noting that the school district did not have the ability to obscure the images of the students, the FOIC still found that based upon an inspection of the tapes -- and the facts of this case -- the identity of the

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children who appear in the recordings could not be discovered. As such, the FOIC concluded that the tapes were not “student records” and did not reveal “personally identifiable” student information, and thus were not exempt from disclosure under the FOIA.

WHAT HAVE WE LEARNED? Previously, the FOIC had upheld decisions by school districts not to release videotapes containing student images, especially where 1) the requested videotape would reveal a student image to someone other than that student’s parent, and 2) the videotape could not be edited (for example, via pixelating) to obscure or delete the images of the other students in the videotape. In addition, as discussed in these pages, where the identities of the students are known, there is a heightened interest in preventing the release of any further information related to those students, since it could easily be traced back to those students. However, it appears that the low tech quality of the video recordings worked to convince the FOIC in Lembeck that there was no danger in the recordings divulging the identity of the students. When combining the lack of clarity of the tapes with the fact that they primarily concerned an employment issue, as opposed to a direct student issue, the FOIC felt comfortable categorizing the recordings as *non*-student records.

It should be noted that the United States Department of Education recently hinted that it may be revising its prior formal guidance with respect to student videotapes being exempt from disclosure. Since the FOIC explicitly relied upon the federal guidance in previously declining to order the disclosure of videotapes, any change in federal guidance will likely alter the FOIC’s view on this issue. Until such time, however, school districts that in good faith operate under the assumption that it is still best to err on the side of protecting the privacy rights of students will likely not be exposed to FOIC sanctions or fines.

Posted in Board of Education, The Freedom of Information Act (FOIA)

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