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# Annual Report from the Data Practices Office

Fiscal Year 2022

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# Introduction

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The mission of the Department of Administration's Data Practices Office (DPO) is to promote understanding of and compliance with the [Minnesota Government Data Practices Act](#) and [Open Meeting Law](#). To further our mission, we provide the following services:

- Informal advice and technical assistance to government entities and members of the public (including the Legislature and the media) on questions related to data practices and open meetings;
- Training on the Data Practices Act and Open Meeting Law;
- Assistance to the Commissioner of Administration on data practices statutory duties, including advisory opinions, temporary classifications, new uses of data, and data challenge appeals;
- Legislative assistance to individuals, organizations, government entities, and the Legislature in drafting and tracking data practices and open meetings legislation;
- Explanatory information pages, model policies and procedures, informational videos, and training modules on our website and YouTube page; and
- Consultation on projects concerning data practices and open meetings issues.

The Office is funded for four full-time staff members and has an annual general fund budget of \$555,000. In addition, the Office provides paid training which generated \$38,000 in Fiscal Year 22 (July 2021-June 2022).

## FY22 highlights and successes

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### Technical assistance success stories

- A public data requester reached out because a government entity quoted the requester 25 cents per page for 1053 pages of electronic data. DPO reached out to the entity to explain that copy costs for paginated electronic data require "actual cost" calculation, rather than by the page. The entity revised its costs.
- A public body reached out to our office regarding the Open Meeting Law for a discussion regarding when meetings must be closed and what information can be shared with the public. We discussed the requirements of the Open Meeting Law and items the entity should consider. We also discussed the difference between the Data Practices Act and its classification of government data and what entities are permitted or required to share during open meetings.
- A data subject contacted DPO asking for assistance with challenging the accuracy and completeness of data about herself. She had submitted a challenge to the entity but had not received a response. I spoke with the subject about the process, then located the contact information for the entity's responsible authority and provided it to her. She was then able to submit her data challenge successfully.
- A member of the public contacted our office after a state agency denied them access to data, citing a provision of the Data Practices Act. I reached out to the agency to discuss the provision. After that discussion, the entity had a better understanding of the scope of the classification and was able to provide the requester access to the limited public data.

- A government entity contacted our office to discuss a data request for law enforcement data. We discussed the classification of this data and protected identities under 13.82, subd. 17. The entity received the information they needed to provide the requester with the available public data while protecting private identity data.
- A member of the public requested an advisory opinion about the classification of the email address of an appointed member of a city board. Understanding that the requester simply wanted the address, I offered to resolve the matter informally by contacting the city. The city was concerned about disclosing the board member's personal email address and noted that several city employees received in-person and email communications from the requester about this issue. I explained that section 13.601 classifies a phone number or the email address of appointed officials as public and suggested that going forward the city could provide email addresses to appointees. The city agreed that it was obligated to provide the requester with some type of contact information and stated they would be in touch with the requester. I followed up with the requester and noted that some confusion at the city stemmed from his multiple contacts with various city employees. I encouraged him to focus correspondence with the officials identified in the data practices policies, which he agreed was the appropriate approach. He was satisfied that he'd be receiving the requested data and knew how to make a proper request in the future.
- A reporter reached out to DPO to ask about school board members' use of personal email addresses to conduct district business with union representatives. I provided her with a couple advisory opinions that discuss the use of personal devices and accounts to create government data subject to the Data Practices Act to assist her in researching her story.

## New search tool

This year, DPO launched a new search application for advisory opinions. Keeping the end-user in mind, the team reviewed the existing opinions and developed new tools to help our partners locate opinions more efficiently.

## DPO outreach

One of DPO's aims is to raise our public profile and reach additional partners. This year, we added 349 new recipients to our listserv (for a total of 2,367 in FY22).

## FY22 technical assistance/partner contacts

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Technical assistance\* usually begins with an email or phone call. These contacts may be a parent asking about data about their student, a police department asking about access to body camera video, or a water and soil conservation district asking about requests for proposals. The DPO team learns more about the situation, and then provides guidance on classification, decision points, and next steps. Some questions require further research and others can be answered relatively quickly. A DPO team member may also reach out to a

government entity on behalf of a member of the public to act as an intermediary in resolving data practices and Open Meeting Law issues.

Our goal in providing this informal guidance to our public community partners is to assist them in accessing data to which they are entitled or to help them understand why they are unable to access data (i.e., the data are classified as not public, or the data do not exist). Our goal in assisting government is to achieve a better understanding of the law, resulting in greater compliance.

\* Authority to provide technical assistance comes from [Minnesota Statutes, section 13.073, subdivision 5](#) and [Minnesota Rules, part 1205.1700](#).

## Technical assistance summary

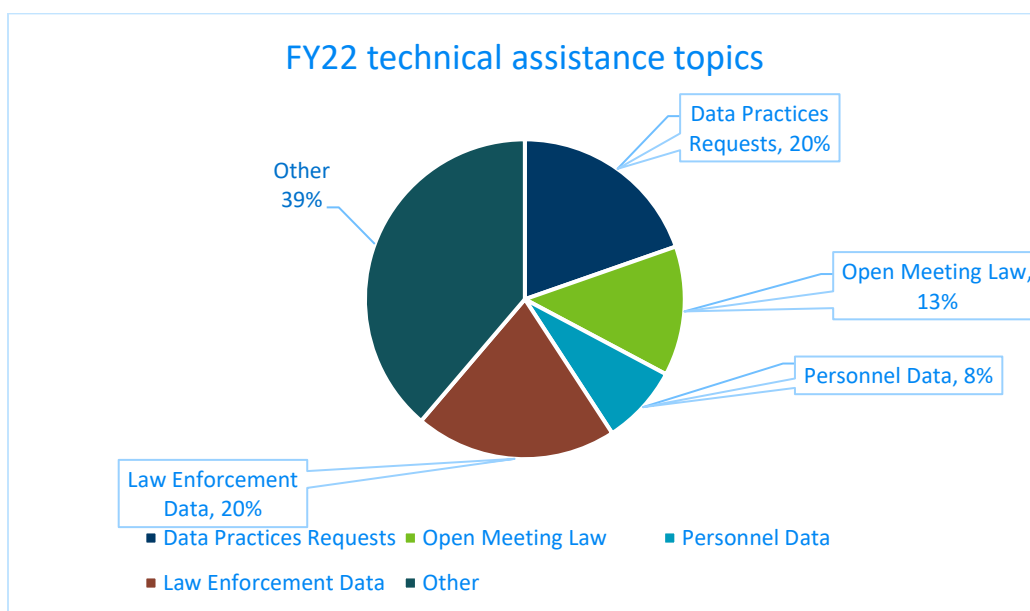
At the end of FY21, we reviewed the way we tracked technical assistance inquiries to reflect the topic areas more accurately and to standardize our practice. One contact is an incoming call or email about one or more data practices or OML topics. Even though we may exchange several emails or calls to respond to an inquiry from one of our partners, for our tracking purposes, we consider that one contact. Thus, the total number of requests for technical assistance does not necessarily represent the qualitative effort involved in responding. Tracking allows us to monitor trends in questions and pinpoint areas of concern for our partners.

**During FY22 we received and responded to 1,669 requests from our partners for informal advice or technical assistance.** This represented an 11% increase in contacts from FY 21. This partner contact number does not include the number of individuals we trained, requests for advisory opinions, audits we received and reviewed, or data challenge appeals.

## Topics

The following are the top four topic areas of inquiry we addressed during FY22. These four topic areas resulted in over half (61%) of the questions DPO fielded in FY22.

1. **Law Enforcement Data\* (341)** - assistance obtaining and classifying information related to data collected, created, and maintained by law enforcement.
2. **Data practices requests (328)** – assistance with fulfilling data requests, status updates, understanding entity responses.
3. **Open Meeting Law (219)** – understanding notice requirements, closed meetings, and technology.
4. **Personnel Data (134)** - assistance obtaining and classifying information related to public employees, volunteers, and independent contractors.



\*The number of law enforcement data contacts includes questions related to body cameras and peace officer records of children, which are tracked separately. Body camera questions accounted for 26% of all law enforcement questions in FY22 and peace officer records of children accounted for 11%.

The remaining 39% of inquiries involved the following topics:

- Copy costs (65)
- Data breaches (19)
- Data classification (98)
- Data on decedents (5)
- Data sharing (29)
- Education data (18)
- HIPAA & MN Health Records Act (22)
- Legislative (15)
- Licensing data (8)
- Policies and procedures (62)
- Property complaints (7)
- Privatization (8)
- Records management (51)
- Remedies (70)
- Other (155)
- Security (22)
- Social services data (19)
- Tennesen warning notice and informed consent (36)
- Training (77)

The next most frequently requested topics were training resources, remedies and enforcement, copy costs, and policies and procedures and other. “Other” includes topics such as licensing data, corrections data, data on decedents, statutory provisions outside of Chapter 13 (court records, private actions, questions related to homeowners’ associations), website feedback, and inquiries that are out of scope for the office.

## Trends in topic areas

1. **Body camera data** – We saw a 68% increase in questions about body cameras this year. While the vast majority (88%) came from the government, the balance came from members of the public and the media. This increase suggests that entities continue to struggle with the practical implementation of this law as the use and implementation of body cameras grows. Members of law enforcement have noted

that the requirements were extremely challenging and confusing to navigate. Members of the public and data subjects have shared their frustration about the amount of data they have been able to access.

2. **Data requests/copy costs** – Though copy costs comprised a small portion of overall calls, we saw an 80% increase in questions on this topic. (This increase was likely due, in part, to the decrease in questions about copy costs in FY21, possibly correlated to decreased ability to provide copies during the pandemic.) Members of the public and government entities have noted frustration with the current copy cost and inspection structure. Provisions in Chapter 13 – sections 13.03 and 13.04 – have not been updated to reflect current business practices including the large amount of email data and other electronic data that entities maintain. Members of the public struggle with understanding how entities arrive at copy cost estimates and have expressed that they sometimes feel that copy costs are used as a barrier to obtain data. Government entities have expressed frustration over how to calculate costs and the time it takes to review and redact responsive data.
3. **Open Meeting Law** – The pandemic exposed existing fault lines in the Open Meeting Law, which has failed to keep pace with modern business practice. Examples include the requirement to post special notice on meeting room doors or bulletin boards, whether the provision requiring a copy of meeting materials applies to meetings held by interactive technology, references to “printed materials” despite widespread use of electronic documents, and continued ambiguity around sub-group bodies (committees, subcommittees, etc.) and state-level bodies.
4. **Records management** – There is not a statewide resource with statutory authority and funding to provide guidance for records management. Currently, records managers and other employees rely on a voluntary network of professionals to pool knowledge and best practices. In their role as secretary of the Records Disposition Panel, staff at the State Archives provide general guidance to government entities administering records management programs. DPO’s predecessor office had funding and staffing to assist government with records management questions. Following a legislative change, that position was eliminated. DPO tries to provide general records management guidance as it relates to data practices but lacks the expertise and experience related to developing retention schedules, determining which records are official records, and guiding entities on best practices for records management.

## Data practices and open meetings training

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### Workshops, webinars, and other trainings

DPO has developed curriculum for full-day and half-day training workshops based on the highest priority needs of our partners, as identified in the top four partner contact topic areas. Our full-day workshops cover the topics of law enforcement data and personnel data. Our half-day workshops cover open meetings and data practices basics (access policies, data requests, and data classification). The curriculum for these hands-on, interactive workshops provides an in-depth experience for our partners and takes dedicated staff time to develop and facilitate. Additionally, remote training usually requires an additional team member to fill the producer role.

Therefore, we charge a fee to recoup a portion of our costs. Short presentations, trainings, webinars, or overviews that we conduct on an ad-hoc basis remain free for our partners.

**The Office trained a total of 1,854 partners in FY22.** DPO conducted all of its workshops and webinars via WebEx.

- 31 total training events in FY22
  - 10 full-day and half-day workshops
  - 7 free webinars: five data practices potpourri webinars, the first installment of DPO Presents partnering with the State Archives staff, and one webinar focused on body camera data.
  - 14 free trainings, including a presentation to the Legislative Commission on Data Practices, a panel discussion about body camera video at the annual COGEL conference, and presentations for state enterprise agencies, and groups with a statewide reach.

## Partner feedback

At each workshop and most webinars, we ask our partners to provide feedback. We use this feedback to determine the training curriculum and to develop new content to address partner needs.

We ask for feedback in several areas:

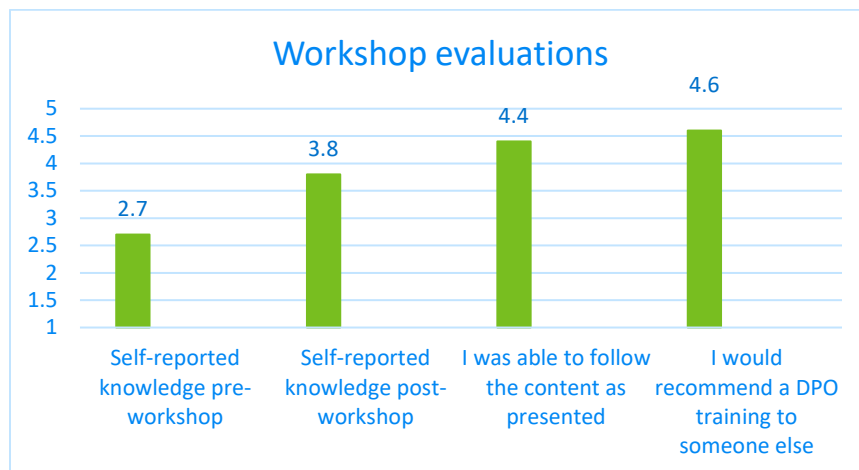
1. For workshops, we ask participants to evaluate their knowledge of data practices on a 5-point scale, 1-very low and 5-very high, before and after the workshop
2. For workshops and webinars, we ask whether the participant could follow the content
3. For workshops and webinars, we ask whether the participant would recommend a DPO training to someone who was interested

We ask our partners to provide a rating from 1 – 5, with a rating of 1 being the lowest (i.e., the information will not be useful in the future, the attendee did not gain any new knowledge, the presenters were not knowledgeable and effective presenters, the level of information did not fit my needs.)

Participants continued to give our workshops, webinars, and trainings positive feedback. Workshop participants showed a demonstrated increase in knowledge after having attended a workshop. Workshop and webinar participants responding to the evaluations overwhelmingly said that they would recommend a DPO training to other interested individuals. \*



## Trends



\*There was a 76.1% response rate for workshop attendees (175/230) and a 31.5% response rate for webinar attendees (337/1069).

### Evaluation comments from webinar attendees:

#### *Data Practices Potpourri*

- You are doing a great job with offering great information each time you hold these trainings.
- Appreciate being able to use your office as a resource while navigating the application of the MN Data Practices Act to the requests that we receive.
- Thank you for being a resource for us, always appreciate valuable information being shared.
- Your staff are wonderful to work with when we email them with questions. They are also timely in responding!
- The potpourri sessions are great!

### *Body Cameras 101*

- Great presentation! Concise, directly on point, good examples and good use of statutes to explain analysis. THANK YOU!!!
- I love these free webinars. Very informative. I have suggested these webinars to many people in my government office. Thank you!

### *After the Chapter 12 Emergency: Data Practices and Open Meetings*

- The webex trainings are excellent. My team and I tune in all the all [sic] and appreciate the work that is put into them. It seems that others have similar questions, so we don't feel alone.
- It was reassuring that I am doing meetings correctly now that we have ended our emergency.
- Helpful information presented - appreciate ability to submit (and get response to) Q&A's

## **Evaluation comments from workshop attendees:**

### *Introduction to Data Practices Policies and Procedures*

- Very well done. I will be sharing with co-workers and taking another course next month for a deeper understanding.
- I think it was great. The presenters were great and it was interactive which really helped.
- Great to hear about your advanced workshops.
- We really appreciate all the work your office does!
- I should have done this training earlier in my career but glad I found it. The presenters were very good...detailed and clear.

### *Law Enforcement Data Workshop*

- I came in with a fairly low baseline understanding (as a new hire) so this was a good overview to a lot of content.
- Very helpful -- loved the interactive format. Your energy and passion for data practices is inspiring. :)
- Thank you for providing this training. You are definitely an asset.
- Great info and you guys are super helpful! Thanks so much for everything today.

### *Dos and Don'ts of Government Personnel Data*

- I took your Government Personnel Data Training today. Your staff did a great job!
- This is my second training with DPO and I have learned a lot and recommended to others that I work with. You all do a great job.
- This workshop was very well done, even with it being remote. The content was easy to follow and it was still interactive. I liked the combination of polls, commenting in chat, and breakout groups. Thank you for putting this on!
- I appreciated the real world situations, it really helped to see how these requirements were applied to these complicated issues
- Thank you for offering this training. Somehow you made data practices interesting!
- Great use of examples and being able to make them fun to discuss, ability to discuss with others

## Evaluations comments from other trainings

- I've been to a number of data practices trainings and this was by far the best one I've attended.
- Training was great. I will use what I learned to review and make changes to our policies.
- The practical portions were really helpful in understanding the material/applying the statutes. The info was well-presented and really useful.

## Advisory opinion activity

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The Commissioner of Administration has authority to issue non-binding advisory opinions, on certain matters involving data practices and open meetings, pursuant to [Minnesota Statutes, section 13.072](#). DPO administers the advisory opinion process for the Commissioner. The Commissioner has issued more than 1,000 opinions since 1993, which provide a range of guidance on many data practices and Open Meeting Law issues. Our [website](#) hosts the full text of all advisory opinions.

### Opinion authority and process

The scope of the Commissioner's authority to issue advisory opinions depends on the requester. For data practices opinions, government entities may ask, "any question relating to public access to government data, rights of subjects of data, or classification of data under [Chapter 13] or other Minnesota statutes governing government data practices." Members of the public who disagree with an entity's determination may ask for an opinion about, "the person's right as a subject of government data or right to have access to government data." Requesters do not need to pay a fee for a data practices advisory opinion request.

A public body may ask for an advisory opinion on "any question relating to the public body's duties under Chapter 13D." A member of the public who disagrees with how a public body performs its duties under the Open Meeting Law may also ask for an opinion. Requesters must pay a \$200 fee for an Open Meeting Law advisory opinion request.

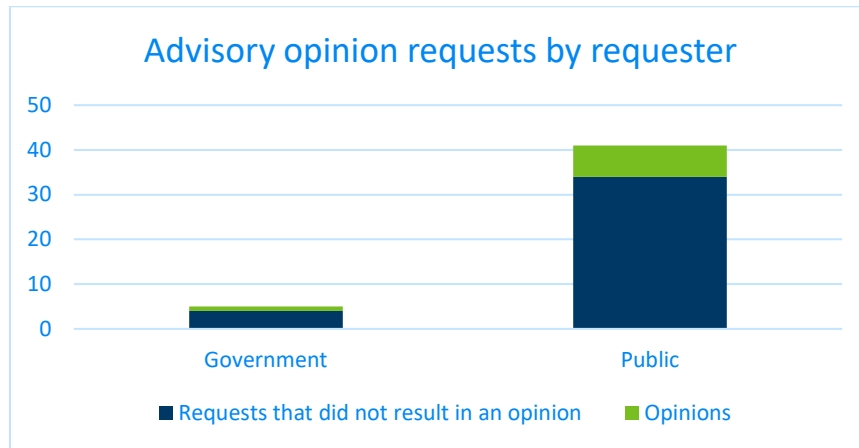
The Commissioner has five business days to decline to issue an advisory opinion request. For accepted requests, the Commissioner has 20 days to issue an advisory opinion and can extend that time for 30 days for good cause. During that time, DPO team members seek comments from parties, draft the opinion, and the Commissioner reviews and signs the opinion. The Commissioner does not have fact-finding authority and limits parties to one opportunity to present their facts and arguments.

Occasionally, a member of the public or government will ask for an "informal advisory opinion" on a specific question. In that case, we handle the question in the same manner as a request for technical assistance, rather than through the formal advisory opinion process (see page 4).

## Opinion requests in FY22

The Commissioner received 49 opinion requests in FY22 and issued eight advisory opinions. (Two opinion requests received in FY22 resulted in advisory opinions issued in FY23.) Of the opinions issued, two opinion raised Open Meeting Law issues and the remainder involved data practices issues.

The following chart shows the opinion requests by requester:



We respond to all advisory opinion requests and can resolve many of the issues requesters raise through education and communication with the parties, which can be more expedient than the formal advisory opinion process. In many situations, we provide technical assistance in an email or letter, direct the opinion requester to prior advisory opinions on the requested topic, and/or provide informal resolution assistance by contacting government entities to resolve disputes with data requesters.

Of the 41 opinion requesters that did not receive an advisory opinion:

- 27 received informal resolution or technical assistance
- 6 required additional information not provided by the requester
- 4 did not raise a clear violation and technical assistance provided
- 2 raised issues outside the scope of section 13.072 and technical assistance provided
- 2 presented intra-body disputes

## Other activities

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### Temporary classification requests

The Commissioner of Administration has authority to approve requests for temporary classification of government data under [Minnesota Statutes, section 13.06](#). The Commissioner did not receive any applications this year.

## Requests for new uses of government data

Government entities may request approval from the Commissioner for a new use of private or confidential data the entities maintain under [Minnesota Statutes, section 13.05](#), subdivision 4(c). The Commissioner did not receive or act on any requests for new uses of data in FY22.

## Data challenge appeals

Data subjects have the right to challenge the accuracy and completeness of data about them under [Minnesota Statutes, section 13.04](#), subdivision 4. The Commissioner of Administration has the authority to receive appeals of those challenges. DPO administers that process for the Commissioner. When the Commissioner receives a complete appeal that meet the requirements of the statute, we are required to offer the data subject an opportunity to resolve the appeal informally. If the data subject declines informal resolution or informal resolution is not successful, then DPO sets the matter for a contested case hearing at the Office of Administrative Hearings. Upon receipt of the administrative law judge's findings, the Commissioner issues a final order. The Commissioner issued 5 final orders in FY22.

## Automated license plate reader audits

The Commissioner of Administration is tasked with receiving audit report summaries for law enforcement agencies using automated license plate readers (ALPR) pursuant to [Minnesota Statutes, section 13.824](#), subdivision 6. DPO administers the audit review function for the Commissioner.

## Areas for growth and looking forward

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### Fostering a community of practice

In FY23, DPO will continue efforts to create a community of practice to support implementation and compliance with the Data Practice Act. We will partner with other entities and resources for DPO Presents webinars. We will also initiate a state SmART agency, board, and commission quarterly meeting on data practices and the Open Meeting Law. We will seek out opportunities to connect with public stakeholder organizations to promote understanding and use of the Data Practices Act and Open Meeting Law.

### Training

DPO is developing additional hands-on workshops that we hope to debut in the second half of FY23. In addition, we will return to in-person training, while continuing to offer remote training. We will also experiment with providing training on a hybrid basis with some participants in-person and some remote when technology allows.

## Legislative activities

DPO will follow up its activity at the legislature last year with a renewed effort to update statutes related to the advisory opinion process and the data challenge appeal process to make the processes more efficient and transparent. The Office will also monitor and work with the Minnesota Legislature on data practices and open meeting issues. We will also support the Legislative Commission on Data Practices, [Minnesota Statutes, section 3.8844](#), as needed, in its efforts to study issues relating to government data practices.

## Administrative rules

In FY23 (and possibly beyond!), the Office will begin the process of updating the administrative rules implementing the Data Practices Act. [Minnesota Rules Chapter 1205](#) was promulgated in 1981, with the bulk of the chapter having been drafted in 1978-79. The rules have not been updated since. We look forward to engaging with stakeholders throughout the process.