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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FAIRFAX COUNTY SCHOOL BOARD,

Plaintiff,

v.

DEBRA TISLER
Serve: Debra Tisler
[redacted]
Fairfax Station, Virginia 22039

and

CALLIE OETTINGER,
Serve: Callie Oettinger
[redacted]
Fairfax Station, Virginia 22039

Defendants.

2021 13491

Case No. _____

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiff Fairfax County School Board ("School Board") brings this action against Defendants Debra Tisler and Callie Oettinger and alleges as follows:

Nature of the Case

1. This case concerns Defendants' retention of confidential information, including identifiable student and personnel information, that was inadvertently and mistakenly released to Defendant Tisler in response to a request under the Virginia Freedom of Information Act made to School Board personnel. On information and belief, Defendant Tisler forwarded the response to Defendant Oettinger, who has posted portions of the records on the internet. Plaintiff has made timely and repeated efforts to secure the return of the confidential information from Defendants, to no avail. This action is brought to secure the return of the information whose confidentiality is

protected by law, to which Defendants have no legal right of access, and which in equity Defendants should not be permitted to retain or disseminate.

The Parties

2. The School Board is a public body corporate that operates and administers Fairfax County Public Schools located in Fairfax County, and the City of Fairfax, Virginia. The School Board's offices are located at 8115 Gatehouse Road, Falls Church, Virginia.

3. Defendant Debra Tisler is, and at all relevant times has been, a citizen of the Commonwealth of Virginia who resides at [redacted] Fairfax Station, Virginia 22039.

4. Defendant Callie Oettinger is, and at all relevant times has been, a citizen of the Commonwealth of Virginia who resides at [redacted] Fairfax Station, Virginia 22039.

Jurisdiction and Venue

5. This Court has subject-matter jurisdiction over this action under Va. Code § 8.01-620 because the School Board seeks injunctive relief.

6. This Court has personal jurisdiction over Defendants because, on information and belief, they are, and at all times relevant to this action have been, domiciled in Virginia.

7. Venue is proper in this Court under Va. Code § 8.01-261(15)(c) because the enjoined acts are to be done in this county.

Factual Allegations

8. In August 2021, Defendant Tisler requested from School Board personnel certain records pursuant to the Virginia Freedom of Information Act ("VFOIA").

9. The records responsive to Defendant Tisler's request include legal invoices submitted by outside counsel to School Board personnel over a period of fourteen months that

contain, among other things, identifiable student and personnel information. The records contain confidential information subject to withholding under several Virginia Code sections, including §§ 2.2-3705.1(1), (2), (13), and 3705.4(1) and information protected from disclosure under the Family Educational Rights and Privacy Act ("FERPA") (collectively, "Confidential Information").

10. The Confidential Information, which is not subject to public disclosure, is collected and maintained by School Board personnel for a number of reasons, including but not limited to, operation of a public school division responsible for the education of more than 180,000 students and satisfying its related data-collection and retention obligations under state and federal law. As such, the information has value to the School Board.

11. In August and continuing through September 13, 2021, School Board personnel compiled responsive records and reviewed such records for the purpose of redacting Confidential Information.

12. On September 10, 2021, School Board personnel placed an initial batch of records, consisting of about 962 pages, in a Dropbox[1] folder and e-mailed a link to the folder to Defendant Tisler. The e-mail also informed Defendant Tisler that, due to the extraordinary volume of responsive records, School Board personnel were still reviewing records and would provide additional records as they were finalized.

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[1]Dropbox is cloud-based computer application that allows users to share documents by placing the documents in a folder and sharing a link to the folder. Only users with a copy of the link to the folder have access to the documents.

13. On September 13, 2021, School Board personnel placed a second batch of records, consisting of about 354 pages (collectively with the records shared on September 10, 2021, the "FCPS Records"), in a Dropbox folder and e-mailed a link to the folder to Defendant Tisler.

14. On September 14, 2021, School Board personnel learned from a third party that it had allegedly disclosed Confidential Information in a VFOIA response. Upon learning of this, School Board personnel reviewed the matter and determined that the records referenced by the third party were likely the FCPS Records. School Board personnel additionally determined that, contrary to normal procedure, the FCPS Records had been provided to Defendant Tisler without a second-level review by counsel. Further review of the FCPS Records revealed that, although they contained redactions of some Confidential Information, the redactions were incomplete, meaning that the records still contained Confidential Information, exempt from disclosure under VFOIA, and otherwise protected under FERPA and Va. Code § 22.1-287.

15. Following this discovery, on September 15, 2021, School Board personnel promptly contacted Defendant Tisler by e-mail, notifying her that certain sensitive information exempt from disclosure under VFOIA had been provided to her in error and requesting that she delete or destroy any versions or copies of the records. School Board personnel also informed Defendant Tisler that it would provide the corrected records to her.

16. Defendant Tisler did not respond to September 15, 2021 e-mail.

17. On September 17, 2021, the School Board's Deputy Division Counsel sent a letter to Defendant Tisler, again, informing her that the records had been released in error and prior to review by counsel and complete redaction of all confidential and privileged information. The letter requested that Defendant Tisler (1) contact Division Counsel's office by no later than September 21, 2021 to make arrangements to return the records, (2) provide contact information for anyone

with whom Defendants shared the records, and (3) refrain from sharing the records with anyone else.

18. Again, Defendant Tisler did not respond to the request.

19. On September 22, 2021, the School Board, through counsel, attempted to reach Defendant Tisler by phone on her home and cell phones. Counsel for the School Board left voicemail messages at both numbers, but Defendant Tisler did not return either of the voicemail messages.

20. The same day, September 22, 2021, the School Board's counsel also sent a letter to Defendant Tisler via hand delivery, e-mail, and first class mail requesting a return call to discuss return of the FCPS Records. The letter instructed Defendant Tisler not to share or disseminate the FCPS Records.

21. When the September 22, 2021 letter was hand delivered to Defendant Tisler, Defendant Tisler told the courier, "tell [the School Board's counsel] to not send anything else to her home or come onto her property again." Other than this terse and hostile communication, Defendant Tisler has not responded to any of the School Board's letters, emails, and phone calls.

22. Defendant Tisler did not respond to the September 22, 2021 letter.

23. On September 23, 2021, the School Board's counsel placed two additional telephone calls to Defendant Tisler. Once again, voicemail messages on both Defendant Tisler's home and cell phone numbers went unreturned.

24. On September 23, 2021, the School Board's counsel sent another letter Defendant Tisler via overnight delivery, e-mail, and first-class mail requesting an immediate return call to discuss return of the FCPS Records. The letter notified Defendant Tisler that the School Board

was prepared to pursue legal action against her to recover the records. The letter repeated the instruction to Defendant Tisler not to share or disseminate the FCPS Records.

25. At the time of this filing, Defendant Tisler has not responded to the September 23, 2021 letter, any of the previous correspondence, or otherwise contacted School Board personnel, its Division Counsel's Office, or the School Board's outside counsel regarding this matter.

26. On September 24, 2021, School Board personnel provided Defendant Tisler with a corrected copy of the FCPS Records provided on September 10, 2021 and September 13, 2021 with all Confidential Information properly redacted.

27. On information and belief, Defendant Tisler continues to retain the FCPS Records, which includes Confidential Information.

28. On information and belief, Defendant Tisler has shared at least some portion of the FCPS Records, including portions that contain Confidential Information, with Defendant Oettinger and with other person(s) who are currently unknown to School Board personnel.

29. On September 25, 2021, School Board personnel learned that a portion of the FCPS Records were posted on the internet. The article states that "[t]here are about 1,500 records" and describes the nature of the records, which is identical to what is contained within the FCPS Records.

30. Portions of the FCPS Records were embedded in links contained within an article about release of the records, which the website states was "Posted by Callie Oettinger" on September 24, 2021.

31. That same day, September 25, 2021, the School Board's Deputy Division Counsel sent a letter to Defendant Oettinger informing her that the records had been released in error and that School Board personnel have undertaken numerous steps in a concerted effort to secure the

return of those records and prevent their further dissemination. The letter requested that Defendant Oettinger: (1) immediately remove the records from the website and other internet locations where they have been posted; (2) refrain from disseminating the records by any means; (3) contact counsel by no later than Sunday, September 24 at Noon to make arrangements to return (or destroy) the records; (4) provide contact information for anyone with whom she shared the records.

32. Defendant Oettinger did not respond to the September 25, 2021 letter.

33. In the morning of September 26, 2021, the School Board's Deputy Division Counsel called Defendant Oettinger to follow up on the letter. Counsel for the School Board left a voicemail message requesting a return call, but Defendant Oettinger did not return the voicemail message.

34. In the afternoon of September 26, 2021, the School Board's counsel sent a letter to Defendant Oettinger via hand delivery and e-mail requesting a return call by the morning of September 27, 2021 to discuss return of the FCPS Records. The letter instructed Defendant Oettinger not to share or disseminate the FCPS Records.

35. Defendant Oettinger did not respond to the September 26, 2021 letter.

36. In the afternoon of September 26, 2021, the School Board's counsel placed a telephone call to Defendant Oettinger and left a voicemail message. Once again, the voicemail message went unreturned.

37. At the time of this filing, Defendant Oettinger has not responded to any of the School Board's letters, e-mails, and phone calls.

38. On information and belief, Defendant Oettinger continues to retain and/or disseminate the FCPS Records, which includes Confidential Information.

COUNT I:
(Detinue)

39. The School Board reasserts and incorporates its allegations in the preceding paragraphs as if fully set forth here.

40. The Confidential Information in the FCPS Records is exempt from disclosure under VFOIA and is the property of the School Board.

41. The School Board has a property interest in the Confidential Information.

42. Defendants have no legal right to possess or disseminate the Confidential Information.

43. The School Board has the right to the immediate possession of the Confidential Information and the right under VFOIA to exclude its possession by others to prevent the risk of diminution of its value.

44. The School Board has the ability to identify, and has identified, the Confidential Information, including reference to those portions of the VFOIA that provide for exclusions to the application of the statute, Va. Code §§ 2.2-3705.1(1), (2), (3), (13), and 3705.4(1).

45. The Confidential Information has value in that School Board personnel collects and maintains the information in fulfillment of its educational mission and to enable the efficient operation of its facilities and to satisfy its obligations under state and federal law.

46. Defendant has possession of, and continues to maintain possession of, the Confidential Information.

47. Defendants have unreasonably refused to return the Confidential Information.

COUNT II:
(Imposition of a Constructive Trust)

48. The School Board reasserts and incorporates its allegations in the preceding paragraphs as if fully set forth here.

49. Constructive trusts are imposed by courts of equity whenever necessary to prevent a failure of justice. Constructive trusts arise by operation of law and are independent of the intention of the parties.

50. The previous allegations demonstrate that Defendants are in possession of the School Board's property—the Confidential Information.

51. Defendants have retained and disseminated this property despite the fact that they should not, in equity and good conscience, retain or disseminate the property.

52. It would be contrary to the principles of equity and unjust to allow Defendants to retain and disseminated, and benefit from retaining and disseminated, the School Board's property.

53. A constructive trust should be imposed on all such unjustly held property so that it may be rightfully returned to the School Board.

Prayer for Relief

WHEREFORE, the School Board requests that the Court enter judgment in its favor, and against Defendants, awarding the School Board the following relief:

A. Entry of preliminary and permanent injunctions:

i. ordering Defendants to return the FCPS Records;

ii. enjoining Defendants, and any persons acting on their behalf, from accessing, reproducing, or using the FCPS Records in any manner;

iii. enjoining Defendants, and any persons acting on their behalf, from disseminating, or causing to be disseminated, the FCPS Records;

iv. ordering Defendants to provide a full accounting to the School Board to include the (a) identity of all persons to whom they provided any portion of the FCPS Records or a link to the FCPS Records, and (b) the location of any websites or social media pages in which they

posted any portion of the FCPS Records or a link to the FCPS Records.

B. Imposition of a constructive trust, as set forth above;

C. An award of such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

FAIRFAX COUNTY SCHOOL BOARD

By: Sona Rewari
Counsel

Sona Rewari (VSB No. 47327)
Ryan M. Bates (VSB No. 74661)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Ave, NW, Suite 900
Washington, DC 20037
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

Counsel for Fairfax County School Board