

Media Outlets Sue for Records Relating to UNC

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A number of media outlets instituted legal action yesterday against the University of North Carolina under North Carolina's Public Records Act, seeking several categories of records relating to the much-publicized investigation into UNC's football program this fall. The plaintiffs' complaint, which is available [here](#), names several individual defendants, including UNC Chancellor Holden Thorp, Athletic Director Dick Baddour, and head football coach Butch Davis.

The lawsuit presents an interesting collision between the openness obligations of a public institution and the interests in student privacy the university must protect in accordance with the Federal Educational Rights and Privacy Act, known as "FERPA." The plaintiffs have put a range of documents at issue in the lawsuit, including the following:

- records of any investigation by UNC of misconduct by its football coaches and players, any sports agent, any athletic booster, and any academic tutor
- names of individuals and organizations that provided any improper benefits to UNC football players
- telephone records of UNC's athletic director, head coach, and a former associate head coach
- parking tickets issued to 11 football players
- names, employment dates, and salaries of all individuals employed as academic tutors since 2007
- names of recipients of athletic scholarships

In a nutshell, several UNC football players have been suspended from action or declared permanently ineligible for accepting improper benefits from sports agents and/or others. Another group of players has been held out this season because of academic improprieties relating to a particular former academic tutor. The school has been particularly circumspect in the information it has released about what transpired, and it has revealed few, if any, names of those involved other than the players themselves.

It is not clear from the allegations of the lawsuit where the gaps in the records UNC has made available to media organizations lie. UNC has apparently heavily redacted information from some of the documents it has disclosed, while withholding other documents altogether. The plaintiffs allege that the school has cited FERPA as its basis for "refus[ing] to produce the requested records,

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in whole or in part."

We will monitor closely the progress of this lawsuit. In addition to resolving the tension between the Public Records Act and FERPA, this lawsuit will also serve as an early, high-profile opportunity to kick the tires of recent changes to the Public Records Act, which we previously reported. These changes include revisions making it easier for prevailing plaintiffs to recover their attorneys' fees, a change that went into effect October 1, 2010.