

FILED

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DEC 21 P 12:38

CLERK U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

FAIRFAX COUNTY SCHOOL BOARD)
)
Plaintiff,)
)
v.)
)
JOHN DOE, a/k/a "FAIRFAX LEAKS,")
CARY WIEDEMANN)
8665 Sudley Rd #167)
Manassas, Virginia 20110)
)
Defendant.)

Case No. 1:12cv1480 CMH/TCB

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

COMES NOW the Plaintiff, the Fairfax County School Board, in the above-captioned action against Defendants John Doe, a/k/a "Fairfax Leaks," and Cary Wiedemann, and alleges as follows:

NATURE OF THE ACTION

1. This is an action for injunctive relief and damages premised on the Fairfax County School Board's claim for violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and the Virginia Computer Crimes Act, 18 Va. Code §§ 18.2-152.4 and -152.12.
2. The School Board brings this case based on an intentional and unauthorized access of and misuse of the School Board's computer data containing the confidential and personally-identifiable educational records of its students.
3. Upon information and belief, Defendant John Doe, a/k/a "Fairfax Leaks," without authorization, obtained a file stored on the School Board's secure, password-protected computer network, that contained the names, student ID numbers, and scholastic grades of more than 2,100

students (the "Student Report Cards File"), and with malicious intent, posted that data to a public website with the URL, www.fairfaxunderground.com. The [fairfaxunderground.com](http://www.fairfaxunderground.com) website is registered to, owned and operated, and moderated by Defendant Cary Wiedemann. Wiedemann has refused the School Board's request to remove the Student Report Cards File from his website.

4. The School Board has incurred, and will continue to incur, significant expense in relation to the unlawful access to its computer network, and the unauthorized copying of confidential data residing on the School Board's computer network. These acts have harmed the School Board's reputation and goodwill with its students, their parents, and the citizens of Fairfax County, and have violated the privacy of students enrolled in schools administered by the School Board.

5. Defendants have caused and, unless enjoined, will continue to cause, irreparable harm for which the School Board has no adequate remedy at law. Due to the acts of Defendants, any member of the public can view, download, copy, and republish the names, Student ID numbers, and grades of the roughly 2,100 students whose records are contained in the Student Report Cards File. Unless enjoined, Defendants may continue to use and disseminate that information to the detriment of the School Board and its students, causing harm to the School Board in an amount that would be difficult or impossible to quantify.

PARTIES

6. Plaintiff, the Fairfax County School Board is a public body corporate that operates and administers the public schools in Fairfax County, and the City of Fairfax, Virginia. The School Board's offices are located at 8115 Gatehouse Plaza, Falls Church, Virginia.

7. Defendant John Doe, is an individual with the username “Fairfax Leaks.” Upon information and belief, John Doe is a resident of the Commonwealth of Virginia.

8. Defendant Cary Wiedemann is an individual who owns, operates, moderates, administers, and hosts a bulletin-board-style website with the URL www.fairfaxunderground.com. Upon information and belief, the domain www.fairfaxunderground.com is hosted on a server located within this judicial District. Wiedemann is a necessary party to this case in order to accord complete relief between the School Board and Doe. Moreover, Wiedemann has an interest relating to the Student Report Cards File which is the subject of this action because it is hosted on his website.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the School Board asserts a claim under a federal statute, 18 U.S.C. § 1030. This Court has supplemental jurisdiction of the School Board’s claim under the Virginia Computer Crimes Act, Va. Code §18.2-152.1 *et seq.*, pursuant to 28 U.S.C. § 1367, as that claim arises out of the events that form the same case or controversy.

10. Upon information and belief, this Court has personal jurisdiction of Doe because he is, and at all times relevant to this action was, domiciled in Virginia. In addition, Doe has purposefully taken actions intended to cause injury to the School Board and its students residing in Virginia, and has used a computer or computer network in the Commonwealth of Virginia under Va. Code § 8.01-328.1.

11. This Court has personal jurisdiction of Wiedemann because, upon information and belief, he is a resident of the Commonwealth of Virginia and also transacts business in the Commonwealth of Virginia by operating a website hosted on a server located in Virginia.

12. Venue in this Court is proper, pursuant to 28 U.S.C. § 1391, because the Defendants in this action reside in this District, and/or because a substantial part of the events or omissions giving rise to this action occurred in this District.

FACTUAL ALLEGATIONS

13. On December 18, 2012, at 6:11 p.m., Defendant Doe, using the username “Fairfax Leaks” initiated a new thread on the General Forum on fairfaxunderground.com entitled: “Leaked! Fairfax High School Report Cards from 2011-2012 School Year for Every Student! 2,166 Page PDF file.” A screenshot of the message, is shown on Exhibit A.

14. Doe’s message stated that he was attaching a PDF file containing “report cards for every single student at Fairfax High School for the 2011-2012 school year, grouped by teacher.” He indicated that he was posting “from a proxy just in case” and asked “Is this against the rules?”

15. Proxy servers are servers that act as intermediaries allowing a user to connect indirectly to another network or server, thereby obscuring the user’s identity and location. Upon information and belief, Doe used a proxy server and the username “Fairfax Leaks” to obscure his identity and location.

16. As the title of his message indicated, the PDF attachment to Doe’s posting was the Student Report Cards File, a file containing 2,166 student names, student I.D. numbers, absences, final exam grades, and final grades, for the 2011-2012 school year. The student enrollment at Fairfax High School that year was 2,436 students. Upon information and belief, the Student Report Cards File posted by Doe contains the names, student ID numbers, absences, final exam grades, and final grades for all students except those in the 2012 graduating class.

17. Fourteen minutes after his original post, at 6:25 p.m., on December 18, 2012, Doe posted a second message in which he stated that he was attaching a TXT file of the same information that he had created from the PDF format document. A screen shot of that message, as posted, is also shown on Exhibit A.

18. Both the PDF and TXT versions of the Student Report Cards File were posted in a format that allows them to be viewed, downloaded, and saved by anyone accessing the fairfaxunderground.com website.

19. On December 19, 2012, Fairfax County Public Schools administrators were alerted that a file containing the grades of thousands of students had been posted on the fairfaxunderground.com website.

20. School Board personnel reported the matter to the Fairfax City Police, and also immediately launched their own investigation.

21. While the police and school system investigations are still ongoing, the School Board has determined that the Student Report Cards File is a report generated on June 18, 2012, on the School Board's Schools Administrative Student Information (SASI) system, and that was stored on the School Board's computer network. Access to the School Board's network is limited to School Board employees and members, each of whom must use a login and password provided by the School Board's Information Technology department to access the network.

22. The Student Report Cards File was stored on a secure server, and in a location to which only Fairfax High School teachers and administrators were authorized access.

23. All public school employees in Virginia, including teachers and administrators, are prohibited under Va. Code §§ 22.1-287 from publicly disclosing the grades and absences of

personally identifiable students without consent of the students or their parents, except under very limited circumstances.

24. The Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, further prohibits public disclosure of personally identifiable student information without consent of the students or their parents, except under very limited circumstances. Unauthorized disclosures of FERPA-protected information jeopardize the School Board’s funding from the U.S. Department of Education.

25. Upon information and belief, at no time was Doe authorized to access or acquire the Student Report Cards File. At no time was Doe authorized to publish the Student Report Cards File to the public on the FairfaxUnderground.com website.

26. At 2:26 p.m. on December 19, 2012, the School Board, through counsel, sent an email to Wiedemann at the email address provided on the website. The email advised that two files containing the names and grades of thousands of students were posted on fairfaxunderground.com, and that “these disclosures were made illegally, and in violation of the privacy rights of the thousands of students who are each identified by name on your website.” The School Board requested that the website administrators immediately remove the files from the website, as well as preserve any records about those who posted, downloaded, or accessed these files. (A copy of that email is attached as Exhibit B.)

27. At 6:52 p.m., on December 20, 2012, Wiedemann sent an email response, a copy of which is attached as Exhibit C. Wiedemann acknowledged that he has the ability to remove the Student Report Cards File from the website, but stated that he is not inclined to do so. He confirmed that he “[has] and will retain full logs of this incident indefinitely, however, I do not

intend to ever reveal them without a valid court order.” Wiedemann also stated that the Student Report Cards File had already been downloaded “hundreds of times.”

28. To date, the Student Report Cards File remains available, both in PDF and TXT form, on the FairfaxUnderground.com website. According to the website, the message thread has been viewed over 4,500 times since Doe’s original posting on December 18, 2012.

COUNT I
Violation of Computer Fraud and Abuse Act (“CFAA”)- 18 U.S.C. § 1030

29. The School Board adopts and re-alleges the allegations contained in paragraphs 1-28 as if fully set forth herein.

30. The School Board’s computer network is connected to the internet and is regularly used to facilitate communications among the School Board’s members, employees, students, parents, and the public, who can and do access the network from various states. The School Board also uses its computer network to transact business with vendors and suppliers located in various states. Therefore, the School Board’s network, and all computers connected to that network, are “protected computers” within the meaning of 18 U.S.C. § 1030(e)(2)(B).

31. The CFAA imposes liability upon any person who: (1) “intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains . . . information from any protected computer;” 18 U.S.C. § 1030(a)(c)(2); or (2) “intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage and loss.” 18 U.S.C. § 1030(a)(5)(C).

32. Upon information and belief, Doe intentionally accessed a computer without authorization or exceeded authorized access, and thereby obtained information from a protected computer, in violation of 18 U.S.C. § 1030(a)(c)(2).

33. Upon information and belief, Doe intentionally accessed a protected computer without authorization, and as a result of such conduct, caused damage and loss, in violation of 18 U.S.C. § 1030(a)(5)(C).

34. At no time relevant to this action did the School Board authorize Doe to access its computer network or to have its confidential Student Report Cards File copied from its network and posted on fairfaxunderground.com.

35. The School Board has expended, and will expend, funds in excess of \$5,000 to respond to the unauthorized access, including costs of notifying more than 2,000 students and parents of the unauthorized access and posting, and the costs of investigating the incident and determining the extent of the damage. The School Board is entitled to maintain a civil action for damages and injunctive relief against Doe for violation of the CFAA, pursuant to 18 U.S.C. § 1030(g).

36. Doe's unlawful access to the School Board's computers and the confidential information being stored thereon has harmed the School Board's reputation and goodwill with its students, their parents, and the community, and has violated the privacy rights of the individual students whose personally identifiable information was publicly disclosed.

37. The School Board is entitled to injunctive relief. Unless enjoined, Doe can continue to use the unlawfully-accessed information to the detriment of the School Board and its students, causing further irreparable harm to the School Board in an amount that would be difficult or impossible to quantify. Unless Doe and Wiedemann are enjoined to remove the Student Report Cards File from Wiedemann's fairfaxunderground.com website, this confidential and highly-private information regarding the School Board's students will remain available for viewing, downloading, re-publication, and dissemination by anyone with an internet connection.

COUNT II
Computer Trespass under the Virginia Computer Crimes Act

38. The School Board adopts and re-alleges the allegations contained in paragraphs 1-37 as if fully set forth herein.

39. Va. Code § 18.2-152.4(6) renders it unlawful for any person, with malicious intent, to “use a computer or computer network to make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data . . . residing in, communicated by, or produced by a computer or computer network.”

40. Va. Code § 18.2-152.12 allows anyone whose property or person has been injured by such act, regardless of whether such act was committed with malicious intent, to obtain damages and the costs of suit.

41. Doe has used a computer or computer network to make or to cause to be made unauthorized copies of the Student Report Cards File, which file constitutes “computer data . . . residing in, communicated by, or produced by” the School Board’s computers and computer network.

42. Doe’s actions have injured the School Board, and unless enjoined, will continue to injure the School Board. The School Board already has incurred the costs of assessing and investigating the unauthorized copying of the Student Report Cards File, and the costs of notifying the students impacted by these disclosures.

43. Under Va. Code §18.2-152.12(A), the School Board is entitled to damages and costs of this suit.

44. The School Board is entitled to injunctive relief to enjoin Doe from making or causing to be made any further unauthorized copies of the Student Report Cards File, and to require that the Student Report Cards File be removed from Wiedemann’s

fairfaxunderground.com website. Absent such injunctive relief, the School Board will be suffer irreparable harm, for which no adequate remedy at law is available.

PRAYER FOR RELIEF

WHEREFORE, the School Board demands that judgment be made and entered in its favor and against Defendants Doe and FairfaxUnderground.com as follows:

A. Entry of a preliminary injunction requiring Doe and Wiedemann to take all steps necessary to remove the Student Report Cards File from the fairfaxunderground.com website;

B. Entry of preliminary and permanent injunctions enjoining Doe, and any persons acting with him or on his behalf, from:

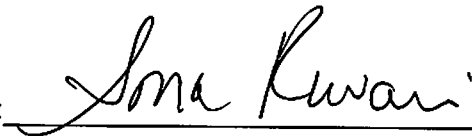
- i. disseminating, copying, or causing to be disseminated or copied the Student Report Card File, in any form;
- ii. accessing the School Board's computer network;
- iii. reproducing, disclosing, using, or disseminating any personally identifiable student information obtained from the School Board's computer network;
- iv. altering, erasing, deleting or destroying any computer, computer drive, computer disk, personal data assistant or any other information-containing medium currently in his possession, custody or control, or in any other way spoliating evidence pertaining to his accessing of or attempts to access the School Board's computer network.

C. Entry of a preliminary and permanent injunction directing Doe, and any persons acting with him or on his behalf, to specifically identify all documents, files and communications that he accessed and/or viewed during his unauthorized access to the School Board's computer network.

- D. An award of actual and compensatory damages, including incidental and consequential damages, in an amount to be determined at trial.
- E. An award of pre-judgment and post-judgment interest and costs.
- F. An award of such other and further relief as this Court, in its judgment, deems just and appropriate.

Respectfully submitted this 21st day of December, 2012.

FAIRFAX COUNTY SCHOOL BOARD

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