

Plaintiffs' Opposition to
Defendant City of Durham's Motion to
Dismiss

Exhibit 1:

Order issued July 21, 2006 in the Superior
Court, State of North Carolina, Durham
County

*State of North Carolina v. COLLIN FINNERTY,
READE W. SELIGMANN, and
DAVID FORKER EVANS*

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
06 CRS 4331-4333
06 CRS 4334-4336
06 CRS 5581-5583

STATE OF NORTH CAROLINA

v.

ORDER

COLLIN FINNERTY,
READE W. SELIGMANN, and
DAVID FORKER EVANS,
Defendants.

This matter coming on to be heard by the undersigned at the July 17, 2006 Criminal Administrative Session of Superior Court on Motions to Quash Subpoenas issued by the District Attorney requesting student information; and, after consideration of the arguments of counsel and the material submitted, the Court makes the following findings of fact:

1. The District Attorney's Office issued two (2) subpoenas to record custodians of Duke University requiring production of home addresses and key card access information for listed students.
2. The information requested is protected by the Family Education Rights and Privacy Act (FERPA) and the subpoenas are governed by N.G.G.S. Section 1-A-1 Rule 45.
3. FERPA 34 CFR Section 99.31 (a)(9) governs disclosure of student information in compliance with lawfully issued subpoenas.
4. The parties have requested a protective order be entered with respect to any information produced pursuant to said subpoenas.

Based upon the foregoing finds of fact, the Court makes the following:


CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter in the above entitled criminal actions and the subpoenas issued therein.
2. The provisions of FERPA permit the disclosure of the requested addresses of the students as Duke University has complied with (a)(9)(ii) providing sufficient notice to allow the students to seek protective action, and the subpoenas seek only addresses of potential witnesses in these cases.
3. The request for key card information for all listed students without any showing of materiality or necessity does not rise to the level required to overcome the confidentiality of student information assured by FERPA.
4. The entry of a protective order is in the best interests of justice.

IT IS THEREFORE ORDERED:

1. The Motions to Quash the Subpoenas issued to Bruce Cunningham, Duke University Registrar, requesting the home addresses of the listed students are denied.
2. The Motions to Quash the Subpoenas issued to Matt Drummond, Duke University Auxiliary Services are granted.
3. Any information produced in compliance with this Order shall not be used for any purpose than the prosecution of these actions, and all parties shall take such reasonable measures as necessary to protect the confidentiality of this information.

This the 21 day of July, 2006.



Kenneth C. Titus
Resident Superior Court Judge Presiding