

Legislative Review: 2014 Session

The Minnesota Legislature adjourned on May 16, 2014, three days early, after a whirlwind last week in session. The Legislature took up many data practices and open meeting related issues this session with data privacy and security on the minds of many in light of current events in Minnesota and across the country.

To address these issues in a more meaningful way in the future, the Legislature enacted a new Legislative Commission on Data Practices ([Chapter 193](#)). This first of its kind commission will have the ability to spend more time discussing and working on solutions to data practices related issues, which can often be complex and difficult. As House author Mary Liz Holberg stated in testimony advocating for her bill, “In the crush of a legislative session, you don’t have time, or the time isn’t being spent, to fully vet these issues.”

In addition to the new commission, various other changes were made that impact data practices and open meetings. The following summaries highlight these changes. All chapter references are to the 2014 Session Laws and are effective **August 1, 2014**, unless otherwise noted.

CHANGES TO CHAPTER 13-GOVERNMENT DATA PRACTICES

Penalties and Procedures related to Data Breaches

- [Creation of Procedures for Not Public data—13.05, subd. 5](#): Requires the responsible authority to establish procedures to ensure that only those who have a work assignment can access not public data. ([Chapter 284, section 1](#))
- [Data Security Breaches —13.055, subd. 2](#): Data breach requirements now apply to all government entities and require the responsible authority to investigate and create a report that details any breach of the security of not public data. *Effective August 1, 2014, and applies to security breaches occurring on or after that date.* ([Ch. 284, sec. 2](#))
- [Penalties—13.09](#): Includes a penalty for knowingly accessing not public data without a work reason to do so. *Effective August 1, 2014, and applies to crimes committed on or after that date.* ([Ch. 284, sec. 3](#))

Government Contracts – 13.05, subd. 11: Imposes data practices requirements on government contractors, regardless of whether a notice is included in the contract; this provision was enacted in response to the Minnesota Supreme Court’s 2013 decision in *Helmberger v. Johnson Controls, Inc.* *Effective May 29, 2014.* ([Ch. 293, sec. 2](#))

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Safe at Home Data—13.045: Updates provisions related to identity data, location data, and real property records of Safe at Home program participants. *Effective April 30, 2014.* ([Ch. 173](#))

Health Care Contract Data and Study—13.387 (new): Applies provisions in 13.05, subd. 11 to health care related entities beginning on June 30, 2015; requires the commissioner of human services to study issues and submit a legislative report related to application of 13.05, subd. 11 on the health care market. *Effective May 29, 2014.* ([Ch. 293, sec. 3 & 11](#))

Checking Account Numbers—13.37, subd. 1(a): Classifies checking account numbers as private or nonpublic security information. *Effective May 10, 2014.* ([Ch. 208](#))

Disclosure of Personnel Data—13.43, subd. 16: Allows school districts to share data on a current or former employee related to sexual contact with a student/parent if the employee resigned while the complaint was pending and the employee had notice that the resignation would result in the release of private personnel data. ([Ch. 312](#))

Child Support Data—13.46, subd. 2: Allows sharing of private child support data on relatives under the provisions of the federal Social Security Act. ([Ch. 291](#)).

Licensing Data—13.46, subd. 4: Removes two subdivisions relating to discipline as duplicative of other provisions within section 13.46. ([Ch. 262](#))

Equal Pay Certificates—13.552, subd. 7: Classifies equal pay certificates of compliance as private or nonpublic data per section 363A.44. ([Ch. 239](#))

Pollution Control Agency Data—13.741, subd. 4: Classifies preliminary data submitted to the Pollution Control Agency's online data system as private or nonpublic data until the data are received. ([Ch. 237](#))

CHANGES RELATED TO THE OPEN MEETING LAW

State Agency Meeting Notice—13D.04, subd. 6: Permits state agencies to notice a public meeting by posting the notice on the agency's website as an alternative to the State Register. ([Ch. 274, sec. 1](#)).

Use of Social Media—13D.065 (new): Allows members of a public body to communicate with all members of the public through social media without violating the Open Meeting Law. ([Ch. 274, sec. 2](#))

St. Paul Port Authority Meetings—469.084, subd. 1a: Permits the St. Paul Port Authority to conduct meetings by telephone or other electronic means if notice is provided pursuant to 13D.015. ([Ch. 206](#))

St. Louis County School Board Meetings: Permits the St. Louis County school board to hold meetings either at the district's administrative offices or outside the boundaries of the school district, if notice is provided. *Effective July 1, 2014.* ([Ch. 272, art 3, sec. 54](#))

OTHER RELATED DATA PRACTICES CHANGES

Legislative Commission on Data Practices – 3.8843 (new): Creates an eight member legislative commission dedicated to studying issues and reviewing legislation involving data practices and personal privacy rights. *Effective May 2, 2014.* ([Ch. 193](#))

All-Payer Claims Data—62U.04, subd. 11 and 12: Restricts the use of claims data and creates a work group to develop a framework to expand the use of the all-payer claims database. *Effective April 30, 2014.* ([Ch. 178](#))

Pharmacist Mental Health Data—151.071, subd. 10: Classifies the mental health data and medical data of pharmacists obtained under the health professional services program as private data. ([Ch. 291, art. 4](#))

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Legislation, cont.

Medical Use of Cannabis and Manufacturer Data—152.25, subd. 1 and 152.31: Classifies data related to the medical use of cannabis as private or nonpublic data, and prohibits the data from being used in any other list or database at the Department of Health; classifies data submitted for registration as a cannabis manufacturer as private or nonpublic data until the applicant is registered; once registered, data are public. ([Ch. 311](#))

Driver's Privacy Protection Act Bulk Data—168.327, subd. 4 and 5: Permits the commissioner of public safety to create a subscription service to share driver and motor vehicle records, and limits the fee that may be charged. ([Ch. 293](#))

Use of Driving Records for Voter Registration—171.12, subd. 7a: Allows the commissioner of public safety to release driver's license data to the secretary of state to increase voter registration and improve voter registration accuracy. *Effective May 14, 2014.* ([Ch. 238](#))

Expungement of Criminal Records

- **Juvenile Expungement—260B.198, subd. 6:** Permits the court to expunge all records related to juvenile delinquency and lists factors to be considered when sealing the record. *Effective January 1, 2015.* ([Ch. 246, sec. 1-3, 5, 15](#))

- **Deletion of Expunged Records—332.70, subd. 3(a):** Requires a business screening service to delete expunged records. ([Ch. 246, sec. 4](#))
- **Adult Expungement—609A.02, subd. 3:** Allows individuals to petition the court to seal criminal records after a specific amount of time and, if charged with a felony, lists crimes eligible for expungement. *Effective January 1, 2015.* ([Ch. 246, sec. 1-2, 5-15](#))

Background Study Privacy Notice—245C.05, subd. 2c: Adds additional requirements to the privacy notice from commissioner of human services when conducting a background check. ([Ch. 250](#)).

CIBRS Data—299C.40, subd. 4(i): Classifies the name of any law enforcement agency that submits data to the Comprehensive Incident-Based Reporting System (CIBRS) and the general type of data submitted as public. ([Ch. 284](#))

Domestic Violence Location Data—609.135, subd. 5 (a): Classifies location data about domestic violence victims and offenders as security information under section 13.37, but allows sharing with law enforcement agencies. *Effective May 17, 2014.* ([Ch. 263](#)).

Electronic Device Location Data—626A.42 & 626A.28: Prohibits an electronic communication service from disclosing location information to a government entity without a tracking warrant. ([Ch. 278](#)).



Caselaw Update

In *Mitchell v. Aitkin County, et al.*, File No. 13-2167 (D. Minn. Mar. 3, 2014), a local news anchor filed suit under the federal Driver's Privacy Protection Act (DPPA) against numerous government entities and law enforcement personnel for unlawfully accessing her driver's license information. The court dismissed all of the plaintiff's claims based, in part, on the statute of limitations and because the plaintiff failed to plead objective facts showing that the access was for impermissible purposes.

In *Keeffe v. City of Minneapolis, et al.*, File No. 09-2941 (D. Minn. May 7, 2014), defendants filed a motion to redact certain information classified as private personnel data under the Government Data Practices Act from the court records and transcripts.

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Caselaw, cont.

The court held that the plaintiff, by bringing the suit, consented to the release of his information. Furthermore, because the Data Practices Act allows for the disclosure of private data in the course of judicial proceedings under Minn. Stat. 13.43, subd. 4, the court refused to redact any complaint data related to other public employees from the court records. The court granted the defendants' motion to redact any data revealing the identities of undercover law enforcement officers and any employee health data. The court determined that public policy dictates the public's presumptive right of access to court records. Since the statements were made in open court and there had been no injury due to the disclosure, the court denied the redaction motion.

Advisory Opinion Update

INVESTIGATIVE DATA

[Opinion 14-001](#): A member of the public requested certain data related to a Campaign Finance and Public Disclosure Board investigation. Minnesota Statutes, section 13.607, states that the requested data are classified per section 10A.02, subd. 11. The Commissioner could not determine whether the Board responded appropriately because the classification of the data is unclear; section 10A.02 is inconsistent with the classification scheme in Chapter 13.

ARBITRATION DATA

[Opinion 14-002](#): Data related to a disciplinary action, which was subsequently completely reversed in arbitration, are private under section 13.43, subd. 4. The Bureau of Mediation Services may not make them public as is otherwise required under section 179A.04. The Bureau may release a decision to the public with the employee's consent, or it may redact or summarize a decision, but it is not obligated to do so.

RESPONSE TO DATA REQUESTS

[Opinion 14-003](#): A member of the public requested access to certain data related to Institutional Review Boards maintained by the University of Minnesota. The data request involved studies by several researchers over a period of 20 years. While the University fulfilled the request, the data requester continued to make and receive responses to other data requests. Based on the complexity and scope of the request and the University's on-going communication with the requester, the University responded appropriately.

CLOSED MEETING TO DISCUSS ALLEGATIONS

[Opinion 14-004](#): A newspaper asked if a City Council could hold a closed meeting to discuss preliminary allegations or charges against an individual to whom it had offered a conditional offer of employment, pursuant to Minnesota Statutes, section 13D.05, subdivision 2(b). Because the individual was not an employee of the City, he remained a "finalist" and therefore was not "an individual subject to [the City Council's] authority" such that the Council could hold a closed meeting.

STATEMENT TO CLOSE A MEETING

[Opinion 14-005](#): At a public meeting, the public body's attorney advised it that it could go into closed session. He stated the specific grounds that permitted closure, and also described the subject to be discussed. The body immediately voted to close the meeting, but did not make the required statement on the record, per section 13D.01, subdivision 3. The public body, not its attorney, must make the statement, even if it simply repeats what its attorney advised.

RESPONSE TO DATA REQUESTS

[Opinion 14-006](#): A data requester asked about access to certain public data and data about himself that a school district maintains. Data about public data requesters are public and not personnel data. The District acted properly in denying access to data related to complaints that did not result in discipline. The District did not comply with section 13.04, because it did not provide access to data in a timely manner.