

No First Amendment Mulligans

By: Jack Greiner on November 1, 2021 on graydon.law

The Fairfax Virginia County School Board is seeking a [mulligan](#) after it released a number of records to two members of the public who received the records in response to a freedom of information request. According to the school board, the records contain confidential and sensitive information. The school board wants the records returned and the moms to stop publicizing the content of the records.

The school board is likely to come up empty on both requests. Where a party comes into information legally and the information concerns matters of public interest, the First Amendment protects the right to publicize the information.

In this case, two moms sought information about how much money the school board was spending on attorney fees. They sought billing records from the school board's outside counsel to confirm their concerns that the legal spending was out of control. The school turned over the records without redactions, but several days later sought their return.

Given the nature of the requested records and the fact that the school board voluntarily produced them, it's hard for me to see how the board can prevail here. And I can't help but be a little cynical here. The board may have realized after the fact that the moms' concerns were legitimate and decided to claw back the records.

But whatever the reason, the law may prove an insurmountable hurdle here.