

STATE OF MICHIGAN

COURT OF CLAIMS

THE MACKINAC CENTER FOR  
PUBLIC POLICY,

Plaintiff,

**OPINION AND ORDER**  
**ON RECONSIDERATION**

v

Case No. 21-000011-MZ

MICHIGAN STATE UNIVERSITY,

Hon. Elizabeth L. Gleicher

Defendant.

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This action under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, arises from a request made by plaintiff Mackinac Center for Public Policy to defendant Michigan State University seeking: “Any emails to or from the president of Michigan State University (MSU) that mention ‘Hsu’ from Feb. 1, 2020 to June 26, 2020.” The Court reviewed *in camera* approximately 592 pages of unredacted emails relevant to plaintiff’s FOIA request and issued an opinion and order partially granting and partially denying the parties’ cross-motions for summary disposition under MCR 2.116(C)(10). Relevant here, the Court concluded that the names of the Michigan State University students who had signed a petition seeking the removal of Professor Hsu from his administrative position at the University, and e-mails sent by students to MSU President Samuel L. Stanley, Jr., M.D., were not exempt from disclosure under MCL 15.243(2).

Defendant filed a motion for reconsideration or “clarification” challenging the Court’s ruling regarding the disclosure of student names and urging the Court to reconsider whether the disclosure of the names would violate the Family Education Rights and Privacy Act (FERPA), 20

USC 1232g(a)(2). Defendant also contended that the Court erred by determining that two redactions made pursuant to MCL 15.243(1)(m), addressing “frank communications,” were subject to disclosure. The Court conducted a brief hearing by Zoom on November 22, 2022.

The Court GRANTS defendant’s motion regarding the redactions on page 575 and 166, finding that these redactions qualify as protected frank communications. The Court DENIES defendant’s motion regarding the students’ names.

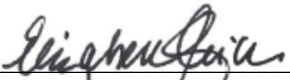
“Congress enacted the FERPA ‘to protect [parents’ and students’] rights to privacy by limiting the transferability of their records without their consent.’ *United States v Miami Univ*, 294 F3d 797, 806 (CA 6, 2002) (alteration in original). The FERPA defines “education records” as “those records, files, documents, and other materials which-- (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 USC 1232g(a)(4)(A). The Court finds that the students’ names are not “information directly related to a student,” and that the names were not “maintained” in the manner the FERPA contemplates.

The United States Supreme Court observed that as used in the FERPA, “[t]he word “maintain” suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled.” *Owasso Indep Sch Dist No I-011 v Falvo*, 534 US 426, 433; 122 S Ct 934; 151 L Ed 2d 896 (2002). Defendant has not presented any evidence supporting that the names of the students who signed the Hsu petition or sent e-mails to President Stanley regarding Professor Hsu are kept in a “database” directly related to the *student*, in contrast with the database kept regarding Dr. Hsu.

Further, the Court finds that the petitions and e-mails are not “education records” because they do not “directly relate[]” to the student signers or senders. Rather, the emails and the petition relate to Professor Hsu, and are “only tangentially related” to the students. See *Ellis v Cleveland Muni Sch Dist*, 309 F Supp 2d 1019, 1022 (ND Ohio, 2004) (explaining that “courts have held FERPA does not prevent the disclosure of records specifying reasons for teacher certificate revocations or the names of the victim and witnesses to an alleged incident of sexual harassment by a teacher,” and collecting cases). As also pointed out in *Ellis*, “FERPA is not a law which absolutely prohibits the disclosure of educational records; rather it is a provision which imposes a financial penalty for the unauthorized disclosure of educational records.” *Id.* at 1023. A disclosure made “to comply with a judicial order” is not prohibited under the FERPA. 34 CFR 99.31(a)(9)(i). For these reasons, the Court DENIES defendant’s motion for reconsideration regarding the redactions of the students’ names.

This is a final order the disposes of the final claim and closes the case.

Date: December 1, 2022

  
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Elizabeth L. Gleicher  
Judge, Court of Claims