

Legislative Update: 2012 Session

This summary highlights changes affecting the Data Practices Act (Minnesota Statutes, Chapter 13) and Open Meeting Law (Chapter 13D) and other laws with data practices and open meeting implications. *The effective date for provisions is August 1, 2012, unless otherwise noted.*

CHANGES TO CHAPTER 13

Default Responsible Authority (RA) – Section 13.02, subdivision 16: Establishes a default RA in local political subdivisions until one is designated by the governing body. (Chapter 290, section 9)

Government Entity Obligations – Sec. 13.025 (new): Moves previously existing government obligations into one comprehensive section. (Ch. 290, sec. 10-11)

Judicial Branch Data – Sec. 13.03, subd. 4: Clarifies that judicial branch data sent to government entities are classified by relevant state or federal law and not court rules. (Ch. 290, sec. 12)

Advisory Opinions – Sec. 13.072, subd. 2: Requires the Commissioner of Administration to indicate when an opinion is not intended to provide guidance to all similarly situated persons or entities. (Ch. 290, sec. 13)

Decedent Data – Sec. 13.10, subd. 1: Clarifies the discharge of a personal representative. (Ch. 290, sec. 14)

Security Information – Sec. 13.37, subd. 1 and 2: Requires a short description from an RA explaining the necessity for a security information classification. (Ch. 290, sec. 16-17)

Genetic Information Public Health Exception – Sec. 13.386, subd. 4 (new): Allows the Commissioner of Health to collect, store, use and disseminate genetic information as required or permitted by statute or rule. The subdivision expires July 1, 2012. *Effective day following enactment.* (Ch. 292, article 4, sec. 1)

Civil Investigative Data – Sec. 13.39, subd. 4: Provides that civil investigative data protections do not apply when the sole issue or dispute is a government entity's timeliness in responding to a data request. (Ch. 290, sec. 20)

Personnel data – Sec. 13.43, subd. 2: Clarifies that the "complete" terms of a settlement agreement are public. Expands the definition of "public official" to include certain local government officials making additional data about those individuals public in specified circumstances. *Effective day following enactment and applies to any agreement entered into or modified after that date.* (Ch. 280)

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Employee Suggestion data – Sec. 13.43, subd. 7a (new): Moves current language about employee suggestion data to its own subdivision. (Ch. 290, sec. 22)

Employees of Contractors – Sec. 13.43, subd. 19 (new): Classifies as private certain personal contact information of a contractor's or subcontractor's employees maintained because of a contractual relationship entered on or after August 1, 2012; requires mandatory disclosures to a government entity for functions authorized by law and to a government entity or any person for prevailing wage purposes. (Ch. 290, sec. 23)

Appraisal Data – Sec. 13.44, subd. 3: Allows for data on real property estimated or appraised values to become public at the discretion of the government entity. *Effective day following enactment.* (Ch. 290, sec. 24)

Welfare Data Sharing – Sec. 13.46, subd. 2: Clarifies that private welfare data may be shared with investigators acting on behalf of a county, state or federal government. (Ch. 216, art. 15, sec. 1)

Welfare Investigative Data – Sec. 13.46, subd. 3: Classifies as public during an investigation, the existence of an investigation by the Commissioner of Human Services of possible overpayments of public funds to a service provider. (Ch. 216, art. 15, sec. 2)

Welfare Licensing Data – Sec. 13.46, subd. 4: Moves existing language that classifies as public data, an applicant whose license is denied or sanctioned based on a determination of maltreatment; classifies as public, the reason for a license holder or applicant's disqualification; allows for certain sharings; and provides the Commissioner of Human Services with access to background study data on individual licensees. (Ch. 216, art. 15, sec. 2)

Applicants for Public Appointment – Sec. 13.601, subd. 3: Makes data that are public for applicants for appointment to a public body consistent with data that are currently public about government employees. (Ch. 290, sec. 37)

Unofficial Fiscal Notes – Sec. 13.64, subd. 3 (new): Classifies certain unofficial fiscal notes requested by or on behalf of a member of the Legislature as not public until introduction or other legislative action. (Ch. 290, sec. 39)

Design-Build Data – Sec. 13.72, subd. 11: Clarifies the classification of data related to Department of Transportation design-build transportation projects. (Ch. 290, sec. 51)

Adopt-A-Highway Data – Sec. 13.72, subd. 17 (new): Classifies as private certain data related to the Department of Transportation's adopt-a-highway program. (Ch. 290, sec. 52)

Law Enforcement Data – Sec. 13.82, subd. 1: Updates the reference to certain Department of Human Services programs that maintain law enforcement data. (Ch. 216, art. 15, sec. 4)

Inactive Financial Transaction Investigative Data – Sec. 13.82, subd. 30 (new): Classifies as not public a person's financial account number or transaction numbers in inactive criminal investigative data. (Ch. 290, sec. 58)

CHANGES TO CHAPTER 13D (OPEN MEETING LAW)

OML Web Posting – Sec. 13D.015: Clarifies that the web posting requirement for state-wide bodies that meet by telephone or other electronic means is 10 days prior to any regular meeting. (Ch. 290, sec. 63)

OML Coded Elsewhere – Sec. 13D.08 (new): Creates a new section that cites other sections of statutes that pertain to the Open Meeting Law. (Ch. 290, sec. 64)

OTHER

Dependent Eligibility Audit – Sec. 43A.28, subd. 2 (new) and 43A.281 (new): Classifies as private the data submitted for purposes of the state group insurance program dependent eligibility audit and allows the data to be shared with an employer; dependents may not be terminated for failure to submit documentation unless certain requirements are met. *Effective day following enactment.* (Ch. 290, sec. 65-66)

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DNR Licensing Data – Sec. 84.0874: Classifies as private, electronic licensing data maintained by the Department of Natural Resources and allows discretionary sharing with persons and entities for specified purposes. (Ch. 290, sec. 69)

Lessard-Sams Outdoor Heritage Council Appraisal Data – Sec. 97A.056, subd. 13 (new): Provides that acquisition data provided by project recipients to the Lessard-Sams Outdoor Heritage Council funding may remain private during negotiations but must become public. (Ch. 264, art. 1, sec. 4)

Alcohol and Drug Counselor Licensing Data – Sec. 148F.025, subd. 4 and 148F.09, subd. 6: Classifies as private certain alcohol and drug counselor data. (Ch. 197, art. 2, sec. 6, 19)

Traffic Accident Data – Sec. 169.09, subd. 13: Allows, upon written request, an attorney or representative of an insurer of an individual involved in an accident to access a traffic accident report sent to the Commissioner of Public Safety. *Effective day following enactment.* (Ch. 185, sec. 3)

Department of Commerce Energy Programs – Sec. 216C.266 and 237.701, subd. 1: Allows data collected by the Commissioner of Commerce to be shared with the Commissioner of Human Services to determine eligibility for certain services. *Effective day following enactment.* (Ch. 290, sec. 70, 71)

Public Safety Data Sharing – Sec. 256.01, subd. 18d and 18e (new): Requires the Commissioner of Public Safety to provide certain driver's license data to the Commissioner of Human Services to determine improper enrollment in public assistance. *Effective July 1, 2013.* (Ch. 247, art. 3, sec. 3-4)

Advisory Committee on Capitol Area Security – Sec. 299E.04: A committee that meets to assess the safety and security risks in the Capitol is subject to Chapters 13 and 13D and has access to certain not public data. *Effective day following enactment.* (Ch. 258, sec. 2)

Vikings Stadium – Sec. 473J.09 (new), 473J.11 (new), and 473J.15 (new): The Metropolitan Sports Authority is subject to Chapters 13 and 13D; certain financial information is not public. *Effective day following enactment.* (Ch. 299, sec. 13, 15, 19)

REPEALED

IRRRB Data – Sec. 13.4967, subd. 6a and 298.22, subd. 12: Repeals not public classification of certain data maintained by the Iron Range Resources and Rehabilitation office; repealed retroactively from the date of final enactment. (Ch. 290, sec. 72)

Caselaw Update

In *Krout, et al. v. City of Greenfield*, 27-CV-10-13395 (Minn. Ct. App. April 16, 2012, unpublished), the City of Greenfield provided cell phone data of certain elected officials in response to a request. The elected officials argued that they were employees under Minnesota Statutes, section 13.43, making certain cell phone data private. The Court of Appeals held that because the City did not consider its elected officials employees, the elected officials at issue were not employees (the Court declined to decide whether all elected officials are government employees). The Court found that allowing government entities to make this determination comported with both the purpose and public policy of Chapter 13.

The U.S. Supreme Court, in *FAA v. Cooper*, ___ U.S. ___ (2012), held that the “actual damages,” provision of the Federal Privacy Act, 5 U. S. C. section 552a, only applies to pecuniary damages and not to mental or emotional distress. The Court held that while the phrase had been interpreted to mean non-pecuniary damages in other circumstances, in this case a more narrow reading was appropriate. The Court relied on prior holdings that a waiver of sovereign immunity must be “unequivocally expressed” in law and any ambiguity should be construed in favor of immunity.

Advisory Opinion Highlights



To date, the Commissioner has issued 11 advisory opinions. Those of more general interest are summarized below.

APPLICATION DATA

[Opinion 12-005](#): An individual requested access to the dates applicants for public employment applied and took qualifying tests. The dates alone, i.e., not associated with any individual, are not data on individuals, and therefore cannot be private personnel data. The entity stated that in response, it had to prepare “summary data” per Minnesota Statutes, section 13.02, subdivision 19. However, summary data must be derived from what is otherwise completely private or confidential data. Accordingly, summary data cannot be derived from applicant data, which are both public and private. To comply with the data request, the entity simply needed to redact all data from the applications and tests except the dates, rather than prepare a summary of the data.

SEPARATION AGREEMENTS

[Opinion 12-006](#): A school district asked about the classification of certain data in a separation agreement between the district and a former employee. The district provided redacted copies of the agreement in response to data requests by the media, stating that the redacted portions contained data classified as private by Minnesota Statutes, section 13.43, subdivision 4. Some of the redacted data were public under Minnesota Statutes, section 13.43, subdivision 2(a), as well as the general presumption. Also, some of the data were properly classified as private personnel data.

APPLICANTS FOR PUBLIC OFFICE

[Opinion 12-007](#): A city asked about the classification of certain data it collected and maintained about a candidate for public office. The candidate submitted an Affidavit of Candidacy and a copy of her driver’s license as proof of residency. Both the Affidavit and the copy of the driver’s

license are public pursuant to the general presumption.

PERFORMANCE EVALUATION SUMMARY UNDER OML

[Opinion 12-008](#): A newspaper asked if a school district complied with the Open Meeting Law regarding its summary of the superintendent’s performance evaluation. The Board conducted the evaluation during a closed “workshop” meeting held before its regular meeting, and provided a summary at a regular meeting the next month (see Minnesota Statutes, section 13D.05, subdivision 3(a)). The workshop was a special meeting pursuant to Minnesota Statutes, section 13D.04, subdivision 1, and therefore separate from the regular meeting that immediately followed adjournment of the special meeting. Thus, the Board should have provided the summary at that regular meeting, because it was its next open meeting. Also, public bodies should convene and adjourn or otherwise conclude meetings in open session.

ACCESS TO EMPLOYMENT CONTRACTS

[Opinion 12-009](#): In response to a request for a copy of the superintendent’s contract, a school district provided access to public personnel data it extracted from the contract, but refused to provide a redacted copy of the contract itself. The District should have provided a copy of the actual contract, with appropriate redactions if applicable.

SQUAD CAR VIDEOS NOT PERSONNEL DATA

[Opinion 12-010](#): An individual who was pulled over by peace officers and subjected to a strip search asked for access to the squad car video of the incident. The City denied access, saying it was private personnel data because there is an active internal affairs investigation. The videotape contains arrest and/or response/incident data, and as such, may not be classified as private personnel data, even if the City is now using those data in its internal affairs investigation of the officers.