Legal Guide for Redistricting Group

Minnesota Open Meeting Law
Minnesota Government Data Practices Act
Public Records

October 12, 2011

by

Office of the Minneapolis City Attorney

TABLE OF CONTENTS

I. **MINNESOTA OPEN MEETING LAW** 3

A. INTRODUCTION 3
B. APPLICATION OF THE OPEN MEETING LAW TO COMMITTEES 3
C. DEFINITION OF "MEETING" 4
D. REQUIREMENTS FOR PUBLIC NOTICE OF MEETINGS 5
E. EMPLOYMENT RELATED PROCEEDINGS 6
F. REQUIREMENT FOR RECORDING VOTES 6
G. REQUIREMENT TO PROVIDE WRITTEN MATERIALS TO THE PUBLIC 6
H. MEETINGS CONDUCTED BY INTERACTIVE TELEVISION 6
I. MEETINGS WHICH MUST OR MAY BE CLOSED 7
J. ENFORCEMENT OF THE OPEN MEETING LAW 9
   1. Civil Penalties 9
   2. Enforcement 9
   3. Forfeiture of Office 9
K. GENERAL APPLICATION TO REDISTRICTING GROUP 9

II. **MINNESOTA GOVERNMENT DATA PRACTICES ACT** 10

A. INTRODUCTION 10
B. ACCESS TO GOVERNMENT DATA 10
C. PERSONNEL DATA 11
D. ELECTED OFFICIALS' DATA 12
E. PENDING CIVIL LEGAL ACTIONS 12
F. LAW ENFORCEMENT DATA 12
G. OTHER DATA 12
H. DATA ON PERSONS APPOINTED TO A PUBLIC BODY 13
I. REMEDIES FOR VIOLATIONS OF THE ACT 13

III. **PUBLIC RECORDS** 14

A. PUBLIC RECORDS 14
B. EXAMPLES OF REDISTRICTING RECORDS 14
C. RETENTION OF REDISTRICTING RECORDS 14
D. GOVERNMENT RECORDS 15
E. EXAMPLES OF RECORDS THAT ARE NOT GOVERNMENT RECORDS 15
F. EXAMPLES OF RECORDS THAT ARE GOVERNMENT RECORDS 15
G. DIFFERENCES BETWEEN DATA PRACTICES ACT REQUESTS FOR DOCUMENTS AND REQUIREMENT TO RETAIN DOCUMENTS 16
H. TIPS FOR KEEPING NOTES 16

IV. **SOURCES** 17

V. **APPENDIX** 17

I. MINNESOTA OPEN MEETING LAW

A. INTRODUCTION

The Minnesota Open Meeting Law is contained in Minn. Stat. Chapter 13D and has been in effect since 1957.

The purposes of the law were summarized by the Minnesota Court of Appeals in Northwest Publ., Inc. v. City of St. Paul, 435 N.W.2d 64 (Minn. Ct. App. 1989), as follows:

1. To prohibit action being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning . . . decisions or to detect improper influences;

2. To assure the public's right to be informed; and

3. To afford the public opportunity to present its views in matters of public concern.

In addition, the court in Olson stated that the statute was enacted for the public benefit and should be liberally construed. This liberal construction includes a presumption of openness subject to rare and carefully restrained exceptions.

B. APPLICATION OF THE OPEN MEETING LAW TO COMMITTEES

The law provides that:

> All meetings, including executive sessions, must be open to the public ...
>
> of the governing body of a ...
>
> statutory or home rule charter city,
>
> (c) of any
>
> (1) committee,
> (2) subcommittee,
> (3) board,
> (4) department, or
> (5) commission,
>
> of a public body.

The Open Meeting Law applies not only to the governing body of the city, but also to any committee, subcommittee, board, department or commission of the governing body of the City.

The Minnesota Court of Appeals has held that a committee that is advisory to the University of Minnesota Regents, whose members are not regent members and are not chosen by the regents, is

not subject to the Open Meeting Law. Minnesota Daily v. University of Minnesota, 432 N.W.2d 189 (Minn. Ct. App. 1988). The application of the Open Meeting Law to advisory committees must be reviewed on a case-by-case basis.

The Open Meeting Law applies to the Minneapolis Charter Commission, its committees, the Advisory Group, and the Redistricting Group.

C. DEFINITION OF "MEETING"

The provisions of the Open Meeting Law do not explain what constitutes a meeting. However, the Minnesota Supreme Court in Moberg v. Independent School District No. 281, 336 N.W.2d 510 (Minn. 1983) stated:

> ... 'meetings' subject to the requirements of the Open Meeting Law are those gatherings of a quorum or more members of the governing body, or a quorum of a committee, subcommittee, board, department or commission thereof, at which members discuss, decide or receive information as a group on issues relating to the official business of that governing body. Although 'chance or social gatherings' are exempt from the requirements of the statute (citation omitted), a quorum may not, as a group, discuss or receive information on official business in any setting under the guise of a private social gathering. The statute does not apply to letters or telephone conversations between fewer than a quorum. (Emphasis added.)

Thus, it would appear that as long as fewer members than a quorum are involved, there is no violation of Minnesota's Open Meeting Law. However, the following additional comments by the Court in Moberg must be kept in mind:

> Appellants correctly point out that this rule may be circumvented by serial face-to-face or telephone conversations between board members to marshal their votes on an issue before it is initially raised at a public hearing. It does not follow that two or three-person conversations should be prohibited, however, because officials who are determined to act furtively will hold such discussions anyway, or might simply use an outsider as an intermediary. There is a way to illegally circumvent any rule the court might fashion, and therefore it is important that the rule not be so restrictive as to lose the public benefit of personal discussion between public officials while gaining little assurance of openness. Of course, serial meetings in groups of less than a quorum for the purposes of avoiding public hearings or fashioning agreement on an issue may also be found to be a violation of the statute depending upon the facts of the individual case. (Emphasis added.)

Considering the Court's warning, it is still possible for a meeting of fewer than a quorum to be in violation of the Open Meeting Law, if under the facts of the situation, it is clear that the intent was to circumvent the Open Meeting Law. Please keep the definition of meeting in mind when communicating with members of the Redistricting Group, whether in-person or by other means, such as by telephone, e-mails or texting.

D. REQUIREMENTS FOR PUBLIC NOTICE OF MEETINGS

ce must be given for regular meetings, special meetings, and emergency meetings as follows:

1. Regular Meetings. The public body is required to keep a schedule of its regular meetings on file at its office. If there is a deviation from the regularly scheduled meeting as to time or place, notice must be provided as required for a special meeting.

2. Special Meetings. A special meeting is a meeting other than a regular or emergency meeting. The public body is required to post written notice of the date, time, place and purpose of the meeting on its principal bulletin board. The notice also shall be mailed or otherwise delivered to each person who has filed with the public body a written request for such notice.

   This notice shall be posted and mailed or delivered at least three days before the date of the meeting. An option to publish the notice is provided.

3. Emergency Meetings. An emergency meeting is a special meeting called because of circumstances that, in the judgment of the public body, require immediate consideration. The public body is required to make a good faith effort to provide notice of the emergency meetings to each news medium that has filed a written request for such notice. This notice should be provided as soon as reasonably practicable after notice has been given to the members of the public body. The notice should include the subject of the meeting. Posted or published notice of an emergency meeting is not required.

The notice requirements apply to public as well as closed meetings. The Legislature also provided that if a meeting is recessed or continued and the time and place of the meeting is established before the meeting is concluded, and the new time and place is recorded in the minutes, no further notice is necessary. If any person receives actual notice of a meeting of a public body at least 24 hours before the meeting, all notice requirements of the Open Meeting Law are satisfied with respect to that person regardless of the method of receiving notice.

All meetings of the Advisory Group and the Redistricting Group will be open to the public. The Minneapolis City Clerk's Office will be responsible for providing appropriate notice.

E. EMPLOYMENT RELATED PROCEEDINGS

The separate existence and histories of the Open Meeting Law and the Minnesota Government Data Practices Act have created a fertile area for ambiguity regarding how the courts interpret the two laws. Problems arise when data that is classified "not public" is discussed at an "open" meeting. The legislature has attempted to clarify this problem; however, this area is particularly susceptible to litigation.

F. REQUIREMENT FOR RECORDING VOTES

The Open Meeting Law requires that the votes of the members of the public body on any action taken in a meeting subject to the Open Meeting Law be recorded in a journal kept for that purpose and that such journal be open to the public during all normal business hours.

G. REQUIREMENT TO PROVIDE WRITTEN MATERIALS TO THE PUBLIC

The law requires that at least one copy of any printed materials relating to the agenda items of a meeting which are prepared or distributed by or at the direction of the governing body or its employees, and which are: (1) distributed at the meeting to all members of the governing body; or (2) distributed before the meeting to all members; or (3) available in the meeting room to all members, shall also be available in the meeting room for inspection by the public while the governing body considers their subject matter.

H. MEETINGS CONDUCTED BY INTERACTIVE TELEVISION

In 1997, the Minnesota Open Meeting Law was amended to allow meetings to be conducted by interactive television. Such meetings are permitted so long as:

1. All members of the body participating in the meeting, wherever their physical location, can hear and see one another and can hear and see all discussion and testimony presented at any location at which at least one member is present;

2. Members of the public present at the regular meeting location of the body can hear and see all discussion and testimony and all votes of members of the body;

3. At least one member of the body is physically present at the regular meeting location; and

4. Each location at which a member of the body is present is open and accessible to the public.

Each member of a body participating in a meeting by electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

If interactive television is used to conduct a meeting, to the extent practical, a public body shall allow a person to monitor the meeting electronically from a remote location. The body may require the

person making such a connection to pay for documented costs that the public body incurs as a result of the additional connection.

.nteractive television is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location and notice of any site where a member of the public body will be participating in the meeting by interactive television. The timing and method of providing notice must be as described in the paragraph D above.

The Redistricting Group will be working with 2010 census data, maps and mapping software. Because of the nature of its work, the Redistricting Group will have in-person meetings.

I. MEETINGS WHICH MUST OR MAY BE CLOSED

In certain circumstances the Open Meeting Law requires closure of meetings. In other circumstances closed meetings are permitted.

1. A meeting must be closed if data is being discussed that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.

2. A meeting must be closed if the data being discussed is active law enforcement investigative data.

3. A meeting must be closed if data is being discussed which is internal affairs data relating to allegations of law enforcement personnel misconduct.

4. A meeting must be closed if educational, health, medical, welfare or mental health data which is not public data by law is being discussed.

5. A public body shall close one or more meetings for preliminary consideration of allegations or charges against an individual subject to its authority. If the members conclude that discipline of any nature may be warranted as a result of those specific charges or allegations, further meetings or hearings relating to those specific charges or allegations held after that conclusion is reached must be open. A meeting also must be open at the request of the individual who is the subject of the meeting.

6. A governing body of a public employer can decide by a majority vote at a public meeting to hold a closed meeting to consider strategy for labor negotiations. Such closed meetings must be tape recorded and the tape preserved for two years after the contract is signed and shall be made available to the public after all labor contracts are signed by the governing body for the current budget period.

7. In Minneapolis Star and Tribune Co. v. Minneapolis Housing and Redevelopment Authority, 246 N.W.2d 448 (Minn. 1976), the Minnesota Supreme Court held that meetings of public bodies with their legal counsel to discuss litigation strategy do not have to be open to the public. In granting this attorney-client exception, however, the Supreme Court made it quite clear that the mere request for general legal advice by a

public body is not sufficient to invoke the exception. A discussion relating to potential challenges to a proposed ordinance would not be covered by the attorney-client exception. Northwest Publ., Inc. v. City of St. Paul, 435 N.W.2d 64 (Minn. Ct. App. 1989). In 1990, the Legislature codified this exception by authorizing closure if "permitted by the attorney-client privilege." A particularized statement must be made, describing the "subject to be discussed" when closing a meeting on the ground of attorney-client privilege. Free Press v. County of Blue Earth, 677 N.W.2d 471, 477 (Minn. Ct. App. 2004); See Minn. Stat. § 13D.05, subd. 3(b).

To determine whether the attorney-client privilege exception applies, the purposes served by the privilege must be balanced against those served by the Open Meeting Law. Prior Lake American v. Mader, 642 N.W.2d 729 (Minn. 2002). The exception applies when this balancing dictates the need for absolute confidentiality. Id.

8. A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

9. A public body may close a meeting to determine the asking price for real or personal property to be sold by the government entity; to review confidential or nonpublic appraisal data; and to develop or consider offers or counteroffers for the purchase or sale of real or personal property. The public body must identify on the record the particular real or personal property that is the subject of the closed meeting. Such closed meetings must be tape recorded and preserved for eight years after the date of the meeting and made available after the real or personal property discussed at the meeting has been purchased or sold or the purchase or sale has been abandoned. The real or personal property must be identified on the tape. The actual purchase or sale must be approved at an open meeting.

10. A public body may close a meeting to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities, if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security must be disclosed and financial decisions must be made at an open meeting. Before closing a meeting, the public body must describe the subject to be discussed by referring to the facilities, systems, procedures, services, or infrastructure to be considered during the closed meeting. Such meeting shall be tape recorded and preserved for at least four years.

J. ENFORCEMENT OF THE OPEN MEETING LAW

1. Civil Penalties

The Open Meeting Law subjects any person who intentionally violates the Open Meeting Law to personal liability in the form of a civil penalty in an amount not to exceed $300 for each occurrence. Such penalty may not be paid by the public body.

2. Enforcement

The law provides that any person may commence a civil action to enforce the law. In addition to other remedies, the court may award reasonable costs, disbursements, and reasonable attorney fees of up to $13,000 to any party in an action under the Open Meeting Law. The court may award costs and attorney fees to a defendant only if the court finds that the action under this section was frivolous and without merit. A public body may pay any costs, disbursements, or attorney fees incurred by or awarded against any of its members in an action under the law.

No monetary penalties or attorney fees may be awarded against a member of a public body unless the court finds that there was a specific intent to violate the Open Meeting Law.

3. Forfeiture of Office

On a finding by a court of a third intentional violation of the Open Meeting Law by the same person, that person forfeits office and may not serve on that government body or in any other capacity with that governing body for a period of time equal to the term of office the person was then serving.

K. GENERAL APPLICATION TO REDISTRICTING GROUP

The Open Meeting Law applies to the Redistricting Group. The City Clerk's Office will provide appropriate public notice. Because of the nature of the work of the Redistricting Group, and absent extreme, unforeseen circumstances, members of the Redistricting Group will attend meetings in person. This paragraph would also apply to the Advisory Group if the Advisory Group were to meet separately.

II. MINNESOTA GOVERNMENT DATA PRACTICES ACT

A. INTRODUCTION

The Minnesota Government Data Practices Act is contained in Minnesota Statutes, Chapter 13. The Act regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities, including the City of Minneapolis. The Act establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is a federal law, a state statute or a temporary classification of data that provides that certain data are not public.

Government data are defined as "... all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." Minn. Stat. § 13.02, subd. 7. The Act defines three essential data classifications. Data may be public, private, or confidential.

Public data means data which is accessible to the public. Private data on individuals (or non-public data not on individuals) means data which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of that data. Confidential data on individuals (or protected non-public data not on individuals) means data which is made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data.

B. ACCESS TO GOVERNMENT DATA

As already noted, the Act presumes that all government data are public unless the law dictates otherwise. Public data must be made available for inspection at no charge immediately, if possible, or as soon as possible. If a request is made for copies of public data, the City may require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, compiling, and electronically transmitting the copies of the data, but may not charge for separating public from not public data. However, if one hundred or fewer pages of black and white, letter or legal size paper copies are requested, actual costs shall not be used. Instead, the City may charge up to twenty-five cents per page. If the City is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible.

When a request is made by an individual who is the subject of data, the person must be informed as to whether or not they are the subject of stored data and the data's classification. The City must comply with a request for access or copying made by the subject of the data immediately, if possible, or within ten working days of the request, excluding Saturdays, Sundays, and legal holidays, if immediate compliance is not possible.

When private or confidential data is collected from an individual, the individual has the right to be informed of: (a) the purpose and intended use of the requested data; (b) whether the individual may refuse to provide the data; (c) any known consequences of refusing to provide the data; and (d) the identity of persons or agencies authorized to receive the data. Generally speaking, private or confidential data is available only to individuals within the City whose work assignments reasonably require access.

Private or confidential data can only be used in accordance with the advisory given to the individual at the time of the collection of the data. It can only be released pursuant to a court order or with the informed consent of the subject of the data. Informed consent should be in writing.

Although the Act presumes that all government data are public, the exceptions are extensive. A few of the most commonly encountered privacy and confidentiality exceptions are noted below.

C. PERSONNEL DATA

One of the most commonly raised issues involves the classification of personnel data regarding City employees. Personnel data is defined in Minn. Stat. §13.43 as data on individuals collected because the individual is or was an employee of, or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with the City. The personnel data section of the statute stands alone in that it reverses the ordinary presumption that data are public under the Act. Under Section 13.43, personnel data is deemed private data unless specifically enumerated within the section as public data. The public personnel data is enumerated as follows:

1. Name; employee identification number, which must not be the employee's social security number; actual gross salary; salary range; terms and conditions of employment relationship, contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;

2. Job title and bargaining unit; job description; education and training background; and previous work experience;

3. Date of first and last employment;

4. The existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;

5. The final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body;

6. The terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement as defined in Minnesota Statutes, Section 123B.143, subdivision 2, paragraph (a); except that the agreement must include specific reasons for the agreement if it involves the payment of more than $10,000 of public money;

7. Work location; a work telephone number; badge number; and honors and awards received; and

8. Payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of

time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

Based on past court cases, the interpretation of Section 13.43 can be complicated. Please contact the City Attorney's Office before disseminating personnel data.

D. ELECTED OFFICIALS' DATA

In Minneapolis, full-time elected officials are treated as employees for the purposes of the Data Practices Act. However, financial disclosure statements of elected or appointed officials which, by requirement of the political subdivision, are filed with the political subdivision, are public data. Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient.

E. PENDING CIVIL LEGAL ACTIONS

Data collected as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, as determined by the City Attorney, is confidential. The data remain confidential until the conclusion of the civil legal action.

F. LAW ENFORCEMENT DATA

Law enforcement data is data created or maintained by agencies carrying on a law enforcement function, including but not limited to, the Police and Fire Departments. Certain law enforcement data is always public. However, criminal investigative data is confidential while the investigation is active. The law enforcement data section of the Act also provides for protection of the identities of certain victims and witnesses.

G. OTHER DATA

Other examples of private data include medical data, certain educational data, certain welfare data, and social security numbers. The City Attorney's Office is always available for consultation on these issues.

H. DATA ON PERSONS APPOINTED TO A PUBLIC BODY

..der Minnesota Statutes, Section 13.601, data about members of the Advisory Group and the Redistricting Group are private, except that the following are public:

1. Name;
2. Residential address, including City of residence;
3. Education and training;
4. Employment history;
5. Volunteer work;
6. Awards and honors;
7. Prior government service;
8. The member's choice of his or her:
   a) Telephone number;
   b) E-mail address; or
   c) Both telephone number and e-mail address.

I. REMEDIES FOR VIOLATIONS OF THE ACT

The Data Practices Act provides that a willful violation of its provisions is a misdemeanor. The Act also authorizes a private legal action to enjoin violations of the Act and provides for exemplary damages of not less than $1,000, nor more than $15,000, for each willful violation of the Act. If the court issues an order to compel compliance, it may impose a civil penalty of up to $1,000 against the government entity. The Act also allows a party prevailing in a suit for damages arising from a violation of the Act to recover costs and disbursements, including reasonable attorney's fees. Further, a complaint alleging a violation of the Act can be filed with the Office of Administrative Hearings. The Office of Administrative Hearings can require that the parties engage in a hearing, which may result in the government entity paying a civil penalty of up to $300, costs, and up to $5,000 in reasonable attorneys' fees.

III. PUBLIC RECORDS

A. PUBLIC RECORDS

1. Most records of the Redistricting Group will be public and will be provided to the public in accordance with the Minnesota Government Data Practices Act.
2. Certain data on Redistricting Group members is public under Minn. Stat. §13.601.
3. Upon request by the public, public records must be produced within a reasonable time period.
4. Public requests for data should be directed to the City Clerk or to the Chair of the Charter Commission.

B. EXAMPLES OF REDISTRICTING RECORDS

1. Redistricting Group training materials.
2. Redistricting Group meeting agendas and minutes.
3. Charter Commission meeting agendas and minutes.
4. Resolutions and ordinances applicable to redistricting.
5. State legislative data used for redistricting.
6. Census data used for redistricting.
7. Minneapolis Ward and Park Board maps, including first draft redistricting maps, proposed redistricting maps, maps adopted by the Minneapolis Charter Commission, and other maps that are widely disseminated to the Redistricting Group for review.
8. Precinct boundaries adopted by the Minneapolis City Council.
9. Audio tapes of meetings.
10. Video tapes of meetings.
11. Written communications with the public, such as letters, e-mails, and texts.
12. E-mails, texts and other written communication related to redistricting with City staff, elected officials and Redistricting Group members.
13. Background materials prepared by City staff.
14. Budget and expenses.

C. RETENTION OF REDISTRICTING RECORDS

Redistricting records that are **government records** must be retained by the City Clerk's Office. See Minnesota Statutes, Section 138.17.

D. GOVERNMENT RECORDS

Government Records, for purposes of retention of records, are:

1. All written or recorded data;
2. Made or received;
3. By the City of Minneapolis, the Minneapolis Charter Commission, the Redistricting Group, or any members of these public bodies;
4. Regardless of the type of physical form; and
5. That becomes part of an official transaction (or has administrative, monetary/budgetary, legal or historical value).

E. EXAMPLES OF RECORDS THAT ARE NOT GOVERNMENT RECORDS

Examples of records that are not government records, and therefore do not need to be retained, are:

1. Extra copies of documents kept for convenience purposes. Make sure one copy of a government record is kept.
2. Books, periodicals, newspapers, library materials or online materials preserved solely for reference purposes.
3. Personal materials that have no relation to official duties (e.g., a text to a friend made during a Redistricting Group meeting).
4. Preliminary drafts, computations, worksheets and informal notes which do not represent significant steps in the preparation of a record. Before you throw out any such data, please consult with the Chair of the Redistricting Group.

F. EXAMPLES OF RECORDS THAT ARE GOVERNMENT RECORDS

Examples of records that are government records, and therefore do need to be retained, are:

1. Documentation necessary to support the first map drafts, the proposed maps, and the final maps.
2. Rough notes, calculations, drafts, computer reports, etc., that are created and assembled in preparation of other records, to trace actions, steps, and decisions covered in the final report or product.
3. Official documents, such as agendas, minutes, resolutions, reports, final maps, and maps widely disseminated to the Redistricting Group for review.

G. DIFFERENCES BETWEEN DATA PRACTICES ACT REQUESTS FOR DOCUMENTS AND REQUIREMENT TO RETAIN DOCUMENTS

1. Redistricting Group members are required to retain one copy of government records.
2. If a document is not a government record, as described above, the data does not need to be retained.
3. Under the Minnesota Government Data Practices Act, "government data" is broader than for retention purposes. "Government data" under the Data Practices Act means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use. Under this broad definition of "government data," if there is a public request for existing redistricting data, even if it does not need to be retained as part of an official action, the data must be provided it if is public data. For example, if a Redistricting Group member makes notes while working on redistricting, such as notations of their thoughts or calculations, that data could be public and accessible to the public, even though it does not need to be retained.

H. TIPS FOR KEEPING NOTES

1. When you are creating notes, keep your personal notes (e.g., phone number of friend or time and place of friend's party) separate from your redistricting notes.
2. When you are creating notes, keep in mind that your redistricting notes can probably be obtained by the public, including the media.
3. Keep one copy of documents that are government records, as defined above for retention purposes.
4. Please consult with the Chair of the Redistricting Group before throwing out documents.
5. You should use a note book that is dedicated to your Redistricting Group tasks. It will be convenient for you to keep your notes in one location so that they do not get lost and can be gathered and provided to the Chair of the Redistricting Group at the end of each Redistricting Group meeting.
6. If you want to take notes on a computer laptop, notebook, tablet, smart phone or other such device, be aware that the public can request the electronic version of your notes. Further, if there is litigation, there may be a request to view your entire device for redistricting records. That may mean you will have to turn over your device and be without it for weeks or months so that an attorney can look at everything on your device. It is a good idea to keep your notes manually to avoid the loss of your device for weeks or months and the loss of your privacy in documents unrelated to redistricting.
7. If you decide to take notes on a computer laptop, notebook, tablet, smart phone or other such device, you will have to transfer such notes to the Chair of the Redistricting Group in electronic form. Please have a means to transfer such data if you decide to use such devices for notes.

IV. SOURCES

Source for Open Meeting Law and Data Practices Act Topics:

Jim Moore, Assistant Minneapolis City Attorney

Source for Public Records Topic:

Craig Steiner, Responsible Authority for the City of Minneapolis

V. APPENDIX

Minnesota Statutes and Advisory Opinion Relating to Open Meeting Law

13.D.01 through 13.D.06 – Open Meeting Law
Minnesota Department of Administration Advisory Opinion: 09-020

Minnesota Statues Relating to the Minnesota Government Data Practices Act

13.01	Government Data
13.02	Definitions
13.03	Access to Government Data
13.08	Civil Remedies
13.085	Administrative Remedy
13.09	Penalties
13.43	Personnel Data
13.601	Elected and Appointed Officials

Minnesota Statues Relating to Records

15.17	Official Records
138.17	Government Records - Administration

Meetings of Public Bodies

CHAPTER 13D
OPEN MEETING LAW

13D.01	MEETINGS MUST BE OPEN TO THE PUBLIC; EXCEPTIONS.
13D.015	MEETINGS BY TELEPHONE OR OTHER ELECTRONIC MEANS.
13D.02	MEETINGS CONDUCTED BY INTERACTIVE TV; CONDITIONS.
13D.021	MEETINGS BY TELEPHONE OR OTHER ELECTRONIC MEANS; CONDITIONS.
13D.03	CLOSED MEETINGS FOR LABOR NEGOTIATIONS STRATEGY.
13D.04	NOTICE OF MEETINGS.
13D.05	MEETINGS HAVING DATA CLASSIFIED AS NOT PUBLIC.
13D.06	CIVIL FINES; FORFEITURE OF OFFICE; OTHER REMEDIES.
13D.07	CITATION.

13D.01 MEETINGS MUST BE OPEN TO THE PUBLIC; EXCEPTIONS.

Subdivision 1. **In executive branch, local government.** All meetings, including executive sessions, must be open to the public

(a) of a state

(1) agency,

(2) board,

(3) commission, or

(4) department,

when required or permitted by law to transact public business in a meeting;

(b) of the governing body of a

(1) school district however organized,

(2) unorganized territory,

(3) county,

(4) statutory or home rule charter city,

(5) town, or

(6) other public body;

(c) of any

(1) committee,

(2) subcommittee,

(3) board,

(4) department, or

(5) commission,

of a public body; and

(d) of the governing body or a committee of:

(1) a statewide public pension plan defined in section 356A.01, subdivision 24; or

(2) a local public pension plan governed by section 69.77, sections 69.771 to 69.775, or chapter 354A or 423B.

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Subd. 2. **Exceptions.** This chapter does not apply

(1) to meetings of the commissioner of corrections;

(2) to a state agency, board, or commission when it is exercising quasi-judicial functions involving disciplinary proceedings; or

(3) as otherwise expressly provided by statute.

Subd. 3. **Subject of and grounds for closed meeting.** Before closing a meeting, a public body shall state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.

Subd. 4. **Votes to be kept in journal.** (a) The votes of the members of the state agency, board, commission, or department; or of the governing body, committee, subcommittee, board, department, or commission on an action taken in a meeting required by this section to be open to the public must be recorded in a journal kept for that purpose.

(b) The vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.

Subd. 5. **Public access to journal.** The journal must be open to the public during all normal business hours where records of the public body are kept.

Subd. 6. **Public copy of members' materials.** (a) In any meeting which under subdivisions 1, 2, 4, and 5, and section 13D.02 must be open to the public, at least one copy of any printed materials relating to the agenda items of the meeting prepared or distributed by or at the direction of the governing body or its employees and:

(1) distributed at the meeting to all members of the governing body;

(2) distributed before the meeting to all members; or

(3) available in the meeting room to all members;

shall be available in the meeting room for inspection by the public while the governing body considers their subject matter.

(b) This subdivision does not apply to materials classified by law as other than public as defined in chapter 13, or to materials relating to the agenda items of a closed meeting held in accordance with the procedures in section 13D.03 or other law permitting the closing of meetings.

History: *1957 c 773 s 1; 1967 c 462 s 1; 1973 c 123 art 5 s 7; 1973 c 654 s 15; 1973 c 680 s 1,3; 1975 c 271 s 6; 1981 c 174 s 1; 1983 c 137 s 1; 1983 c 274 s 18; 1984 c 462 s 27; 1987 c 313 s 1; 1990 c 550 s 2,3; 1991 c 292 art 8 s 12; 1991 c 319 s 22; 1994 c 618 art 1 s 39; 1997 c 154 s 2; 1Sp2001 c 10 art 4 s 1; 2010 c 359 art 12 s 3*

13D.015 MEETINGS BY TELEPHONE OR OTHER ELECTRONIC MEANS.

Subdivision 1. **Application.** This section applies to:

(1) a state agency, board, commission, or department, and a statewide public pension plan defined in section 356A.01, subdivision 24; and

(2) a committee, subcommittee, board, department, or commission of an entity listed in clause (1).

Subd. 2. **Conditions.** An entity listed in subdivision 1 may conduct a meeting governed by this section and section 13D.01, subdivisions 1, 2, 4, and 5, by telephone or other electronic

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

means so long as the following conditions are met:

(1) all members of the entity participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony;

(2) members of the public present at the regular meeting location of the entity can hear all discussion and all votes of members of the entity and participate in testimony;

(3) at least one member of the entity is physically present at the regular meeting location; and

(4) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

Subd. 3. **Quorum; participation.** Each member of the entity participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

Subd. 4. **Monitoring from remote site; costs.** If telephone or another electronic means is used to conduct a meeting, the entity, to the extent practical, shall allow a person to monitor the meeting electronically from a remote location. The entity may require the person making a connection to pay for documented marginal costs that the entity incurs as a result of the additional connection.

Subd. 5. **Notice.** If telephone or another electronic means is used to conduct a regular, special, or emergency meeting, the entity shall provide notice of the regular meeting location, of the fact that some members may participate by electronic means, and of the provisions of subdivision 4. The timing and method of providing notice is governed by section 13D.04. In addition, the entity must post the notice on its Web site at least ten days before the meeting.

History: *2009 c 80 s 1*

13D.02 MEETINGS CONDUCTED BY INTERACTIVE TV; CONDITIONS.

Subdivision 1. **Conditions.** A meeting governed by section 13D.01, subdivisions 1, 2, 4, and 5, and this section may be conducted by interactive television so long as:

(1) all members of the body participating in the meeting, wherever their physical location, can hear and see one another and can hear and see all discussion and testimony presented at any location at which at least one member is present;

(2) members of the public present at the regular meeting location of the body can hear and see all discussion and testimony and all votes of members of the body;

(3) at least one member of the body is physically present at the regular meeting location; and

(4) each location at which a member of the body is present is open and accessible to the public.

Subd. 2. **Members are present for quorum, participation.** Each member of a body participating in a meeting by electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

Subd. 3. **Monitoring from remote site; costs.** If interactive television is used to conduct a meeting, to the extent practical, a public body shall allow a person to monitor the meeting electronically from a remote location. The body may require the person making such a connection to pay for documented marginal costs that the public body incurs as a result of the additional

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

connection.

Subd. 4. **Notice of regular and all member sites.** If interactive television is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location and notice of any site where a member of the public body will be participating in the meeting by interactive television. The timing and method of providing notice must be as described in section 13D.04.

History: *1957 c 773 s 1; 1967 c 462 s 1; 1973 c 123 art 5 s 7; 1973 c 654 s 15; 1973 c 680 s 1,3; 1975 c 271 s 6; 1981 c 174 s 1; 1983 c 137 s 1; 1983 c 274 s 18; 1984 c 462 s 27; 1987 c 313 s 1; 1990 c 550 s 2,3; 1991 c 292 art 8 s 12; 1991 c 319 s 22; 1994 c 618 art 1 s 39; 1997 c 154 s 2*

13D.021 MEETINGS BY TELEPHONE OR OTHER ELECTRONIC MEANS; CONDITIONS.

Subdivision 1. **Conditions.** A meeting governed by this section and section 13D.01, subdivisions 1, 2, 4, and 5, may be conducted by telephone or other electronic means so long as the following conditions are met:

(1) the presiding officer, chief legal counsel, or chief administrative officer for the affected governing body determines that an in-person meeting or a meeting conducted under section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under chapter 12;

(2) all members of the body participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony;

(3) members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration;

(4) at least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration; and

(5) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

Subd. 2. **Members are present for quorum, participation.** Each member of the body participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

Subd. 3. **Monitoring from remote site; costs.** If telephone or another electronic means is used to conduct a meeting, to the extent practical, the body shall allow a person to monitor the meeting electronically from a remote location. The body may require the person making a connection to pay for the documented additional cost that the body incurs as a result of the additional connection.

Subd. 4. **Notice of regular and all member sites.** If telephone or another electronic means is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and of the provisions of subdivision 3. The timing and method of providing notice is governed by section 13D.04 of the Open Meeting Law.

History: *2007 c 110 s 1*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

13D.03 CLOSED MEETINGS FOR LABOR NEGOTIATIONS STRATEGY.

Subdivision 1. **Procedure.** (a) Section 13D.01, subdivisions 1, 2, 4, 5, and section 13D.02 do not apply to a meeting held pursuant to the procedure in this section.

(b) The governing body of a public employer may by a majority vote in a public meeting decide to hold a closed meeting to consider strategy for labor negotiations, including negotiation strategies or developments or discussion and review of labor negotiation proposals, conducted pursuant to sections 179A.01 to 179A.25.

(c) The time of commencement and place of the closed meeting shall be announced at the public meeting.

(d) A written roll of members and all other persons present at the closed meeting shall be made available to the public after the closed meeting.

Subd. 2. **Meeting must be recorded.** (a) The proceedings of a closed meeting to discuss negotiation strategies shall be tape-recorded at the expense of the governing body.

(b) The recording shall be preserved for two years after the contract is signed and shall be made available to the public after all labor contracts are signed by the governing body for the current budget period.

Subd. 3. **If violation claimed.** (a) If an action is brought claiming that public business other than discussions of labor negotiation strategies or developments or discussion and review of labor negotiation proposals was transacted at a closed meeting held pursuant to this section during the time when the tape is not available to the public, the court shall review the recording of the meeting in camera.

(b) If the court finds that this section was not violated, the action shall be dismissed and the recording shall be sealed and preserved in the records of the court until otherwise made available to the public pursuant to this section.

(c) If the court finds that this section was violated, the recording may be introduced at trial in its entirety subject to any protective orders as requested by either party and deemed appropriate by the court.

History: *1957 c 773 s 1; 1967 c 462 s 1; 1973 c 123 art 5 s 7; 1973 c 654 s 15; 1973 c 680 s 1,3; 1975 c 271 s 6; 1981 c 174 s 1; 1983 c 137 s 1; 1983 c 274 s 18; 1984 c 462 s 27; 1987 c 313 s 1; 1990 c 550 s 2,3; 1991 c 292 art 8 s 12; 1991 c 319 s 22; 1994 c 618 art 1 s 39; 1997 c 154 s 2*

13D.04 NOTICE OF MEETINGS.

Subdivision 1. **Regular meetings.** A schedule of the regular meetings of a public body shall be kept on file at its primary offices. If a public body decides to hold a regular meeting at a time or place different from the time or place stated in its schedule of regular meetings, it shall give the same notice of the meeting that is provided in this section for a special meeting.

Subd. 2. **Special meetings.** (a) For a special meeting, except an emergency meeting or a special meeting for which a notice requirement is otherwise expressly established by statute, the public body shall post written notice of the date, time, place, and purpose of the meeting on the principal bulletin board of the public body, or if the public body has no principal bulletin board, on the door of its usual meeting room.

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(b) The notice shall also be mailed or otherwise delivered to each person who has filed a written request for notice of special meetings with the public body. This notice shall be posted and mailed or delivered at least three days before the date of the meeting.

(c) As an alternative to mailing or otherwise delivering notice to persons who have filed a written request for notice of special meetings, the public body may publish the notice once, at least three days before the meeting, in the official newspaper of the public body or, if there is none, in a qualified newspaper of general circulation within the area of the public body's authority.

(d) A person filing a request for notice of special meetings may limit the request to notification of meetings concerning particular subjects, in which case the public body is required to send notice to that person only concerning special meetings involving those subjects.

(e) A public body may establish an expiration date for requests for notices of special meetings pursuant to this subdivision and require refiling of the request once each year.

(f) Not more than 60 days before the expiration date of a request for notice, the public body shall send notice of the refiling requirement to each person who filed during the preceding year.

Subd. 3. **Emergency meetings.** (a) For an emergency meeting, the public body shall make good faith efforts to provide notice of the meeting to each news medium that has filed a written request for notice if the request includes the news medium's telephone number.

(b) Notice of the emergency meeting shall be given by telephone or by any other method used to notify the members of the public body.

(c) Notice shall be provided to each news medium which has filed a written request for notice as soon as reasonably practicable after notice has been given to the members.

(d) Notice shall include the subject of the meeting. Posted or published notice of an emergency meeting is not required.

(e) An "emergency" meeting is a special meeting called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body.

(f) If matters not directly related to the emergency are discussed or acted upon at an emergency meeting, the minutes of the meeting shall include a specific description of the matters.

(g) The notice requirement of this subdivision supersedes any other statutory notice requirement for a special meeting that is an emergency meeting.

Subd. 4. **Recessed or continued meetings.** (a) If a meeting is a recessed or continued session of a previous meeting, and the time and place of the meeting was established during the previous meeting and recorded in the minutes of that meeting, then no further published or mailed notice is necessary.

(b) For purposes of this subdivision, the term "meeting" includes a public hearing conducted pursuant to chapter 429 or any other law or charter provision requiring a public hearing by a public body.

Subd. 5. **Closed meetings.** The notice requirements of this section apply to closed meetings.

Subd. 6. **State agencies.** For a meeting of an agency, board, commission, or department of the state:

(1) the notice requirements of this section apply only if a statute governing meetings of the agency, board, or commission does not contain specific reference to the method of providing notice; and

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(2) all provisions of this section relating to publication are satisfied by publication in the State Register.

Subd. 7. **Actual notice.** If a person receives actual notice of a meeting of a public body at least 24 hours before the meeting, all notice requirements of this section are satisfied with respect to that person, regardless of the method of receipt of notice.

History: *1957 c 773 s 1; 1967 c 462 s 1; 1973 c 123 art 5 s 7; 1973 c 654 s 15; 1973 c 680 s 1,3; 1975 c 271 s 6; 1981 c 174 s 1; 1983 c 137 s 1; 1983 c 274 s 18; 1984 c 462 s 27; 1987 c 313 s 1; 1990 c 550 s 2,3; 1991 c 292 art 8 s 12; 1991 c 319 s 22; 1994 c 618 art 1 s 39; 1997 c 154 s 2*

13D.05 MEETINGS HAVING DATA CLASSIFIED AS NOT PUBLIC.

Subdivision 1. **General principles.** (a) Except as provided in this chapter, meetings may not be closed to discuss data that are not public data.

(b) Data that are not public data may be discussed at a meeting subject to this chapter without liability or penalty, if the disclosure relates to a matter within the scope of the public body's authority and is reasonably necessary to conduct the business or agenda item before the public body.

(c) Data discussed at an open meeting retain the data's original classification; however, a record of the meeting, regardless of form, shall be public.

(d) All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

Subd. 2. **When meeting must be closed.** (a) Any portion of a meeting must be closed if expressly required by other law or if the following types of data are discussed:

(1) data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults;

(2) active investigative data as defined in section 13.82, subdivision 7, or internal affairs data relating to allegations of law enforcement personnel misconduct collected or created by a state agency, statewide system, or political subdivision;

(3) educational data, health data, medical data, welfare data, or mental health data that are not public data under section 13.32, 13.3805, subdivision 1, 13.384, or 13.46, subdivision 2 or 7; or

(4) an individual's medical records governed by sections 144.291 to 144.298.

(b) A public body shall close one or more meetings for preliminary consideration of allegations or charges against an individual subject to its authority. If the members conclude that discipline of any nature may be warranted as a result of those specific charges or allegations, further meetings or hearings relating to those specific charges or allegations held after that conclusion is reached must be open. A meeting must also be open at the request of the individual who is the subject of the meeting.

Subd. 3. **What meetings may be closed.** (a) A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(b) Meetings may be closed if the closure is expressly authorized by statute or permitted by the attorney-client privilege.

(c) A public body may close a meeting:

(1) to determine the asking price for real or personal property to be sold by the government entity;

(2) to review confidential or protected nonpublic appraisal data under section 13.44, subdivision 3; and

(3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Before holding a closed meeting under this paragraph, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting. The proceedings of a meeting closed under this paragraph must be tape recorded at the expense of the public body. The recording must be preserved for eight years after the date of the meeting and made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the governing body has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. If an action is brought claiming that public business other than discussions allowed under this paragraph was transacted at a closed meeting held under this paragraph during the time when the tape is not available to the public, section 13D.03, subdivision 3, applies.

An agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body's internal procedures, and the purchase price or sale price is public data.

(d) Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities, if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting. Before closing a meeting under this paragraph, the public body, in describing the subject to be discussed, must refer to the facilities, systems, procedures, services, or infrastructures to be considered during the closed meeting. A closed meeting must be tape recorded at the expense of the governing body, and the recording must be preserved for at least four years.

History: *1957 c 773 s 1; 1967 c 462 s 1; 1973 c 123 art 5 s 7; 1973 c 654 s 15; 1973 c 680 s 1,3; 1975 c 271 s 6; 1981 c 174 s 1; 1983 c 137 s 1; 1983 c 274 s 18; 1984 c 462 s 27; 1987 c 313 s 1; 1990 c 550 s 2,3; 1991 c 292 art 8 s 12; 1991 c 319 s 22; 1994 c 618 art 1 s 39; 1997 c 154 s 2; 1999 c 227 s 22; 2002 c 379 art 1 s 5; 2004 c 276 s 1; 2004 c 290 s 18; 2007 c 110 s 2; 2007 c 147 art 10 s 15; 2008 c 335 s 1; 2010 c 365 art 1 s 8*

13D.06 CIVIL FINES; FORFEITURE OF OFFICE; OTHER REMEDIES.

Subdivision 1. **Personal liability for $300 fine.** Any person who intentionally violates this chapter shall be subject to personal liability in the form of a civil penalty in an amount not to exceed $300 for a single occurrence, which may not be paid by the public body.

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Subd. 2. **Who may bring action; where.** An action to enforce the penalty in subdivision 1 may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located.

Subd. 3. **Forfeit office if three violations.** (a) If a person has been found to have intentionally violated this chapter in three or more actions brought under this chapter involving the same governing body, such person shall forfeit any further right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office such person was then serving.

(b) The court determining the merits of any action in connection with any alleged third violation shall receive competent, relevant evidence in connection therewith and, upon finding as to the occurrence of a separate third violation, unrelated to the previous violations, issue its order declaring the position vacant and notify the appointing authority or clerk of the governing body.

(c) As soon as practicable thereafter the appointing authority or the governing body shall fill the position as in the case of any other vacancy.

Subd. 4. **Costs; attorney fees; requirements; limits.** (a) In addition to other remedies, the court may award reasonable costs, disbursements, and reasonable attorney fees of up to $13,000 to any party in an action under this chapter.

(b) The court may award costs and attorney fees to a defendant only if the court finds that the action under this chapter was frivolous and without merit.

(c) A public body may pay any costs, disbursements, or attorney fees incurred by or awarded against any of its members in an action under this chapter.

(d) No monetary penalties or attorney fees may be awarded against a member of a public body unless the court finds that there was an intent to violate this chapter.

(e) The court shall award reasonable attorney fees to a prevailing plaintiff who has brought an action under this section if the public body that is the defendant in the action was also the subject of a prior written opinion issued under section 13.072, and the court finds that the opinion is directly related to the cause of action being litigated and that the public body did not act in conformity with the opinion. The court shall give deference to the opinion in a proceeding brought under this section.

History: *1957 c 773 s 1; 1967 c 462 s 1; 1973 c 123 art 5 s 7; 1973 c 654 s 15; 1973 c 680 s 1,3; 1975 c 271 s 6; 1981 c 174 s 1; 1983 c 137 s 1; 1983 c 274 s 18; 1984 c 462 s 27; 1987 c 313 s 1; 1990 c 550 s 2,3; 1991 c 292 art 8 s 12; 1991 c 319 s 22; 1994 c 618 art 1 s 39; 1997 c 154 s 2; 2008 c 335 s 2*

13D.07 CITATION.

This chapter may be cited as the "Minnesota Open Meeting Law."

History: *1957 c 773 s 1; 1967 c 462 s 1; 1973 c 123 art 5 s 7; 1973 c 654 s 15; 1973 c 680 s 1,3; 1975 c 271 s 6; 1981 c 174 s 1; 1983 c 137 s 1; 1983 c 274 s 18; 1984 c 462 s 27; 1987 c 313 s 1; 1990 c 550 s 2,3; 1991 c 292 art 8 s 12; 1991 c 319 s 22; 1994 c 618 art 1 s 39; 1997 c 154 s 2*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Minnesota Department of Administration Advisory Opinion 09-020

This is an opinion of the Commissioner of Administration issued pursuant to section 13.072 of Minnesota Statutes, Chapter 13 - the Minnesota Government Data Practices Act. It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On May 26, 2009, the Information Policy Analysis Division (IPAD) received a letter, dated May 22, 2009, from John Borger, an attorney. In his letter, Mr. Borger asked the Commissioner, on behalf of his client, the Star Tribune, to issue an advisory opinion on whether the Metro Gang Strike Force (MGSF) Advisory Board had violated the Open Meeting Law (OML), Minnesota Statutes, Chapter 13D. Mr. Borger submitted the $200.00 fee required by section 13.072.

The Commissioner accepted Mr. Borger's request and in a letter to Manila Shaver, MGSF Advisory Board Chair, notified Mr. Shaver of her intent to issue the opinion and gave the members of the Board an opportunity to explain their position. Mr. Shaver replied, in a letter dated June 11, 2009. Subsequently, the Commissioner notified Mr. Borger and Mr. Shaver that she would not issue an opinion because the MGSF had been dissolved. (The Commissioner refunded Mr. Borger's fee.)

Mr. Borger asked the Commissioner to reconsider her decision, because the Board was still in operation, even though the MGSF was not. The Commissioner agreed, and Mr. Borger resubmitted his request on July 17, 2009, along with the $200.00 fee.

In response, IPAD notified Mr. Shaver that the Commissioner intended to issue this opinion, in a letter dated July 27, 2009, and again gave the members of the Board an opportunity to explain their position. Mr. Shaver responded again, in a letter dated August 12, 2009.

The Commissioner also invited Rodney Bartsh, Chair of the Gang and Drug Oversight Council, which oversees the Board, to submit comments. Mr. Bartsh did not provide any comments. A summary of the facts follows.

The MGSF and its Advisory Board were established by the Gang and Drug Oversight Council, as part of its duty to "establish multijurisdictional task forces and strike forces to combat gang and drug crime." (See section 299A.641, subdivision 3.) The MGSF was organized as a joint powers entity, whose 13 Advisory Board members are the chief law enforcement officers, or their designees, of all parties to the Joint Powers Agreement. (See MGSF Advisory Board Bylaws, Section IV.)

On April 7, 2009, a Star Tribune editorial writer sent an email to (then) MGSF Assistant Commander James Heimerl, seeking his perspective on an issue that was the subject of an April 5, 2009, newspaper article, about which she intended to write an editorial. She asked for a response by the following afternoon "for deadline purposes."

According to documentation Mr. Borger provided, at 1:40 p.m. on April 8, Deputy Chief Rob Allen of the Minneapolis Police Department sent an email, with an attached letter, to Mr. Shaver and 33 others, including all Advisory Board members/member-designees. In the email, which Mr. Allen addressed to his 'colleagues,' he asked them to review the attached letter, stating '[t]here is some time critical information that I think can help prevent further issue with MGSF operations if we act quickly enough.' In the letter, Mr. Allen raised several issues and wrote, "I would like the board to consider issuing a statement similar to" a paragraph he drafted and included.

According to copies of the emails Mr. Borger submitted, between 2:50 and 4:29 p.m., seven Advisory Board members (or their designees) replied to Mr. Allen (and copied other Board members, including Mr. Shaver) with the following comments, listed in chronological order:

1. The Sheriff and I looked your memo and the proposed statement over. We like the idea of having this statement on record . . . . If you get consensus on it, we recommend [Mr. Shaver], on behalf of the MGSF Board, take action today and release it.
2. Chief . . . and I reviewed your memo and endorse your recommendation and the immediate action by the board suggested by [commenter #1.]
3. In my view the statement is a good idea and reflects a solidarity on the part of the board. I also feel that as chair of the MGSF Board, Chief Shaver is the person the statement should come from.
4. You did a nice job [in the statement.]
5. I agree with the others.
6. I support the statement and agree [Mr. Shaver] as the chair of the MGSF would be the appropriate person to deliver the message.
7. I support the statement and agree that Chief Shaver as the chair of the MGSF would be the appropriate person to deliver the message.

At 5:00 p.m., Mr. Shaver issued a press release, which consisted of the verbatim statement Mr. Allen proposed in his email to Board members and two additional introductory sentences. Mr. Shaver then emailed the Advisory Board that he had taken that action.

Issues:

Based on Mr. Borger's opinion request, the Commissioner agreed to address the following issues:

1. Is the Advisory Board for the Metro Gang Strike Force a public body that must comply with the Open Meeting Law, Minnesota Statutes, Chapter 13D?
2. Did the members of the Advisory Board for the Strike Force comply with the OML when they exchanged

certain email messages relating to the activities of the Strike Force?

Discussion:

Issue 1:

Is the Advisory Board for the Metro Gang Strike Force a public body that must comply with the Open Meeting Law, Minnesota Statutes, Chapter 13D?

In his comments to the Commissioner, Mr. Shaver wrote: "(t)he OML applies to any 'board' of a 'public body.' Minn. Stat. § 13D.01, subd. 1(c)(3). As MGSF Bylaws acknowledge, the Advisory Board is subject to the OML."

Issue 2:

Did the members of the Advisory Board for the Strike Force comply with the OML when they exchanged certain email messages relating to the activities of the Strike Force?

Minnesota Statutes, section 13D.01, subdivision 1, states: "[a]ll meetings, including executive sessions, must be open to the public." The Legislature did not define "meeting" in the OML; however, the Minnesota Supreme Court described the "quorum rule:"

> 'Meetings' subject to the requirements of the Open Meeting Law are those gatherings of a quorum or more members of the governing body . . . at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body. *Moberg v. Independent School District No. 281*, 336 N.W.2d 510, 518 (Minn. 1983).

In his comments to the Commissioner, Mr. Borger wrote:

> Because more than a quorum of the Advisory Board participated in the communications and a majority of the board expressly approved issuing the statement, it amounted to a 'virtual meeting' that violated the OML. The OML allows a non-physical 'meeting' of a public body only in very limited circumstances [See Minnesota Statutes, section 13D.021]. . . . .
>
> It is immaterial that Mr. Shaver might have issued a press release on his own authority, without any action by the Advisory Board. That is simply not what happened. . . . . Mr. Allen expressly requested action by the Advisory Board. All board members received that request. Discussion among board members addressed whether there was a 'consensus' on the requested action. Points of discussion included whether there should be a press release at all, what the release should say, and who should issue the press release. A majority of the board members expressly approved the request . . . . That surely constitutes 'transacting public business' under the standard of *St. Cloud Newspapers, Inc.*, 332 N.W.2d 1, 6 (Minn. 1983). . . . . What happened was that a quorum of the Advisory Board, 'as a group, discuss[ed] . . . [and] receive[d] information on official business.' [See *Moberg*, 336 N.W.2d at 518.]

Mr. Shaver responded first on June 11, 2009; he modified his comments to the Commissioner in his August 12, 2009 response.

In his June 11, 2009, comments, Mr. Shaver wrote:

> • I cannot speak on behalf of the Board on this matter as our Board has not met to discuss this issue. Our next meeting is on June 30th, almost two weeks beyond the June 17th deadline you provided.
>
> • As Chair, I cannot control the independent actions of the Board or individual Board member [sic] outside an official meeting.
>
> • In this incident I did not initiate the original e-mail or distribute it. I did distribute to the Board a copy of a news release, which is part of my day-to-day duties as chair.

In his August 12, 2009, comments, Mr. Shaver wrote:

> The situation is analogous to a city council member alerting officials with administrative responsibilities to issues requiring immediate attention or offering other unsolicited input regarding day-to-day municipal business. Deputy Chief Allen's letter, and its distribution by e-mail, did not violate the OML. See *Moberg*, 336 N.W.2d at 518 . . . . He was simply disseminating information to all Board members alerting them about a matter of high importance....
>
> The e-mail from Deputy Chief Allen was a single Board member's opinion that a response was required. The communication in the other e-mails represented individuals offering their opinion that I should act on the matter immediately. References to the 'Board' or 'MGSF' in these e-mail communications stem from the fact that any routine actions performed by the Chair were done 'on the Board's behalf,' as specified by the MGSF Bylaws. . . .

With respect to Mr. Shaver's assertion that he issued the news release as part of his day-to-day duties, the Commissioner respectfully disagrees. Mr. Shaver characterized the subject of the email Mr. Allen sent as "a matter of high importance" to the Advisory Board. Seven of the Advisory Board members, more than a quorum, expressed their opinions to all other Board Members about whether the Board should act, what action it should take and who should act on the Board's behalf.

Mr. Shaver stated that Mr. Allen's email was permissible under *Moberg*, because it is permissible for members of a public body to receive information "through the mail." In *Moberg*, the Court stated that in a situation in which a quorum or more of a public body received written information as a group, but did not read and discuss it, there was no violation of the OML. In that situation, the Court wrote, ". . . such distribution was functionally equivalent to receiving information through the mail, which is permissible, and there was no danger of forming group consensus because no information was actually received until material was read and no discussion occurred." *Moberg* at 511. The Court made its ruling in 1983, long before email was a common means of communication.

Here, a quorum of the Advisory Board, in addition to receiving information, commented on and provided direction to Mr. Shaver on a matter relating to the official business of the Board.

The Commissioner is aware that Minnesota courts have not ruled definitively on this issue. However, given the facts here, the Commissioner believes that per *Moberg* and *St. Cloud Newspapers, Inc.*, the conduct of the Advisory Board constituted a meeting, which was required to be public, and as such is impermissible under the OML.

If Mr. Allen had sent his suggestion only to Mr. Shaver, and if Mr. Shaver had taken action without consulting a quorum of the Board, then, in the Commissioner's view, that conduct would be permissible. It seems reasonable that one-way communication between the chair and members of a public body is permissible, such as when the chair or staff sends meeting materials via email to all board members, as long as no discussion or decision-making ensues.

The Commissioner urges the Legislature to provide guidance in the OML on issues arising from the widespread use of email and other forms of communication. It would be helpful to clarify specifically what kinds of email communications are permissible.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issues that Mr. Borger raised is as follows:

1. The Advisory Board for the Metro Gang Strike Force is a public body that must comply with the Open Meeting Law (OML), Minnesota Statutes, Chapter 13D.
2. Members of the Advisory Board for the Strike Force did not comply with the OML when they exchanged certain email messages relating to the activities of the Strike Force.

Signed:

Sheila M. Reger
Commissioner

Dated: September 8, 2009

© Copyright 2011. Information Policy Analysis Division, Minnesota Department of Administration
201 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155 • Phone: 651-296-6733 or 800-657-3721 • info.ipad@state.mn.us • Contact Us •
Advisory Opinions RSS

13.01 GOVERNMENT DATA.

Subdivision 1. **Applicability.** All government entities shall be governed by this chapter.

Subd. 2. **Citation.** This chapter may be cited as the "Minnesota Government Data Practices Act."

Subd. 3. **Scope.** This chapter regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities. It establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.

Subd. 4. **Headnotes.** The headnotes printed in boldface type before paragraphs in this chapter are mere catchwords to indicate the content of a paragraph and are not part of the statute.

Subd. 5. **Provisions coded in other chapters.** (a) The sections referenced in this chapter that are codified outside this chapter classify government data as other than public, place restrictions on access to government data, or involve data sharing.

(b) Those sections are governed by the definitions and general provisions in sections 13.01 to 13.07 and the remedies and penalties provided in sections 13.08 and 13.09, except:

(1) for records of the judiciary, as provided in section 13.90; or

(2) as specifically provided otherwise by law.

History: *1979 c 328 s 1; 1981 c 311 s 1,39; 1Sp1981 c 4 art 1 s 4,5; 1982 c 545 s 24; 1991 c 319 s 1; 1999 c 227 s 22; 2000 c 468 s 1,2; 2005 c 163 s 3,4*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

13.02 DEFINITIONS.

Subdivision 1. **Applicability.** As used in this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Administration.

Subd. 3. **Confidential data on individuals.** "Confidential data on individuals" means data which is made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data.

Subd. 3a. **Criminal justice agencies.** "Criminal justice agencies" means all state and local prosecution authorities, all state and local law enforcement agencies, the Sentencing Guidelines Commission, the Bureau of Criminal Apprehension, the Department of Corrections, and all probation officers who are not part of the judiciary.

Subd. 4. **Data not on individuals.** "Data not on individuals" means all government data which is not data on individuals.

Subd. 5. **Data on individuals.** "Data on individuals" means all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

Subd. 6. **Designee.** "Designee" means any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data.

Subd. 7. **Government data.** "Government data" means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.

Subd. 7a. **Government entity.** "Government entity" means a state agency, statewide system, or political subdivision.

Subd. 8. **Individual.** "Individual" means a natural person. In the case of a minor or an incapacitated person as defined in section 524.5-102, subdivision 6, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

Subd. 8a. **Not public data.** "Not public data" means any government data which is classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.

Subd. 9. **Nonpublic data.** "Nonpublic data" means data not on individuals that is made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.

Subd. 10. **Person.** "Person" means any individual, partnership, corporation, association, business trust, or a legal representative of an organization.

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Subd. 11. **Political subdivision.** "Political subdivision" means any county, statutory or home rule charter city, school district, special district, any town exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2, and any board, commission, district or authority created pursuant to law, local ordinance or charter provision. It includes any nonprofit corporation which is a community action agency organized pursuant to the Economic Opportunity Act of 1964 (Public Law 88-452) as amended, to qualify for public funds, or any nonprofit social service agency which performs services under contract to a government entity, to the extent that the nonprofit social service agency or nonprofit corporation collects, stores, disseminates, and uses data on individuals because of a contractual relationship with a government entity.

Subd. 12. **Private data on individuals.** "Private data on individuals" means data which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of that data.

Subd. 13. **Protected nonpublic data.** "Protected nonpublic data" means data not on individuals which is made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.

Subd. 14. **Public data not on individuals.** "Public data not on individuals" means data which is accessible to the public pursuant to section 13.03.

Subd. 15. **Public data on individuals.** "Public data on individuals" means data which is accessible to the public in accordance with the provisions of section 13.03.

Subd. 16. **Responsible authority.** "Responsible authority" in a state agency or statewide system means the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data. "Responsible authority" in any political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law.

Subd. 17. **State agency.** "State agency" means the state, the University of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.

Subd. 18. **Statewide system.** "Statewide system" includes any record-keeping system in which government data is collected, stored, disseminated and used by means of a system common to one or more state agencies or more than one of its political subdivisions or any combination of state agencies and political subdivisions.

Subd. 19. **Summary data.** "Summary data" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.

History: *1974 c 479 s 1; 1975 c 401 s 1; 1976 c 239 s 2; 1976 c 283 s 1-5; 1977 c 375 s 1-5; 1978 c 790 s 1; 1979 c 328 s 2-6; 1980 c 603 s 1-6; 1980 c 618 s 25; 1981 c 311 s 2-6,39; 1982 c 545 s 1,24; 1984 c 436 s 1; 1989 c 351 s 2; 1996 c 440 art 1 s 1; 1999 c 227 s 22; 2000 c 468 s 3; 2001 c 202 s 1; 2005 c 163 s 5; 2007 c 129 s 1,2*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

13.03 ACCESS TO GOVERNMENT DATA.

Subdivision 1. **Public data.** All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential. The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records.

Subd. 2. **Procedures.** (a) The responsible authority in every government entity shall establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner.

(b) The responsible authority shall prepare public access procedures in written form and update them no later than August 1 of each year as necessary to reflect any changes in personnel or circumstances that might affect public access to government data. The responsible authority shall make copies of the written public access procedures easily available to the public by distributing free copies of the procedures to the public or by posting a copy of the procedures in a conspicuous place within the government entity that is easily accessible to the public.

(c) Full convenience and comprehensive accessibility shall be allowed to researchers including historians, genealogists and other scholars to carry out extensive research and complete copying of all records containing government data except as otherwise expressly provided by law.

A responsible authority may designate one or more designees.

Subd. 3. **Request for access to data.** (a) Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places, and, upon request, shall be informed of the data's meaning. If a person requests access for the purpose of inspection, the responsible authority may not assess a charge or require the requesting person to pay a fee to inspect data.

(b) For purposes of this section, "inspection" includes, but is not limited to, the visual inspection of paper and similar types of government data. Inspection does not include printing copies by the government entity, unless printing a copy is the only method to provide for inspection of the data. In the case of data stored in electronic form and made available in electronic form on a remote access basis to the public by the government entity, inspection includes remote access to the data by the public and the ability to print copies of or download the data on the public's own computer equipment. Nothing in this section prohibits a government entity from charging a reasonable fee for remote access to data under a specific statutory grant of authority. A government entity may charge a fee for remote access to data where either the data or the access is enhanced at the request of the person seeking access.

(c) The responsible authority or designee shall provide copies of public data upon request. If a person requests copies or electronic transmittal of the data to the person, the responsible authority may require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting the copies of the data or the data, but may not charge for separating public from not public data. However, if 100 or fewer pages of black and white, letter or legal size

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

paper copies are requested, actual costs shall not be used, and instead, the responsible authority may charge no more than 25 cents for each page copied. If the responsible authority or designee is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible.

(d) When a request under this subdivision involves any person's receipt of copies of public government data that has commercial value and is a substantial and discrete portion of or an entire formula, pattern, compilation, program, device, method, technique, process, database, or system developed with a significant expenditure of public funds by the government entity, the responsible authority may charge a reasonable fee for the information in addition to the costs of making and certifying the copies. Any fee charged must be clearly demonstrated by the government entity to relate to the actual development costs of the information. The responsible authority, upon the request of any person, shall provide sufficient documentation to explain and justify the fee being charged.

(e) The responsible authority of a government entity that maintains public government data in a computer storage medium shall provide to any person making a request under this section a copy of any public data contained in that medium, in electronic form, if the government entity can reasonably make the copy or have a copy made. This does not require a government entity to provide the data in an electronic format or program that is different from the format or program in which the data are maintained by the government entity. The entity may require the requesting person to pay the actual cost of providing the copy.

(f) If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall inform the requesting person of the determination either orally at the time of the request, or in writing as soon after that time as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based. Upon the request of any person denied access to data, the responsible authority or designee shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.

Subd. 4. **Change in classification of data; effect of dissemination among agencies.** (a) The classification of data in the possession of an entity shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving entity.

(b) If data on individuals is classified as both private and confidential by this chapter, or any other statute or federal law, the data is private.

(c) To the extent that government data is disseminated to a government entity by another government entity, the data disseminated shall have the same classification in the hands of the entity receiving it as it had in the hands of the entity providing it.

(d) If a government entity disseminates data to another government entity, a classification provided for by law in the hands of the entity receiving the data does not affect the classification of the data in the hands of the entity that disseminates the data.

(e) To the extent that judicial branch data is disseminated to government entities by the judicial branch, the data disseminated shall have the same level of accessibility in the hands of the agency receiving it as it had in the hands of the judicial branch entity providing it.

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Subd. 5. **Copyright or patent of government data.** A government entity may enforce a copyright or acquire a patent for a computer software program or components of a program created by that government entity without statutory authority. In the event that a government entity acquires a patent to a computer software program or component of a program, the data shall be treated as trade secret information pursuant to section 13.37.

Subd. 6. **Discoverability of not public data.** If a government entity opposes discovery of government data or release of data pursuant to court order on the grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer, arbitrator, or administrative law judge an action to compel discovery or an action in the nature of an action to compel discovery.

The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.

If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by the parties. If the data are a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse, the presiding officer shall consider the provisions of section 611A.90, subdivision 2, paragraph (b).

Subd. 7. **Data transferred to archives.** When government data that is classified as not public by this chapter or any other statute, including private data on decedents and confidential data on decedents, is physically transferred to the state archives, the data shall no longer be classified as not public and access to and use of the data shall be governed by section 138.17.

Subd. 8. **Change to classification of data not on individuals.** Except for security information, nonpublic and protected nonpublic data shall become public either ten years after the creation of the data by the government entity or ten years after the data was received or collected by any governmental entity unless the responsible authority for the originating or custodial entity for the data reasonably determines that, if the data were made available to the public or to the data subject, the harm to the public or to a data subject would outweigh the benefit to the public or to the data subject. If the responsible authority denies access to the data, the person denied access may challenge the denial by bringing an action in district court seeking release of the data. The action shall be brought in the district court located in the county where the data are being maintained, or, in the case of data maintained by a state agency, in any county. The data in dispute shall be examined by the court in camera. In deciding whether or not to release the data, the court shall consider the benefits and harms in the same manner as set forth above. The court shall make a written statement of findings in support of its decision.

Subd. 9. **Effect of changes in classification of data.** Unless otherwise expressly provided by a particular statute, the classification of data is determined by the law applicable to the data at the time a request for access to the data is made, regardless of the data's classification at the time it was collected, created, or received.

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

Subd. 10. **Costs for providing copies of data.** Money may be collected by a responsible authority in a state agency for the actual cost to the agency of providing copies or electronic transmittal of government data. When money collected for purposes of this section is of a magnitude sufficient to warrant a separate account in the state treasury, that money must be deposited in a fund other than the general fund and is appropriated to the agency.

Subd. 11. **Treatment of data classified as not public; public meetings.** Not public data may be discussed at a meeting open to the public to the extent provided in section 13D.05.

Subd. 12. **Pleadings.** Pleadings, as defined by court rule, served by or on a government entity, are public data to the same extent that the data would be public if filed with the court.

History: *1979 c 328 s 7; 1980 c 603 s 7; 1981 c 311 s 39; 1Sp1981 c 4 art 1 s 6; 1982 c 545 s 2,24; 1984 c 436 s 2-4; 1985 c 298 s 1-4; 1987 c 351 s 1; 1990 c 573 s 1; 1991 c 319 s 2; 1991 c 345 art 1 s 44; 1992 c 569 s 1,2; 1994 c 618 art 1 s 1,2; 1995 c 259 art 4 s 1; 1996 c 440 art 1 s 2; 1999 c 227 s 1,22; 1999 c 250 art 1 s 41; 2000 468 s 4,5; 2004 c 290 s 1; 2005 c 163 s 6-12; 2007 c 129 s 3; 2008 c 315 s 2; 1Sp2010 c 1 art 14 s 3*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

13.08 CIVIL REMEDIES.

Subdivision 1. **Action for damages.** Notwithstanding section 466.03, a responsible authority or government entity which violates any provision of this chapter is liable to a person or representative of a decedent who suffers any damage as a result of the violation, and the person damaged or a representative in the case of private data on decedents or confidential data on decedents may bring an action against the responsible authority or government entity to cover any damages sustained, plus costs and reasonable attorney fees. In the case of a willful violation, the government entity shall, in addition, be liable to exemplary damages of not less than $1,000, nor more than $15,000 for each violation. The state is deemed to have waived any immunity to a cause of action brought under this chapter.

Subd. 2. **Injunction.** A responsible authority or government entity which violates or proposes to violate this chapter may be enjoined by the district court. The court may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate this chapter.

Subd. 3. **Venue.** An action filed pursuant to this section may be commenced in the county in which the individual alleging damage or seeking relief resides, or in the county wherein the political subdivision exists, or, in the case of the state, any county.

Subd. 4. **Action to compel compliance.** (a) Actions to compel compliance may be brought either under this subdivision or section 13.085. For actions under this subdivision, in addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved person seeking to enforce the person's rights under this chapter or obtain access to data may bring an action in district court to compel compliance with this chapter and may recover costs and disbursements, including reasonable attorney's fees, as determined by the court. If the court determines that an action brought under this subdivision is frivolous and without merit and a basis in fact, it may award reasonable costs and attorney fees to the responsible authority. If the court issues an order to compel compliance under this subdivision, the court may impose a civil penalty of up to $1,000 against the government entity. This penalty is payable to the state general fund and is in addition to damages under subdivision 1. The matter shall be heard as soon as possible. In an action involving a request for government data under section 13.03 or 13.04, the court may inspect in camera the government data in dispute, but shall conduct its hearing in public and in a manner that protects the security of data classified as not public. If the court issues an order to compel compliance under this subdivision, the court shall forward a copy of the order to the commissioner of administration.

(b) In determining whether to assess a civil penalty under this subdivision, the court or other tribunal shall consider whether the government entity has substantially complied with general data practices under this chapter, including but not limited to, whether the government entity has:

(1) designated a responsible authority under section 13.02, subdivision 16;

(2) designated a data practices compliance official under section 13.05, subdivision 13;

(3) prepared the public document that names the responsible authority and describes the records and data on individuals that are maintained by the government entity under section 13.05, subdivision 1;

(4) developed public access procedures under section 13.03, subdivision 2; procedures to guarantee the rights of data subjects under section 13.05, subdivision 8; and procedures to ensure

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

that data on individuals are accurate and complete and to safeguard the data's security under section 13.05, subdivision 5;

(5) acted in conformity with an opinion issued under section 13.072 that was sought by a government entity or another person; or

(6) provided ongoing training to government entity personnel who respond to requests under this chapter.

(c) The court shall award reasonable attorney fees to a prevailing plaintiff who has brought an action under this subdivision if the government entity that is the defendant in the action was also the subject of a written opinion issued under section 13.072 and the court finds that the opinion is directly related to the cause of action being litigated and that the government entity did not act in conformity with the opinion.

Subd. 5. **Immunity from liability.** A government entity or person that releases not public data pursuant to an order under section 13.03, subdivision 6 is immune from civil and criminal liability.

Subd. 6. **Immunity from liability; personnel settlement.** No cause of action may arise as a result of the release of data contained in a termination or personnel settlement agreement if the data were not public data as defined in section 13.02, at the time the agreement was executed but become public data under a law enacted after execution.

History: *1974 c 479 s 5; 1975 c 401 s 5; 1976 c 239 s 4,5; 1979 c 328 s 14; 1980 c 603 s 13; 1981 c 311 s 39; 1Sp1981 c 4 art 1 s 8-10; 1982 c 545 s 24; 1985 c 298 s 5,6; 1986 c 444; 1991 c 319 s 30; 1999 c 227 s 22; 2000 c 468 s 8; 2001 c 202 s 3; 1Sp2003 c 8 art 2 s 3; 2005 c 163 s 29-31; 2007 c 129 s 8; 2008 c 315 s 3,4; 2010 c 297 s 2*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

13.085 ADMINISTRATIVE REMEDY.

Subdivision 1. **Definition.** As used in this section, "office" means the Office of Administrative Hearings.

Subd. 2. **Complaints.** (a) A complaint alleging a violation of this chapter for which an order to compel compliance is requested may be filed with the office. An action to compel compliance does not include procedures pursuant to section 13.04, subdivision 4 or 4a.

(b) The complaint must be filed with the office within two years after the occurrence of the act or failure to act that is the subject of the complaint, except that if the act or failure to act involves concealment or misrepresentation by the government entity that could not be discovered during that period, the complaint may be filed with the office within one year after the concealment or misrepresentation is discovered.

(c) The complaint must be made in writing, submitted under oath, and detail the factual basis for the claim that a violation of law has occurred. The office may prescribe a standard form for the complaint. The complaint must be accompanied by a filing fee of $1,000 or a bond to guarantee the payment of this fee.

(d) Upon receipt of a filed complaint, the office must immediately notify the respondent and, if known, the applicable responsible authority for the government entity, if the responsible authority is not otherwise named as the respondent. The office must provide the respondent with a copy of the complaint by the most expeditious means available. Notice to a responsible authority must be delivered by certified mail. The office must also notify, to the extent practicable, any individual or entity that is the subject of all or part of the data in dispute.

(e) The office must notify the commissioner of administration of an action filed under this section. Proceedings under this section must be dismissed if a request for an opinion from the commissioner was accepted on the matter under section 13.072 before the complaint was filed, and the complainant's filing fee must be refunded.

(f) The respondent must file a response to the complaint within 15 business days of receipt of the notice. For good cause shown, the office may extend the time for filing a response.

Subd. 3. **Probable cause review.** (a) The chief administrative law judge must assign an administrative law judge to review each complaint. Within 20 business days after a response is filed, or the respondent's time to file the response, including any extension, has expired, the administrative law judge must make a preliminary determination for its disposition as follows:

(1) if the administrative law judge determines that the complaint and any timely response of the respondent agency do not present sufficient facts to believe that a violation of this chapter has occurred, the complaint must be dismissed; or

(2) if the administrative law judge determines that the complaint and any timely response of the respondent agency do present sufficient facts to believe that a violation of this chapter has occurred, the judge must schedule a hearing as provided in subdivision 4.

(b) The office must notify all parties of the determination made under paragraph (a). The notice must provide as follows:

(1) if the complaint is scheduled for a hearing, the notice must identify the time and place of the hearing and inform all parties that they may submit evidence, affidavits, documentation, and argument for consideration by the administrative law judge; or

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(2) if the complaint is dismissed for failure to present sufficient facts to believe that a violation of this chapter has occurred, the notice must inform the parties of the right of the complainant to seek reconsideration of the decision on the record by the chief administrative law judge, as provided in paragraph (c).

(c) A petition for reconsideration may be filed no later than five business days after a complaint is dismissed for failure to present sufficient facts to believe that a violation of this chapter has occurred. The chief administrative law judge must review the petition and make a final ruling within ten business days after its receipt. If the chief administrative law judge determines that the assigned administrative law judge made a clear material error, the chief administrative law judge must schedule the matter for a hearing as provided in subdivision 4.

Subd. 4. **Hearing; procedure.** (a) A hearing on a complaint must be held within 30 business days after the parties are notified that a hearing will be held. An oral hearing to resolve questions of law may be waived upon consent of all parties and the presiding administrative law judge. For good cause shown, the judge may delay the date of a hearing by no more than ten business days. The judge may continue a hearing to enable the parties to submit additional evidence or testimony.

(b) The administrative law judge must consider any evidence and argument submitted until the hearing record is closed, including affidavits and documentation.

(c) All hearings, and any records relating to the hearing, must be open to the public, except that the judge may inspect in camera any government data in dispute. If the hearing record contains information that is not public data, the judge may conduct a closed hearing to consider the information, issue necessary protective orders, and seal all or part of the hearing record, as provided in section 14.60, subdivision 2. If a party contends, and the judge concludes, that not public data could be improperly disclosed while that party is presenting its arguments, the judge shall close any portion of the hearing as necessary to prevent the disclosure. A hearing may be conducted by conference telephone call or interactive audio/video system, at the discretion of the presiding judge, and upon consent of all parties.

Subd. 5. **Disposition.** (a) Following a hearing, the judge must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions. The judge may:

(1) dismiss the complaint;

(2) find that an act or failure to act constituted a violation of this chapter;

(3) impose a civil penalty against the respondent of up to $300;

(4) issue an order compelling the respondent to comply with a provision of law that has been violated, and may establish a deadline for production of data, if necessary; and

(5) refer the complaint to the appropriate prosecuting authority for consideration of criminal charges.

(b) In determining whether to assess a civil penalty, the office shall consider the factors described in section 13.08, subdivision 4.

(c) The judge must render a decision on a complaint within ten business days after the hearing record closes. The chief administrative law judge shall provide for public dissemination of orders issued under this section. If the judge determines that a government entity has violated a provision of law and issues an order to compel compliance, the office shall forward a copy of

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

the order to the commissioner of administration. Any order issued pursuant to this section is enforceable through the district court for the district in which the respondent is located.

(d) A party aggrieved by a final decision on a complaint filed under this section is entitled to judicial review as provided in sections 14.63 to 14.69. Proceedings on a complaint are not a contested case within the meaning of chapter 14 and are not otherwise governed by chapter 14.

(e) A decision of the office under this section is not controlling in any subsequent action brought in district court alleging the same violation and seeking damages.

(f) A government entity or person that releases not public data pursuant to an order under this section is immune from civil and criminal liability for that release. A government entity or person that acts in conformity with an order issued under this section to the government entity or to any other person is not liable for compensatory or exemplary damage or awards of attorney fees for acting in conformity with that order in actions under this section or section 13.08, or for a penalty under section 13.09.

Subd. 6. **Costs; attorney fees.** (a) A rebuttable presumption shall exist that a complainant who substantially prevails on the merits in an action brought under this section is entitled to an award of reasonable attorney fees, not to exceed $5,000. An award of attorney fees may be denied if the judge determines that the violation is merely technical or that there is a genuine uncertainty about the meaning of the governing law.

(b) Reasonable attorney fees, not to exceed $5,000, must be awarded to a substantially prevailing complainant if the government entity that is the respondent in the action was also the subject of a written opinion issued under section 13.072 and the administrative law judge finds that the opinion is directly related to the matter in dispute and that the government entity did not act in conformity with the opinion.

(c) The office shall refund the filing fee of a substantially prevailing complainant in full, less $50, and the office's costs in conducting the matter shall be billed to the respondent, not to exceed $1,000.

(d) A complainant that does not substantially prevail on the merits shall be entitled to a refund of the filing fee, less any costs incurred by the office in conducting the matter.

(e) If the administrative law judge determines that a complaint is frivolous, or brought for purposes of harassment, the judge must order that the complainant pay the respondent's reasonable attorney fees, not to exceed $5,000. The complainant shall not be entitled to a refund of the filing fee.

(f) The court shall award the complainant costs and attorney fees incurred in bringing an action in district court to enforce an order of the Office of Administrative Hearings under this section.

Subd. 7. **Special account; appropriation.** Proceeds collected by the office from filing fees and bonds submitted under this section shall be deposited into the administrative hearings account established under section 14.54 and are appropriated to the office for use in administering the requirements of this section. By September 1 each year, the chief administrative law judge must report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the office on receipt and expenditure of money under this section in the preceding fiscal year.

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

History: *2010 c 297 s 3*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

13.09 PENALTIES.

Any person who willfully violates the provisions of this chapter or any rules adopted under this chapter is guilty of a misdemeanor. Willful violation of this chapter by any public employee constitutes just cause for suspension without pay or dismissal of the public employee.

History: *1974 c 479 s 6; 1975 c 401 s 6; 1976 c 239 s 6; 1981 c 311 s 39; 1982 c 545 s 24; 1985 c 298 s 7*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

13.43 PERSONNEL DATA.

Subdivision 1. **Definition.** As used in this section, "personnel data" means government data on individuals maintained because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a government entity. Personnel data includes data submitted by an employee to a government entity as part of an organized self-evaluation effort by the government entity to request suggestions from all employees on ways to cut costs, make government more efficient, or improve the operation of government. An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion.

Subd. 2. **Public data.** (a) Except for employees described in subdivision 5 and subject to the limitations described in subdivision 5a, the following personnel data on current and former employees, volunteers, and independent contractors of a government entity is public:

(1) name; employee identification number, which must not be the employee's Social Security number; actual gross salary; salary range; terms and conditions of employment relationship; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;

(2) job title and bargaining unit; job description; education and training background; and previous work experience;

(3) date of first and last employment;

(4) the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;

(5) the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body;

(6) the terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement as defined in section 123B.143, subdivision 2, paragraph (a); except that the agreement must include specific reasons for the agreement if it involves the payment of more than $10,000 of public money;

(7) work location; a work telephone number; badge number; work-related continuing education; and honors and awards received; and

(8) payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

(b) For purposes of this subdivision, a final disposition occurs when the government entity makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the government entity, or arbitrator. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. A disciplinary

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

action does not become public data if an arbitrator sustains a grievance and reverses all aspects of any disciplinary action.

(c) The government entity may display a photograph of a current or former employee to a prospective witness as part of the government entity's investigation of any complaint or charge against the employee.

(d) A complainant has access to a statement provided by the complainant to a government entity in connection with a complaint or charge against an employee.

(e) Notwithstanding paragraph (a), clause (5), upon completion of an investigation of a complaint or charge against a public official, or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "public official" means:

(1) the head of a state agency and deputy and assistant state agency heads;

(2) members of boards or commissions required by law to be appointed by the governor or other elective officers; and

(3) executive or administrative heads of departments, bureaus, divisions, or institutions within state government.

Subd. 2a. **Data disclosure by statewide pension plans.** Notwithstanding any law to the contrary, with respect to data collected and maintained on members, survivors, and beneficiaries by statewide retirement systems that is classified as public data in accordance with subdivision 2, those retirement systems may be only required to disclose name, gross pension, and type of benefit awarded, except as required by sections 13.03, subdivisions 4 and 6; and 13.05, subdivisions 4 and 9.

Subd. 3. **Applicant data.** Except for applicants described in subdivision 5, the following personnel data on current and former applicants for employment by a government entity is public: veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. Names of applicants shall be private data except when certified as eligible for appointment to a vacancy or when applicants are considered by the appointing authority to be finalists for a position in public employment. For purposes of this subdivision, "finalist" means an individual who is selected to be interviewed by the appointing authority prior to selection.

Subd. 4. **Other data.** All other personnel data is private data on individuals but may be released pursuant to a court order. Data pertaining to an employee's dependents are private data on individuals.

Subd. 5. **Undercover law enforcement officer.** All personnel data maintained by a government entity relating to an individual employed as or an applicant for employment as an undercover law enforcement officer are private data on individuals. When the individual is no longer assigned to an undercover position, the data described in subdivisions 2 and 3 become public unless the law enforcement agency determines that revealing the data would threaten the personal safety of the officer or jeopardize an active investigation.

Subd. 5a. **Limitation on disclosure of certain personnel data.** Notwithstanding any other provision of this section, the following data relating to employees of a secure treatment facility defined in section 253B.02, subdivision 18a, employees of a state correctional facility, or

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

employees of the Department of Corrections directly involved in supervision of offenders in the community, shall not be disclosed to facility patients, corrections inmates, or other individuals who facility or correction administrators reasonably believe will use the information to harass, intimidate, or assault any of these employees: place where previous education or training occurred; place of prior employment; and payroll timesheets or other comparable data, to the extent that disclosure of payroll timesheets or other comparable data may disclose future work assignments, home address or telephone number, the location of an employee during nonwork hours, or the location of an employee's immediate family members.

Subd. 6. **Access by labor organizations.** Personnel data may be disseminated to labor organizations to the extent that the responsible authority determines that the dissemination is necessary to conduct elections, notify employees of fair share fee assessments, and implement the provisions of chapters 179 and 179A. Personnel data shall be disseminated to labor organizations and to the Bureau of Mediation Services to the extent the dissemination is ordered or authorized by the commissioner of the Bureau of Mediation Services.

Subd. 7. **Employee assistance data.** All data created, collected or maintained by a government entity to administer employee assistance programs similar to the one authorized by section 43A.319 are classified as private, pursuant to section 13.02, subdivision 12. This section shall not be interpreted to authorize the establishment of employee assistance programs.

Subd. 8. **Harassment data.** When allegations of sexual or other types of harassment are made against an employee, the employee does not have access to data that would identify the complainant or other witnesses if the responsible authority determines that the employee's access to that data would:

(1) threaten the personal safety of the complainant or a witness; or

(2) subject the complainant or witness to harassment.

If a disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary for the employee to prepare for the proceeding.

Subd. 9. **Peer counseling debriefing data.** (a) Data acquired by a peer group member in a public safety peer counseling debriefing is private data on the person being debriefed.

(b) For purposes of this subdivision, "public safety peer counseling debriefing" means a group process oriented debriefing session held for peace officers, firefighters, medical emergency persons, dispatchers, or other persons involved with public safety emergency services, that is established by any government entity providing public safety emergency services and is designed to help a person who has suffered an occupation-related traumatic event begin the process of healing and effectively dealing with posttraumatic stress.

Subd. 10. **Prohibition on agreements limiting disclosure or discussion of personnel data.** (a) A government entity may not enter into an agreement settling a dispute arising out of the employment relationship with the purpose or effect of limiting access to or disclosure of personnel data or limiting the discussion of information or opinions related to personnel data. An agreement or portion of an agreement that violates this paragraph is void and unenforceable.

(b) Paragraph (a) applies to the following, but only to the extent that the data or information could otherwise be made accessible to the public:

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

(1) an agreement not to discuss, publicize, or comment on personnel data or information;

(2) an agreement that limits the ability of the subject of personnel data to release or consent to the release of data; or

(3) any other provision of an agreement that has the effect of limiting the disclosure or discussion of information that could otherwise be made accessible to the public, except a provision that limits the ability of an employee to release or discuss private data that identifies other employees.

(c) Paragraph (a) also applies to a court order that contains terms or conditions prohibited by paragraph (a).

Subd. 11. **Protection of employee or others.** (a) If the responsible authority or designee of a government entity reasonably determines that the release of personnel data is necessary to protect an employee from harm to self or to protect another person who may be harmed by the employee, data that are relevant to the concerns for safety may be released as provided in this subdivision.

(b) The data may be released:

(1) to the person who may be harmed and to an attorney representing the person when the data are relevant to obtaining a restraining order;

(2) to a prepetition screening team conducting an investigation of the employee under section 253B.07, subdivision 1; or

(3) to a court, law enforcement agency, or prosecuting authority.

(c) Section 13.03, subdivision 4, paragraph (c), applies to data released under this subdivision, except to the extent that the data have a more restrictive classification in the possession of the agency or authority that receives the data. If the person who may be harmed or the person's attorney receives data under this subdivision, the data may be used or released further only to the extent necessary to protect the person from harm.

Subd. 12. **Sharing of law enforcement personnel background investigation data.** A law enforcement agency shall share data from a background investigation done under section 626.87 with the Peace Officer Standards and Training Board or with a law enforcement agency doing an investigation of the subject of the data under section 626.87.

Subd. 13. **Dissemination of data to Department of Employment and Economic Development.** Private personnel data must be disclosed to the Department of Employment and Economic Development for the purpose of administration of the unemployment benefits program under chapter 268.

Subd. 14. **Maltreatment data.** When a report of alleged maltreatment of a student in a school facility, as defined in section 626.556, subdivision 2, paragraph (f), is made to the commissioner of education under section 626.556, data that are relevant to a report of maltreatment and are collected by the school facility about the person alleged to have committed maltreatment must be provided to the commissioner of education upon request for purposes of an assessment or investigation of the maltreatment report. Data received by the commissioner of education pursuant to these assessments or investigations are classified under section 626.556.

Subd. 15. **Dissemination of data to law enforcement.** Private personnel data, or data on employees that are confidential data under section 13.39, may be disseminated to a law

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in the investigation of a crime committed or allegedly committed by an employee.

Subd. 16. **School district or charter school disclosure of violence or inappropriate sexual contact.** The superintendent of a school district or the superintendent's designee, or a person having administrative control of a charter school, must release to a requesting school district or charter school private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student, if an investigation conducted by or on behalf of the school district or law enforcement affirmed the allegations in writing prior to release and the investigation resulted in the resignation of the subject of the data.

Subd. 17. **Continuity of operations.** Personal home contact information may be used to ensure that an employee can be reached in the event of an emergency or other disruption affecting continuity of operation of a government entity. An employee's personal home contact information may be shared with another government entity in the event of an emergency or other disruption to ensure continuity of operation of either government entity.

Subd. 18. **Private personnel data.** Private personnel data of state employees must be disclosed to the Department of Administration for the purpose of administration of the workers' compensation program as provided in chapter 176.

History: *1979 c 328 s 17; 1980 c 603 s 24,25,29; 1981 c 311 s 12,13,17,39; 1982 c 545 s 9,10,24; 1984 c 436 s 17; 1984 c 544 s 89; 1985 c 298 s 12; 1987 c 186 s 15; 1987 c 284 art 1 s 1; 1987 c 351 s 7; 1987 c 384 art 1 s 2; 1988 c 598 s 1; 1990 c 550 s 1; 1991 c 319 s 4-6; 1993 c 351 s 6,7; 1994 c 618 art 1 s 9; 1995 c 259 art 1 s 7-9; 1Sp1995 c 3 art 9 s 1; 1996 c 440 art 1 s 10-12; 1997 c 214 s 2; 1998 c 397 art 11 s 3; 1999 c 107 s 66; 1999 c 182 s 1; 1999 c 227 s 6; 1999 c 250 art 1 s 114; 2000 c 343 s 4; 2001 c 70 s 1; 2001 c 178 art 2 s 3; 2002 c 243 s 1; 2002 c 352 s 6; 2002 c 396 s 1; 2003 c 130 s 12; 1Sp2003 c 8 art 2 s 8; 2004 c 137 s 1; 2004 c 206 s 52; 2004 c 288 art 3 s 1,2; 2004 c 290 s 4,5; 2005 c 163 s 37-39; 2007 c 129 s 23-28; 2009 c 142 art 1 s 1,2; 2010 c 365 art 1 s 3,4*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

13.601 ELECTED AND APPOINTED OFFICIALS.

Subdivision 1. **Financial disclosure statements.** Financial disclosure statements of elected or appointed officials which, by requirement of the political subdivision, are filed with the political subdivision, are public data on individuals.

Subd. 2. **Correspondence.** Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient.

Subd. 3. **Applicants for appointment.** (a) Data about applicants for appointment to a public body collected by a government entity as a result of the applicant's application for appointment to the public body are private data on individuals except that the following are public:

(1) name;

(2) city of residence, except when the appointment has a residency requirement that requires the entire address to be public;

(3) education and training;

(4) employment history;

(5) volunteer work;

(6) awards and honors;

(7) prior government service; and

(8) any data required to be provided or that is voluntarily provided in an application for appointment to a multimember agency pursuant to section 15.0597.

(b) Once an individual is appointed to a public body, the following additional items of data are public:

(1) residential address; and

(2) either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee.

(c) Notwithstanding paragraph (b), any electronic mail address or telephone number provided by a public body for use by an appointee shall be public. An appointee may use an electronic mail address or telephone number provided by the public body as the designated electronic mail address or telephone number at which the appointee can be reached.

History: *1979 c 328 s 22; 1981 c 311 s 39; 1982 c 545 s 24; 1984 c 436 s 27; 1999 c 227 s 22; 2005 c 163 s 43; 2008 c 315 s 10*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

15.17 OFFICIAL RECORDS.

Subdivision 1. **Must be kept.** All officers and agencies of the state, counties, cities, towns, school districts, municipal subdivisions or corporations, or other public authorities or political entities within the state, hereinafter "public officer," shall make and preserve all records necessary to a full and accurate knowledge of their official activities. Government records may be produced in the form of computerized records. All government records shall be made on a physical medium of a quality to insure permanent records. Every public officer is empowered to reproduce records if the records are not deemed to be of permanent or archival value by the commissioner of administration and the records disposition panel under section 138.17. The public officer is empowered to reproduce these records by any photographic, photostatic, microphotographic, optical disk imaging system, microfilming, or other reproduction method that clearly and accurately reproduces the records. Each public officer may order that those photographs, photostats, microphotographs, microfilms, optical images, or other reproductions, be substituted for the originals of them. The public officer may direct the destruction or sale for salvage or other disposition of the originals from which they were made, in accordance with the disposition requirements of section 138.17. Photographs, photostats, microphotographs, microfilms, optical images, or other reproductions are for all purposes deemed the original recording of the papers, books, documents, and records reproduced when so ordered by any public officer and are admissible as evidence in all courts and proceedings of every kind. A facsimile or exemplified or certified copy of a photograph, photostat, microphotograph, microfilm, optical image, or other reproduction, or an enlargement or reduction of it, has the same effect and weight as evidence as would a certified or exemplified copy of the original.

Subd. 2. **Responsibility for records.** The chief administrative officer of each public agency shall be responsible for the preservation and care of the agency's government records, which shall include written or printed books, papers, letters, contracts, documents, maps, plans, computer-based data, and other records made or received pursuant to law or in connection with the transaction of public business. It shall be the duty of each agency, and of its chief administrative officer, to carefully protect and preserve government records from deterioration, mutilation, loss, or destruction. Records or record books may be repaired, renovated, or rebound when necessary to preserve them properly.

Subd. 3. **Delivery to successor.** Every legal custodian of government records, at the expiration of that official's term of office or authority, or on the official's death a legal representative, shall deliver to a successor in office all government records in custody; and the successor shall receipt therefor to the predecessor or legal representative and shall file in the office a signed acknowledgment of the delivery. Every public officer shall demand from a predecessor in office, or the predecessor's legal representative, the delivery of all government records belonging to the office.

Subd. 4. **Accessible to public.** Access to records containing government data is governed by sections 13.03 and 138.17.

History: *1941 c 553 s 1-4; 1957 c 28 s 1,2; 1973 c 123 art 5 s 7; 1973 c 422 s 1; 1979 c 328 s 23; 1981 c 311 s 39; 1982 c 545 s 24; 1982 c 573 s 1; 1986 c 444; 1990 c 506 art 2 s 4; 1993 c 71 s 1; 1999 c 227 s 11,12; 2007 c 76 s 1*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

138.17 GOVERNMENT RECORDS; ADMINISTRATION.

Subdivision 1. **Destruction, preservation, reproduction of records; prima facie evidence.** (a) The attorney general, legislative auditor in the case of state records, state auditor in the case of local records, and director of the Minnesota Historical Society, hereinafter director, shall constitute the Records Disposition Panel. The members of the panel shall have power by majority vote to direct the destruction or sale for salvage of government records determined to be no longer of any value, or to direct the disposition by gift to the Minnesota Historical Society or otherwise of government records determined to be valuable for preservation. The Records Disposition Panel may by majority vote order any of those records to be reproduced by photographic or other means, and order that photographic or other reproductions be substituted for the originals of them. It may direct the destruction or sale for salvage or other disposition of the originals from which they were made. Photographic or other reproductions shall for all purposes be deemed the originals of the records reproduced when so ordered by the records disposition panel, and shall be admissible as evidence in all courts and in proceedings of every kind. A facsimile, exemplified or certified copy of a photographic, optical disk imaging, or other reproduction, or an enlargement or reduction of it, shall have the same effect and weight as evidence as would a certified or exemplified copy of the original. The Records Disposition Panel, by majority vote, may direct the storage of government records, except as herein provided, and direct the storage of photographic or other reproductions. Photographic or other reproductions substituted for original records shall be disposed of in accordance with the procedures provided for the original records.

(b) For the purposes of this chapter:

(1) the term "government records" means state and local records, including all cards, correspondence, discs, maps, memoranda, microfilms, papers, photographs, recordings, reports, tapes, writings, optical disks, and other data, information, or documentary material, regardless of physical form or characteristics, storage media or conditions of use, made or received by an officer or agency of the state and an officer or agency of a county, city, town, school district, municipal subdivision or corporation or other public authority or political entity within the state pursuant to state law or in connection with the transaction of public business by an officer or agency;

(2) the term "state record" means a record of a department, office, officer, commission, commissioner, board or any other agency, however styled or designated, of the executive branch of state government; a record of the state legislature; a record of any court, whether of statewide or local jurisdiction; and any other record designated or treated as a state record under state law;

(3) the term "local record" means a record of an agency of a county, city, town, school district, municipal subdivision or corporation or other public authority or political entity;

(4) the term "records" excludes data and information that does not become part of an official transaction, library and museum material made or acquired and kept solely for reference or exhibit purposes, extra copies of documents kept only for convenience of reference and stock of publications and processed documents, and bonds, coupons, or other obligations or evidences of indebtedness, the destruction or other disposition of which is governed by other laws;

(5) the term "state archives" means those records preserved or appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of government or because of the value of the information contained in them, when determined to have sufficient historical or other value to warrant continued preservation by the

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

state of Minnesota and accepted for inclusion in the collections of the Minnesota Historical Society.

(c) If the decision is made to dispose of records by majority vote, the Minnesota Historical Society may acquire and retain whatever they determine to be of potential historical value.

Subd. 1a. **Records inspection.** Government records which a state agency, political subdivision, or statewide system lists on a records disposition application or records schedule, or on which archival assistance or advice is requested, may be inspected by state archives' employees if state archives gives prior notice. Employees of the archives shall have access to the records for the purpose of determining the historical or other continuing value of the records, regardless of the records' classification pursuant to chapter 13 or 270B. Employees of the archives shall be liable to the penalties set forth for improper disclosure by them of private, confidential, nonpublic, or protected nonpublic data inspected for this purpose.

Subd. 1b. **Transfer process.** After July 1, 1982, all records deemed to be of continuing value and authorized for transfer to the archives by the Records Disposition Panel shall be retained by the requesting agency or may be transferred to the archives in accordance with subdivision 1, notwithstanding the provisions of chapter 13. The responsible authority of the state agency, political subdivision, or statewide system transferring records to the archives shall notify the archivist or a designee with regard to the records transferred of the classification of the records pursuant to chapter 13.

Subd. 1c. **Access to archives records.** (a) All records transferred to the archives shall be accessible to the public unless the archives determines that the information:

(1) was compiled for law enforcement purposes and disclosure would (i) materially impair the effectiveness of an ongoing investigation, criminal intelligence operation, or law enforcement proceeding; (ii) identify a confidential informant; (iii) reveal confidential investigative techniques or procedures, including criminal intelligence activity; or (iv) endanger the life of an individual;

(2) is administrative or technical information, including software, operating protocols, employee manuals, or other information, the disclosure of which would jeopardize the security of a record-keeping system;

(3) is proprietary information, including computer programs and software and other types of information manufactured or marketed by persons under exclusive legal right, owned by the agency or entrusted to it;

(4) contains trade secrets or confidential commercial and financial information obtained, upon request, from a person;

(5) is library, archival, or museum material contributed by private persons to the extent of any lawful limitation imposed upon the material; or

(6) if disclosed, would constitute a clearly unwarranted invasion of personal privacy. Disclosure of an individually identifiable record does not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual.

(b) The society may withhold access to state archives from any person who willfully mutilates, damages, or defaces archival records, or wrongfully removes them from state archives;

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

provided that the society shall notify the person of the decision to withhold access, and the person may, within 30 days, appeal the decision to the Executive Council of the society.

(c) The state archivist shall notify any person from whom access is withheld pursuant to paragraph (a). The person may, within 30 days of the day the notice is sent, appeal the archivist's determination to the Executive Council of the society. The Executive Council shall, within 30 days of the filing of an appeal, issue a decision determining if the archivist has correctly applied the standards of paragraph (a). The decision of the Executive Council may be appealed to the District Court of Ramsey County.

Subd. 2. [Repealed, 1971 c 529 s 15]

Subd. 3. **University; State Agricultural Society; Minnesota Historical Society.** Laws 1971, chapter 529, sections 1 to 14 shall not apply to the public records of the University of Minnesota, the Minnesota State Agriculture Society, or the Minnesota Historical Society.

Subd. 4. **State library.** No public records of the Minnesota State Library shall be subject to the disposition or orders provided by Laws 1971, chapter 529, except with the consent of the state librarian.

Subd. 5. **Supreme Court.** No public records of the Supreme Court shall be subject to the disposition or orders provided by Laws 1971, chapter 529, except with the consent of the court.

Subd. 6. **Archivist; equipment; supplies.** The Minnesota Historical Society shall employ a professional archivist, who shall be known as the state archivist, and other agents and personnel as are necessary to enable it to carry out its duties and powers. The archivist shall be appointed by the director of the society.

Subd. 7. **Records management.** It shall be the duty of the head of each state agency and the governing body of each county, municipality, and other subdivision of government to establish and maintain an active, continuing program for the economical and efficient management of the records of each agency, county, municipality, or other subdivision of government. Public officials shall prepare an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records, establishing a time period for the retention or disposal of each series of records. When the schedule is unanimously approved by the records disposition panel, the head of the governmental unit or agency having custody of the records may dispose of the type of records listed in the schedule at a time and in a manner prescribed in the schedule for particular records which were created after the approval. A list of records disposed of pursuant to this subdivision shall be maintained by the governmental unit or agency. When records containing not public data as defined in section 13.02, subdivision 8a, are being disposed of under this subdivision, the records must be destroyed in a way that prevents their contents from being determined.

Subd. 8. **Emergency records preservation.** Every county, municipality, or other subdivision of government may institute a program for the preservation of necessary documents essential to the continuity of government in the event of a disaster or emergency.

Subd. 9. [Repealed, 2007 c 76 s 2]

Subd. 10. [Repealed, 2007 c 76 s 2]

History: *1947 c 547 s 5; 1961 c 175 s 3-8; 1963 c 695 s 2,3; 1971 c 529 s 4-10; 1973 c 32 s 2,3; 1973 c 123 art 5 s 7; 1974 c 184 s 8,9; 1976 c 324 s 22; 1978 c 717 s 2; 1981 c 311 s 39; 1982*

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.

c 545 s 24; 1982 c 573 s 3-8; 1986 c 444; 1987 c 365 s 18; 1990 c 506 art 2 s 17,18; 1991 c 291 art 21 s 4; 1991 c 345 art 1 s 77; 1993 c 71 s 2; 1997 c 202 art 3 s 35; 1999 c 250 art 1 s 80,81; 2001 c 202 s 10; 2005 c 156 art 5 s 23; 2006 c 212 art 1 s 5; 2006 c 233 s 6; 2006 c 253 s 7,8

Copyright © 2010 by the Office of the Revisor of Statutes, State of Minnesota. All Rights Reserved.