

[NEIS case on retention of graduates' information]

Constitutional Court Decision 2003Hun-Ma282 · 425 (consolidated), decided July 21, 2005

Regarding the constitutionality of the education authority's retention of the name, birth date, and graduation date of the students via the National Education Information System ("NEIS")

Facts

The Minister of Education and Human Resources established a nation-wide computer network system called NEIS, and after testing between September 2000 and October 2002, began operating it starting in the first semester of the 2003 academic year. This system is the education component of the project designed to realize an electronic government, and replaces the school databases built for each school containing information on students and teachers. Now, a database has been established for the Education Office of each Province and Metropolitan City, and about ten thousand primary and secondary schools, sixteen Provincial and Metropolitan Education Offices, and the Ministry of Education and Human Resources are connected through the Internet. Through this comprehensive educational information system, school administration, academic affairs, personnel, budget, accounting, and all work related to education are electronically integrated so that they can be performed likewise. Petitioners, students who had graduated from schools within the jurisdiction of the Seoul Metropolitan Office of Education, filed this constitutional complaint on the

ground that Respondents' retention of the information on the petitioners, in the aforesaid system, violates the petitioners' basic rights such as the right to the pursuit of happiness, privacy and freedom in private life.

Legal issue

Is it constitutional for the education authority to retain the name, birth date, and graduation date of the students via the NEIS?

Reasoning

The Constitutional Court ruled with a seven to one decision that retention of the graduates' name, birth date, and graduation date is not unconstitutional on the following grounds:

Majority Opinion of Seven Justices

A. In restricting the right to control one's personal information, it is sound to specify concretely in law the subject, purpose, object, and scope of collection, storage, and use of the personal information, and thereby provide a clear legal basis for such restriction. Depending on the type and nature of the personal information, and the method and nature of processing the information, the degree of clarity required of the law authorizing such restriction varies. Respondents wish to perform customer services required of them - issuance of all certificates related to school graduates - efficiently and for that reason retain in the educational information system (NEIS) the information not deemed sensitive or

closely related to one's personality right such as the graduate's name, birth date, and graduation date. In light of the nature and quantity of the information retained, and the non-invasive nature of the retaining purpose, we do not find that the degree of clarity required of the authorizing law is especially high. Therefore, the respondents' acts of retention, even if based on a general authorizing provision such as Article 5 of the Act Regarding Protection of Personal Information by Public Agencies, which states that "public agencies may retain personal information files to the extent necessary for performing the duties required of them," does not violate the principle of statutory reservation.

B. Restriction on the right to control one's personal information affects or infringes on the personality right or freedom of private life to a varying extent that depends upon the type, nature of the personal information at issue, and the purpose of collecting, the method of using and processing the information. In judging the legitimacy of the restriction on the right to control one's personal information, we need to weigh the aforesaid factors and the importance of the public interest sought. In trying to accommodate the convenience of those applying for issuance of graduation certificates and promote administrative efficiency, the respondents retain in NEIS only the name, birth date, and graduation date – the information can hardly be deemed as sensitive information that can significantly influence one's dignity and personality right. Such retention affects the minimum information necessary for accomplishment of the purpose. Also, such retention is subject to the regulation of those provisions relevant to protection of personal information set forth in the Act Regarding Protection of Personal Information By Public Agencies.

Conclusion

Nothing in the record suggests that the respondents used the personal information outside the scope of their retaining purposes. The mere fact that the information is retained in the automated electronic system called NEIS does not destroy the legitimacy of the respondents' lawful retaining act.

* Dissenting Opinion of One Justice

The information retained by the respondents constitutes information concerning academic records, which have tremendous influence in extracting the image of the information's subject in our country where academic records are important. The information therefore can be sensitive information that its subject person would wish not to disclose to others without his or her own consent. It is questionable whether holding this type of information in a highly centralized information system such as NEIS that uses computer and the internet can be based on the general provision of Article 5 of the Act Regarding Protection of Personal Information By Public Agencies, which does not specify for which purpose the information can be collected and processed. I question whether provision of the public services such as issuance of graduation certificates really necessitates accumulating in an electronic system and managing the aforesaid personal information at the level of the Heads of the Provincial and Metropolitan Offices of Education and the Ministry of Education and Human Resources. I question what true public interest is attained through such measures. Under the circumstances that the laws concerning protection of personal information are

not fully enacted and that the legitimacy of the purpose of, and the appropriateness of the means, of retaining the information, are not recognized, the respondents' act of retaining important personal information in NEIS infringes upon the information subject's right to control one's own personal information.