
In the Matter of
A Privacy Complaint
Filed Against

Review and Determination by
New York State Education Dept.
Office of the Chief Privacy Officer

North Shore Schools

On March 23, 2021 a complaint was filed by Jerry Romano (complainant), a resident of the North Shore Central School District (District) with the New York State Education Department’s (NYSED’s) Chief Privacy Officer. Complainant alleges that the District disclosed student and family personally identifiable information (PII)—specifically, names, addresses, and phone numbers—without consent, to the president of the teacher’s union to advocate for the budget. Seven additional residents requested that NYSED’s Chief Privacy Officer investigate this matter.

As a second violation, complainant alleges that the District, in response to a Freedom of Information Law (FOIL) request, released PII pertaining to a specific student.

In response to the complaints, on May 7, 2021, NYSED’s Chief Privacy Officer requested the school investigate and provide a written response, including a summary of its investigation and addressing the specific allegations raised by complainant; whether the school addressed the complaint previously, and whether an unauthorized disclosure occurred, including the legal and factual basis for the school’s conclusion. The school submitted its response to the Chief Privacy Officer on June 11, 2021.

Applicable Law

The federal Family Educational Rights and Privacy Act (FERPA)¹ protects the privacy of student educational records and places restrictions on the release of students’ PII. New York has adopted additional privacy laws and regulations. Education Law § 2-d² protects PII from unauthorized disclosure and provides parents with rights regarding their child's PII, especially as pertains to third party contractors.

In accordance with the requirements of Education Law § 2-d NYSED has adopted a [§2-d Bill of Rights for Data Privacy and Security](#) that authorizes NYSED’s

¹ 20 USC § 1232g; 34 CFR Part 99

² Education Law § 2-d

Chief Privacy Officer to address complaints about possible breaches and unauthorized disclosure of student PII.

Arguments

Complainant contends that:

- (1) The District improperly provided the president of the teacher's union with PII, specifically, the name, address, phone number and schools attended for all families enrolled in the District; and
- (2) In response to a FOIL request, the District provided PII regarding a specific student.

Complainant further contends that he became aware of the alleged "privacy violation" when his FOIL request for the same information provided to the president of the teacher's union was denied. Complainant also states that the information was provided so that the union could advocate for an upcoming proposed school budget.

With regard to the first allegation, the District takes the position that no unauthorized access to PII occurred. The District admits that, pursuant to a May 18, 2020 FOIL request, it provided the president of the teacher's union with a list of the names, addresses, phone numbers and schools for all families with children enrolled in the District on June 2, 2020. The District states that it released this information because it is directory information in accordance with FERPA, and the release, which was used to promote the District election, would benefit students in accordance with Education Law § 2-d (5) (b) (1). Finally, the District states that it relied on FOIL advisory opinion 10755 issued by the New York State Committee on Open Government which specifically states that a school district may not prohibit access to directory information sought for "politically partisan" purposes.³

The District's response further explains that it would not have released the information after it received guidance from NYSED's Chief Privacy Officer on August 27, 2020, which was sent to all Data Protection Officers. That guidance consisted of an August 5, 2020 FOIL decision issued by NYSED's Chief Privacy Officer explaining that Education Law § 2-d is more protective of PII than FERPA and that releasing information in a get-out-the vote effort was not sufficiently beneficial to students or educational agencies to justify the release of directory information. In light of this guidance, the District denied the January 28, 2021 FOIL request made by complainant for the same information provided to the president of the teacher's union.

³ Freeman, Robert J., Committee on Open Government Advisory Opinion 10755, April 14, 1998, <https://docsopengovernment.dos.ny.gov/coog/ftext/f10755.htm>

With regard to the second allegation, the District admits that it made a redaction error but states that the error involved one single page in a 29,000 page FOIL response. Once made aware of the disclosure, the District contacted the family and requested that the individual who received the FOIL disclosure immediately destroy the document.

Determination

Neither § 121.4 of the regulations of the Commissioner of Education or NYSED's [§ 2-d Bill of Rights for Data Privacy and Security](#), allow individuals other than parents, eligible students, teachers, principals or other staff of an educational agency to file complaints about possible breaches and unauthorized releases of personally identifiable information. Complainant does not state that he is a parent, teacher, principal or other staff of the District. Of note, individuals may file complaints pertaining to FERPA with the United States Department of Education⁴. In this case, however there is no dispute that PII was disclosed. As such, the Office of the Chief Privacy Officer has determined that it is appropriate to address the complaint in this instance.

With regard to the first allegation, the District's June 2, 2020 release to the president of the teacher's union violated FERPA and Education Law § 2-d. As the District indicates, its directory information policy is contained within its annual school calendar.⁵ That policy does not list parent names as directory information, nor does it state that directory information will be released for a district-wide mailing list for a political purpose or upcoming District vote. The quote from advisory opinion 10755 that the District relies upon in its response is misplaced, as the quoted passage referred to a "list of the addresses of *all* taxpayers within the District"⁶ (emphasis added). Indeed, that same advisory opinion later states:

If the District maintains a list of parents of students, such a record would fall within the scope of FERPA. As indicated earlier, that statute pertains to information personally identifiable to a student. According to the federal regulations, "personally identifiable information" includes not only the student's name but the name of student's parents or other family members and the address of the student or his or her family [34 CFR § 99.3].

⁴ <https://studentprivacy.ed.gov/file-a-complaint>

⁵ <https://northshoreschools.org/calendars/2021-22-calendar.pdf>

⁶ Freeman, Robert J., Committee on Open Government Advisory Opinion 10755, April 14, 1998, <https://docsopengovernment.dos.ny.gov/coog/ftext/f10755.htm>

Consequently, I do not believe that a list of parents of students could be disclosed without consent given by parents identified in the list.⁷

Therefore, the information released to the president of the teacher's union did not qualify as directory information in accordance with the District's directory information policy. Although the FOIL request from the union should have been denied, the District indicates that it will not release this information again under similar circumstances. Indeed, the District subsequently denied complainant's FOIL request, which was the same as the request made by the president of the teacher's union.

FOIL allows an agency to correct a mistake by later claiming a privilege concerning documents it previously released.⁸ Moreover, to the extent complainant wishes to challenge and/or appeal the denial of his FOIL request, a denial of access to District records should be appealed to the officer designated to hear such an appeal. If complainant is dissatisfied with that decision, Public Officers Law § 89 vests exclusive jurisdiction over challenges to such officer's final decision in the Supreme Court of the State of New York. Thus, denials of FOIL requests by school districts may not be adjudicated by the Commissioner or State Education Department under the Public Officers Law or Education Law §§ 2-d and 310.

With respect to the second allegation, the District admits that the student's PII was inadvertently disclosed in the course of producing a 29,000 page FOIL response. This release constituted an unauthorized disclosure or release of PII as those terms are defined under § 121.1 of the regulations of the Commissioner of Education. Accordingly, the District was required to, but did not, report the release to this office in accordance with §121.10 (d).⁹ Nevertheless, once made aware of the unauthorized release, the District promptly notified the parents of the affected student and sought to have the unredacted documentation that was mistakenly sent to the third party returned or destroyed.

Thus, while the District erred as described above, it also took remedial measures to address the disclosures and mitigate any potential harm arising therefrom. Therefore, as a remedy, the District must review its policies concerning the required actions when an unauthorized disclosure or release occurs. Additionally, the District should review its policies regarding "directory information" (*see* 34 CFR § 99.3), including the definition of this term and how, and to whom, such information may be made available.

⁷ *Id.*, *see also* Freeman, Robert J., Committee on Open Government Advisory Opinion 17193, May 28, 2008 <https://docs.dos.ny.gov/coog/ftext/f17193.html>

⁸ *See Matter of Mazzone v. New York State Dept. of Transp.*, 95 AD3d 1423, 1425-1426 (3rd Dept 2021) *citing Matter of Miller v. New York State Dept. of Transp.*, 58 AD3d 981, 983 (3rd Dept 2009), *lv denied* 12 NY3d 712 (2009).

⁹ Reports can be made using the [Data Incident Reporting Form](#) on NYSED's website.

December 1, 2021
NYSED
Office of the Chief Privacy Officer