



**Wisconsin Attorney General releases Memorandum regarding the practical impact of *Schill v. Wisconsin Rapids School District* on the public records law.**

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Last month, the Wisconsin Supreme Court held that purely personal e-mails sent and received on government equipment are not subject to disclosure under the Public Records Law. *Schill v. Wisconsin Rapids School District*, 775 N.W.2d 103 (2009). On July 28, 2010, Wisconsin Attorney General J.B. Van Hollen issued a Memorandum to address the practical impact of the *Schill* decision on records custodians.

The Attorney General's Memorandum indicates the "purely personal e-mail" exception "should be narrowly applied." The Memorandum also states, "If there is *any* aspect of the e-mail that may shed light on governmental functions and responsibilities, the relevant content must be released as any other record would be released under the Public Records Law." [emphasis in original]. Also, the Memorandum addressed partial redaction of e-mails and stated, "If a document contains both personal and non-personal content, a records custodian may redact portions of the document so that the purely personal information is not released."

If you hoped there would be fewer public records requests for e-mails following *Schill*, that may not be the case. The Memorandum encourages individuals who are concerned about misuse of public resources to make public records requests regarding personal use of government e-mail. Specifically, the Memorandum noted, "an individual may request existing records containing statistical information, including the number of e-mails (personal and business) and the time and dates of the personal e-mails over a specified period."

The *Schill* decision and the Attorney General's interpretation will likely place the records custodian in the position of having to sort through e-mails even if an employee declares an e-mail to be purely personal. It appears the records custodian will have to engage in a more time consuming review as employers try to follow the opinions of both the Supreme Court and the Attorney General. There also may be a spike in employee e-mail use (and abuse) if they perceive that *Schill* gives them *carte blanche* in their use of the employer's e-mail system.

If you have any questions on how to handle records requests or how to limit employee e-mail abuse after *Schill* and the Attorney General's Memorandum, please do not hesitate to contact us.

*This article should not be construed as legal advice and is intended for general informational purposes only. If you have any questions, you should consult your legal counsel.*