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U.S. Department of Labor Announces Final Rule for Federal Contractors Aimed at Non-Discrimination Based on Sexual Orientation and Gender Identity

The Attorney General recently issued a legal opinion on whether fees can be charged for copies of public records, when the requester uses their own technology to make the copies. (OAG-12-14, 12/30/14). This new legal opinion addresses the fees that can be charged for copies of court documents maintained by the clerk of courts or register of deeds. However, the legal opinion also provides helpful information for processing similar requests for records under the Public Records Law.

The question addressed in the Attorney General's opinion was whether a government entity must allow a citizen to use technology, like a smart phone or handheld scanner, to make copies of public documents and not charge a fee for these copies. The legal opinion concludes that a court clerk may not charge copying costs when a citizen uses a personal device to make the copies. More importantly, the legal opinion concludes that the court clerk has the discretion as to whether to allow individuals to make copies using a camera phone or other personal device. In reaching this conclusion, the Attorney General relies on a court case addressing that same issue under the Public Records Law.

In *Grebner v. Schiebel*, 2001 WI App 17, 240 Wis. 2d 551, a public records request was made for voting records from Polk County, but the requester sought permission to use his own portable photocopy machine to make the copies. The County Clerk's office denied this request, but offered to make the copies for the requester for a fee. The requester argued he just wanted access to the records, and would make his own copies, and then inquired as to whether he could make the copies using a digital camera or laptop computer, rather than the portable photocopy machine. This second request was granted, as long as the use of the digital camera or laptop computer did not cause damage to the documents being copied. The requester filed a lawsuit arguing that he had a right to make his own copies of public records with his own copying machine. The Court of Appeals rejected this argument and held that the custodian of records has the option of determining how public records are copied.

The Court of Appeals emphasized the fact that the requester was not denied the right to copy the records, and noted that the requester could have used a digital camera or laptop computer to make the copies. The Court stated that the issue in this case is whether the requester has a right to select the equipment to be used for copying public records without the custodian of record's permission. The Court answered this question "no." The Court held that a reasonable reading of § 19.35(1)(b), of the Public Records Law is that the custodian of records has the option to determine how the records are copied. The Court concluded that the custodian of records has the

right to deny use of personal equipment "without entering into a debate over the adequacy of the requester's equipment or the likelihood that it will destroy the document."

In light of the *Grebner* decision, as affirmed by the recent Attorney General's opinion, a government body has the right to determine how public records are copied, including whether a requester may use a smart phone or other technology to make the copies. The best practice would be to incorporate any restrictions on copying of public records into your existing public records policy so the public is aware of these restrictions before a request is made.

If you have any questions about this issue or would like to discuss this decision in more detail, please contact Attorney Nancy Pirkey at 262/364-0257 or npirkey@buelowvetter.com or your Buelow Vetter attorney.