

The 2014 Legislative session is underway

The Minnesota Legislature convened on Feb. 25, 2014, and just days into the new session, they've already taken up issues related to data practices and open meetings. Bill introductions of interest address the treatment of law enforcement booking photos ("mug shots"), contracts between the government and private sector, and the establishment of a legislative commission on data practices and privacy issues. As the legislative session progresses, the Legislature may consider some familiar topics in carry-over bills from last year, including data breaches, the classification and retention of law enforcement license plate reader data, and social media changes to the Open Meeting Law. Here are some other legislative items of note:

IPAD's Open Meeting Law proposal. IPAD is proposing some slight changes to the Open Meeting Law, which would promote increased public access to information about meetings by utilizing technology. The proposal ([HF 2236](#)) will allow state agencies to post required meeting notices on their websites as an alternative to publishing in the State Register. Rep. Mike Freiberg will author the bill in the House.

Privacy and technology. The [House Civil Law committee](#) held an oversight hearing in January where law enforcement and others testified about the uses of current technology and the impacts on privacy. The issues raised and discussed at this hearing will likely be heard throughout the legislative session. Given the state of current surveillance technology, we will see the Legislature continue to address potential impacts on privacy.

Expungement working group. In light of current issues related to the expungement of criminal records, the Senate and House established a [joint working group](#) to receive information, hold discussions, and work to identify solutions. The group, chaired by Sen. Bobby Joe Champion and Rep. Debra Hilstrom, met four times between September 2013 and February 2014. They heard testimony from the public and listened to presentations from government and other experts in the field. Rep. Melin will author the bill ([HF 2576](#)) in the House and Sen. Champion will author it in the Senate ([SF 2214](#)). Hearings on the bills began the week of March 3rd.

As always, IPAD will track relevant bills, monitor legislative hearings, and provide a full summary of data practices and open meeting related legislation in our spring FYi newsletter. In the meantime, please email us with any questions at info.ipad@state.mn.us.

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Caselaw Update

In *Argus Leader Media v. U.S. Department of Agriculture*, 12–3765 (8th Cir. Jan. 28, 2014), Argus Leader Media, a Sioux Falls, S.D. newspaper, was denied its federal Freedom of Information Act (FOIA) request for yearly Electronic Benefit Transfer (EBT) amounts for every participating Supplemental Nutrition Assistance Program (SNAP) retailer over the past five years from the U.S. Department of Agriculture (USDA).

The court used a plain meaning approach to reverse and remand the District Court’s finding that the data requested are exempt from disclosure under 7 U.S.C. § 2018. Section 2018 exempts information obtained from a retailer for administrative purposes. The way the SNAP program operates, beneficiaries of SNAP use their EBT card at a retailer, the EBT transactions are processed by a third party payment processor and sent to USDA, and USDA loads the retailer’s aggregated data into a database. So, because USDA generates the requested information in its own database, and the underlying data is “obtained” from third-party payment processors, not the retailer, it does not fall under the statute and the data is not exempt from disclosure.

In *Bass v. Anoka County, et. al.*, 13-860 (D. Minn. 2014), *McDonough v. Al’s Auto Sales, et. al.*, 13-1889 (D. Minn. 2014), and *Potocnik v. Anoka County, et. al.*, 13-1103 (D. Minn. Feb. 21, 2014), Plaintiffs each brought claims under the federal Driver’s Privacy Protection Act (DPPA) and the Fourth Amendment to the U.S. Constitution against numerous city, county and law enforcement entities, as well as against the past and current commissioners of the Minnesota Dept. of Public Safety, for unlawfully accessing the plaintiffs’ motor vehicle records.

Issuing the three orders on the same day, the court dismissed all DPPA claims based on violations prior to 2009 as time-barred under the general four-year statute of limitations for federal claims. The court then held that the plaintiffs failed to properly allege that the defendants accessed their motor vehicle records for an impermissible purpose. The court refused to infer that plaintiffs’ records were impermissibly accessed based solely on the number of times they had been accessed, and without further evidence for impermissibility, dismissed all DPPA claims.



The court similarly dismissed the plaintiffs’ Fourth Amendment claims. The court held that an individual does not have a reasonable expectation of privacy in motor vehicle records, as the information is voluntarily supplied and the information can be accessed from other sources. As such, there is no constitutional right to privacy in motor vehicle records. Finally, the court dismissed the plaintiffs’ 42 U.S.C. § 1983 claims, because the remedies provided under the DPPA preclude enforcement under other statutory schemes.

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Caselaw Update, cont.

In *Evenstad v. Herberg, et al.*, 12-3179 (D. Minn. Jan. 10, 2014), the Plaintiff was involuntarily placed in the Minnesota Sex Offender Program. He brought a complaint under the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) in federal court against the Commissioner of the Department of Human Services for the unlawful storage and collection of his private data.

The Commissioner of Human Services successfully argued that the Plaintiff cannot maintain a claim under Chapter 13 against a person in his/her individual capacity under Minn. Stat. 13.08, subd. 1, and that any claims against the Commissioner in an official capacity must be dismissed because Minnesota did not expressly waive its U.S. Constitution Eleventh Amendment immunity to suit in federal court. The Court agreed, stating that a waiver of Eleventh Amendment immunity must be explicit in the statute, and because Chapter 13 did not expressly waive that immunity, the Plaintiff could not bring his claim in federal court. The Plaintiff's claim was ultimately dismissed.

In *Rasmusson v. Chisago County, et al.*, 12-cv-0632 (D. Minn. Jan. 10, 2014), the District Court granted the defendants' motion to dismiss for failure to state a claim in all but one count against one defendant. The plaintiff brought suit under the Driver's Privacy Protection Act (DPPA) in 2012 after learning that her driver's license data had been accessed by officers multiple times without a legitimate purpose.

The Court found that the plaintiff's U.S. Constitution Fourth and Fourteenth Amendment rights had not been violated, because there is no reasonable expectation to privacy of the information on a driver's license. The Court also held that federal statute 42 U.S.C. § 1983 could not be used to enforce the DPPA violation, because DPPA has its own comprehensive enforcement scheme. The court also dismissed the plaintiff's claim of invasion of privacy under common law. There is a high threshold of offensiveness required for a viable claim. The expectation of privacy for information on a driver's license is very low, because it is shown to strangers frequently, and most of the information on it is public.

Report on Juvenile Records

The Council on Crime and Justice released a [report](#) in January 2014 that discusses the implications of juvenile delinquency and protection and release of juvenile records.

