

The Ohio Supreme Court ruled on March 25 that the names of substitute teachers who work during a teachers' strike are public record, but qualified [its decision](#) to account for real-time threats to the replacement teachers.

The case involved the Cleveland Teachers Union's (CTU) public records request to the Strongsville Board of Education seeking information about the replacement teachers employed during the Strongsville teachers' strike in 2013. The district refused to release much of the requested information citing privacy and concerns for the replacement teachers' safety. The CTU then sued for the release of the replacement teachers' names.

Key to the Court's decision was the fact that there was "little evidence that there is any threat to the teachers' privacy or well-being now that the strike is over." The Court acknowledged there is a right to privacy that supersedes the public records law when a person could be at substantial risk for harm if the requested information is disclosed. Because the replacement teachers had faced both nonphysical threats and physical violence from union supporters during the Strongsville strike, the Court said it was reasonable for the district to withhold the names during the strike.

However, at the time the court of appeals heard the issue, the strike was over and "the danger of retaliation or physical harm to the replacement teachers had receded." In affirming the court of appeals ruling, the Court did not find persuasive the district's argument that it would permanently damage the replacement teachers' professional reputations if they were identified as having crossed the picket lines.

It appears districts may deny public records requests for this type of information received *during* a teachers' strike where the facts support safety concerns. However, the district's response should also indicate that it will be open to revisiting the issue at a later date if the direct threat of harm is no longer present. Districts can use the language directly from this decision to indicate they are denying the request "taking into consideration the facts and circumstances as they [currently] exist." Where the facts do not support a denial, a district may be on the hook for the requester's legal fees as well as any penalties for violating the public records law.

If you have any questions about this decision or how to ensure you comply with the public records law, please contact your principal Squire Patton Boggs lawyer or the individual listed in this alert.

## Contact

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