

BREAKING NEWS: Wisconsin Supreme Court rules personal e-mails sent and stored on government property are not public records

By Anders B. Helquist

On July 16, 2010, the Wisconsin Supreme Court issued its decision in *Schill v. Wisconsin Rapids School District*. The Court ruled personal e-mails sent by public sector employees over a government network, using government equipment, are not subject to release under Wisconsin's Public Records Law.

In this case, a citizen requested e-mails for the period from March 1, 2007 through April 13, 2007 "from the computers [the Teachers] use during their school work day." The requester wanted to determine if the teachers were following the district's computer use policy that permitted "occasional" personal use. The teachers sought to prevent the release of personal e-mails sent over the district's computers.

The Court's lead opinion rejected the argument that personal e-mails were "records." To constitute a "record" under the Public Records Law, "the content of the document must have a connection to a government function." In this case, the personal e-mails had no connection to a government function. (Both parties conceded the e-mails at issue were personal.) Thus, the Court determined they were not records subject to release.

In making the ruling, the Court's lead opinion noted that "personal e-mails could, however, be public records under the Public Records Law . . . if the e-mails were used as evidence in a disciplinary investigation or to investigate the misuse of government resources."

As such, in responding to a records requests, the records custodian "will have to determine whether the content of an e-mail is solely personal or has a connection to a governmental function." If part of an e-mail is personal, and part has a "connection to a government function" the personal portion of the e-mail must be redacted before release. Further, the Court's decision probably expands beyond e-mails to all electronic "documents with purely personal content and with no connection to a government function. . . ."

The Court's decision leaves many unanswered questions. For example, how broadly will a "connection to a government function" be defined? If a records custodian receives a request for the list of websites visited by an employee, must the custodian ask the employee which websites visited were personal? What are the employer's obligations in determining whether requested documents are truly personal or something else? These questions remain unanswered and create further difficulty for public sector employers.

Should you have any questions regarding this decision or how it impacts your obligations under Wisconsin's Public Records law, please do not hesitate to contact the labor and employment attorneys at Weld, Riley, Prenz & Ricci, S.C.

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.