



Bricker Bulletin



An MR/DD Update

November 2007

Bricker & Eckler LLP

100 South Third Street
Columbus, Ohio 43215-4291

Phone 614 . 227 . 2300
Fax 614 . 227 . 2390
info@bricker.com
www.bricker.com

COLUMBUS | CLEVELAND
CINCINNATI-DAYTON

This document has been prepared as a general reference document for informational purposes. The information contained herein is not intended to be and should not be construed as legal advice. Each circumstance should be considered and evaluated separately, and possibly with involvement of legal counsel.

Please contact Bricker & Eckler for permission to reprint this bulletin in part, or in its entirety.

Friendly “Promise” Can Hurt You Under New Public Records Law

County board personnel should be wary of a provision in House Bill 9 (effective September 29, 2007) which can impose substantial costs for what might seem to be a minor offense. Specifically, House Bill 9 (Public Records Law amendments) declares that a court of law must impose attorney fees when it orders the production of records if it also finds that the public office promised to allow inspection or copying within a specified period of time “but failed to fulfill that promise within that specified period of time.” (ORC 149.43[C][2], as amended.)

This new provision is significant in that it allows a public office to create, in effect, a self-imposed “hard deadline” for the production of public records. House Bill 9 does not itself impose any fixed time period for the production of records—rather, it retains the prior generic statement that records must be made available “promptly.” County board personnel might therefore be surprised to find that a casual statement made to a requester, indicating when the records will be available, could cost the agency tens of thousands of dollars in attorney

fees, should the records not in fact be produced at the promised time.

It seems likely that some individuals will want to play “gotcha” with this new provision of House Bill 9. To protect against this, agencies may want to instruct their office staff and others responsible for the production of public records to be careful to avoid any specific statements as to when a given record will be available. If for some reason a statement cannot be avoided, it would be advisable for the county board’s response to include language clearly indicating that any predicted availability date is an estimate only and does not constitute a guarantee or ‘promise’ within the meaning of the Public Records Law.

It should be noted that HB9 applies only to requests for public records and that many of the types of records kept by a county board of MR/DD are not public records subject to disclosure.

MR/DD Practice Group

H. Randy Bank
614.227.8336
rbank@bricker.com

James P. Burnes
614.227.8804
jburnes@bricker.com

Dane A. Gaschen
614.227.8887
dgaschen@bricker.com

James J. Hughes, III
614.227.2365
jjhughes@bricker.com

Melissa Martinez Bondy
614.227.8875
mbondy@bricker.com

Kimball H. Carey
614.227.4891
kcarey@bricker.com

Susan B. Greenberger
614.227.8848
sgreenberger@bricker.com

Susan L. Oppenheimer
614.227.8822
soppenheimer@bricker.com

Diana S. Brown
614.227.8823
dbrown@bricker.com

Jennifer A. Flint
614.227.2316
jflint@bricker.com

Warren I. Grody
614.227.2332
wgrody@bricker.com

Betsy A. Swift
614.227.8850
bswift@bricker.com