
Draft Proposed Updates to Minnesota Rules, Chapter 1205

Introduction

The Commissioner of Administration shall promulgate rules to implement the enforcement and administration of the [Minnesota Government Data Practices Act](#). (See [Minnesota Statutes Section 13.07](#).) These administrative rules, [Minnesota Rules Chapter 1205](#), were adopted in 1981 and have not been revised since adoption.

The Commissioner is proposing updates to the rules to accomplish the following:

- Adding new parts for data not on individuals
- Adding a new part to consolidate and update requirements for policies and procedures
- Removing duplicative language or language that has been incorporated into Ch. 13
- Adding a new part for advisory opinion requests (Section 13.072 authority added in 1993)
- Reorganizing provisions and incorporating plain language for clarity

The Data Practices Office, on behalf of the Commissioner, is asking for feedback on these informal proposed rules and suggestions for additional updates. We will review and incorporate feedback prior to submitting the official draft for publication, after which there will be a formal notice and comment period.

Please contact the Data Practices Office with any questions or comments or to schedule a time to discuss the proposal: info.dpo@state.mn.us.

Note: This document only includes parts and subparts with proposed changes. The bold, italic heading introduces the part/subpart at issue but will not be included in the final language. Due to proposed additions and repeals, some of the parts and subparts will need to be renumbered.

A clean copy incorporating the draft proposed changes without strikethroughs or underlines is also available at: <https://mn.gov/admin/data-practices/rulemaking/>

1205.0100. HOW THESE RULES APPLY.

Subpart 2. Purpose.

Subp. 2. **Purpose.** The purpose of this chapter is to aid governmental entities in implementing and administering Minnesota Statutes, chapter 13, ~~as those sections relate to data on individuals.~~ This chapter is intended to guide entities so that while protection is given to individual privacy not public data, ~~neither necessary openness in government transparency, nor the~~ and the orderly and efficient operation of government ~~are balanced~~ is curtailed.

Subpart 3. Government agencies.

Subp. 3. **Government agencies** ~~entities.~~ This chapter shall apply to ~~those~~ governmental entities as defined by Minnesota Statutes, section 13.02, subdivisions 11, 17, and 18, ~~which collect, create, use, store, and disseminate data on individuals as defined in Minnesota Statutes, section 13.02, subdivision 5.~~

~~This chapter shall only apply to data on individuals, as defined by Minnesota Statutes, section 13.02, subdivision 5, which is created, collected, maintained, used, or disseminated by governmental entities.~~

~~This chapter shall not apply to any government data collected, created, used, stored, or disseminated which is not data on individuals as defined in Minnesota Statutes, section 13.02, subdivision 5, except this chapter shall apply to summary data.~~

Subpart 4. Social service agencies.

Subp. 4. **Social service agencies and government contractors.** Nonprofit social service agencies meeting the requirements of Minnesota Statutes, section 13.02, subdivision 11 ~~shall~~ include, but are not limited to, agencies providing mental health, physical health, counseling, and day-activities services.

Government contractors are private persons that have contracted with a government entity pursuant to Minnesota Statutes, section 13.05, subdivision 11.

~~This chapter shall only apply in the instance where such an agency a nonprofit social service agency or government contractor is required by the terms of a written contract with a state agency, political subdivision, or statewide system to collect, create, store, use, or disseminate data on individuals government data.~~

~~In the event of such a contract, this chapter shall only apply to the data on individuals that is actually generated by the social service agency because of the contract.~~

Any data generated by ~~activities of the social service agency or government contractor that are independent of the contractually based activities outside the scope of the contract~~ shall not be subject to these rules.

~~This chapter shall not apply to personnel data maintained on employees of such social service agencies. When a government entity maintains data about the employees of a nonprofit social services agency or government contractor, those data are classified by Minnesota Statutes, section 13.43, subdivision 19. Personnel information and records that a nonprofit social services agency or government contractor maintains about its own employees are not subject to this chapter.~~

Subpart 5. Legal proceedings.

~~Subp. 5. Legal proceedings. Nothing in these rules shall limit the discovery procedures available at law to any party in a civil or criminal action or administrative proceeding as described in the Minnesota Rules of Civil Procedure and the Minnesota Rules of Criminal Procedure as adopted by the Minnesota Supreme Court or in Minnesota Statutes and rules adopted thereunder.~~

~~Nothing in this chapter shall restrict or limit the scope or operation of any judicial order or rule issued by a state or federal court.~~

~~In the event of the issuance of a subpoena duces tecum for any private or confidential data or a subpoena requiring any agent of an entity to testify concerning any private or confidential data, the court's attention shall be called, through the proper channels, to those statutory provisions, rules, or regulations which restrict the disclosure of such information.~~

~~Nothing in this chapter shall be construed to diminish the rights conferred on subjects of data by Minnesota Statutes, section 13.04, or any other statute.~~

1205.0200. DEFINITIONS.

Subpart 1. Scope.

~~Subpart 1. Scope. All terms shall have the meanings given them by Minnesota Statutes, section 13.02. Those terms and additional terms as used in this chapter shall have the meanings as follows. The definitions in Minnesota Statutes, section 13.02 and this part apply to this chapter.~~

New Subpart __. Authorized representative.

Subp. __. Authorized representative. "Authorized representative" means entities and agencies as determined by the responsible authority who are authorized by statute, including Minnesota Statutes, section 13.05, subdivision 4, or federal law to gain access to

specific data; and entities or individuals given access by written informed consent of the data subject.

Subpart 3. Confidential data.

Subp. 3. **Confidential data.** "Confidential data," as defined in Minnesota Statutes, section 13.02, subdivision 3 ~~shall only~~ include data which is expressly classified as confidential by either a state statute, including the provisions of Minnesota Statutes, section 13.06, or federal law.

~~Data is confidential only if a state statute or federal law provides substantially that certain data shall not be available either to the public or to the data subject; or certain data shall not be available to anyone for any reason except agencies which need the data for agency purposes. Certain data shall be confidential if a state statute or federal law provides that the data may be shown to the data subject only at the discretion of the person holding the data, and if such state statute or federal law provides standards which limit the exercise of the discretion of the person maintaining the data.~~

~~Data is not confidential if a state statute or federal law provides that the data is confidential, but the context of the statute or federal law, in which the term confidential appears, reasonably indicates the data is accessible by the data subject, or if the data subject is given access to the data only upon the discretion of the person holding the data and the state statute or federal law does not provide any standards which limit the exercise of such discretion. In such cases, the proper classification of the data is private.~~

~~A state agency rule, an executive order, an administrative decision, or a local ordinance shall not classify data as "confidential" or use wording to make data inaccessible to the data subject unless there is a state statute or federal law as the basis for the classification.~~

A. Absent an explicit confidential classification, data on individuals are confidential if state statute or federal law provides that:

(1) Data are not accessible to the public and the data subject.

(2) Data are only accessible to those within the entity with a work assignment that reasonably requires access.

(3) Data are not accessible to the public but may be shown to the data subject at the discretion of the entity maintaining the data pursuant to state statute or federal law that provides standards limiting the exercise of the entity's discretion.

B. Data are not confidential if a state statute or federal law provides that the data are confidential and the context of the state statute or federal law in which the term confidential appears reasonably indicates:

(1) The data are accessible by the data subject; or

(2) The data subject is given access to the data only upon the discretion of the person holding the data and the statute or federal law does not provide any standards which limit the exercise of such discretion.

In such cases, the data are private.

C. A state agency rule, an executive order, an administrative decision, or a local ordinance shall not classify data as "confidential" or use wording to make data inaccessible to the data subject unless there is a state statute or federal law that provides authority for the classification.

Subpart 4. Data.

Subp. 4. **Data on individuals.** ~~"Data" means "data on individuals" as defined in Minnesota Statutes, section 13.02, subdivision 5, unless stated otherwise.~~

~~Data can be maintained in any form, including, but not limited to, paper records and files, microfilm, computer medium, or other processes.~~

~~The duration of the existence of data, including whether certain data is temporary rather than permanent, is not relevant to compliance with this chapter.~~

~~All data, in whatever form it is maintained, is "data on individuals" if it can in any way identify any particular individual.~~

~~Code numbers, which are used to represent particular individuals, constitute "data on individuals" if a list or index of any type is available by which the code number can be cross referenced to a name or other unique personal identifier so that any individual's identity is revealed. Code numbers, lists of code numbers, or data associated with code numbers may qualify for treatment as summary data, pursuant to part 1205.0700.~~

~~"Code number" means the labeling or enumeration of data by use of a letter, number, or combination thereof, which is used in place of an individual's name, including but not limited to index numbers, dummy numbers, SOUNDEX codes, and Social Security numbers.~~

~~Data is "data on individuals" if it identifies an individual in itself, or if it can be used in connection with other data elements to uniquely identify an individual. Such data shall include, but is not limited to, street addresses, job titles, and so forth where the particular data could only describe or identify one individual.~~

"Data on individuals" as defined in Minnesota Statutes, section 13.02, subdivision 5, means data of which a living human being is the identifiable data subject, unless the

1 identifying information are incidental, and the data are not accessible by name or
2 identifying information.

3 Incidental means that the entity can demonstrate that the identifying information is
4 irrelevant to the substance of the data.

5 ***NEW Subpart. Data not on individuals.***

6 Subp. . **Data not on individuals.** “Data not on individuals” as defined in Minnesota
7 Statutes, section 13.02, subdivision 4, means data in which a living human being is not the
8 identifiable subject. It includes identifying information on an individual that an entity can
9 demonstrate are incidental and the data are not accessible by the individual’s name or
10 other identifying data.

11 Data not on individuals include data collected or created about a human being after death.

12 ***NEW Subpart. Data subject.***

13 Subp. . **Data subject.** “Data subject” means the individual who can be identified in data
14 on individuals. The data subject is provided specific access rights pursuant to Minnesota
15 Statutes, section 13.04.

16 ***[Subpart 5. Designee – Repealed as redundant.]***

17 ***Subpart 6. Entity.***

18 Subp. 6. **Government eEntity.** “Government eEntity” means any governmental agency or
19 entity subject to the requirements of the act, including state agencies, political
20 subdivisions, and statewide systems as those terms are defined in Minnesota Statutes,
21 section 13.02.

22 “State agency” shall include any entity which is given power of statewide effect by statute or
23 executive order.

24 “Political subdivision” shall include those local government entities which are given powers
25 of less than statewide effect by statute or executive order.

26 “Statewide systems” shall include, but are not limited to, record keeping and data-
27 administering systems established by statute, federal law, administrative decision or
28 agreement, or joint powers agreement. “Statewide systems” shall include, but are not
29 limited to, the Criminal Justice Information System administered by the Bureau of Criminal
30 Apprehension, the Statewide Accounting System, and the various welfare systems primarily
31 administered by the Department of Human Services.

32 ***Subpart 9. Private data.***

1 Subp. 9. **Private data.** "Private data," as defined in Minnesota Statutes, section 13.02,
2 subdivision 12 shall only include data which is expressly classified by either a state statute,
3 including the provisions of Minnesota Statutes, section 13.06, or federal law.

4 ~~In the absence of an explicit private classification, d~~Data ~~are~~is private if a state statute or
5 federal law provides substantially that:

6 A. ~~Certain d~~Data shall not be available to the public but shall be available to the subject of
7 that data.

8 B. ~~Certain d~~Data shall not be available to anyone, except the data subject or the subject's
9 designated representative such as an attorney.

10 C. ~~Certain d~~Data shall be confidential and the ~~person~~individual the data is about may view
11 the data at reasonable times.

12 D. ~~Certain d~~Data shall be confidential and may be shown to the data subject at the
13 discretion of the person holding the data. Such data shall be private if the state statute or
14 federal law does not provide standards which limit the exercise of the discretion of the
15 person maintaining the data.

16 E. ~~Certain d~~Data ~~is~~are confidential, but the context of the statute or federal law in which the
17 term confidential appears reasonably indicates the data ~~is~~are accessible by the individual
18 who is the subject of the data.

19 ~~Data is not private if a federal agency rule provides substantially that as a part of its plan for~~
20 ~~implementation of a certain federal program, a state agency, statewide system, or political~~
21 ~~subdivision must provide for the confidentiality of data obtained from program subjects.~~

22 A state agency rule, an executive order, an administrative decision, or a local ordinance
23 shall not classify data as "private" or use wording to make data inaccessible to the public
24 unless there is a state statute or federal law ~~as the basis for that~~ provides authority for the
25 classification.

26 **Subpart 10. Public data.**

27 Subp. 10. **Public data.** "Public data" shall mean government data on individuals or not on
28 individuals that are "data on individuals," not classified by state statute, including
29 ~~Minnesota Statutes, section 13.06, or federal law as not public, private or confidential data.~~
30 This subpart shall not limit the ability of an entity to apply for temporary classifications of
31 data pursuant to Minnesota Statutes, section 13.06.

32 **Subpart 12. Responsible authorities – repeal as duplicative**

33 **Subpart 13. Responsible authorities in state agencies.**

1 Subp. 13. **Responsible authority in state agencies.** Pursuant to Minnesota Statutes,
2 section 13.02, subdivision 16(a), the Commissioner designates the following individuals as
3 state agency responsible authorities unless state law or executive order provides
4 otherwise: ~~In state agencies, the responsible authority shall be as follows, unless otherwise~~
5 ~~provided by state law:~~ for departments, the commissioner of the department; for
6 constitutional offices, the constitutional officer; for the University of Minnesota, the
7 individual appointed by the Board of Regents; for all other state agencies, the chief
8 executive officer, or if none, then an individual chosen by the agency's governing body.

9 **Subpart 14. Responsible authority in political subdivisions.**

10 Subp. 14. **Responsible authority in political subdivisions.** In political subdivisions, the
11 responsible authority shall be as ~~designated pursuant to Minnesota Statutes, section~~
12 ~~13.02, subdivision 16(b), follows,~~ unless otherwise provided by state law: ~~In addition:~~

13 A. For counties, each elected official of the county shall be the responsible authority for the
14 official's office. An individual who is an employee of the county shall be appointed by the
15 county board to be the responsible authority for any data administered outside the offices
16 of elected officials.

17 B. For cities, the city council shall appoint an individual who is an employee of the city. ~~If~~
18 ~~the city does not have employees, the city council shall appoint an individual who is a~~
19 ~~volunteer with the city or a member of the city council.~~

20 C. For school districts, the school board shall appoint an individual who is an employee of
21 the school district.

22 D. For nonprofit corporations or nonprofit social service agencies, unless a statute or the
23 governmental entity which created the corporation or agency appoints an individual, the
24 governing body of the corporation or agency shall appoint an individual. If no appointment
25 is made, the chief executive officer of the nonprofit corporation or agency shall be the
26 responsible authority. If the corporation or agency is part of a statewide system, the
27 responsible authority for the statewide system shall be the responsible authority for the
28 corporation or agency as determined by this part.

29 E. For all other political subdivisions, the governing body shall appoint an individual who is
30 an employee of the political subdivision. ~~If the political subdivision does not have~~
31 ~~employees, the governing body shall appoint an individual who is a volunteer with the~~
32 ~~political subdivision or a member of the governing body.~~

33 **Subpart 15. Responsible authority in statewide systems.**

34 Subp. 15. **Responsible authority in statewide systems.** ~~In "statewide systems," the~~
35 ~~responsible authority shall be as follows, unless otherwise provided by state law:~~

1 ~~A. the commissioner of any state department or any executive officer designated by statute~~
2 ~~or executive order as responsible for such a system; or~~

3 ~~B. if a state statute or executive order does not designate an individual as responsible~~
4 ~~authority, the commissioner of administration shall appoint the responsible authority after~~
5 ~~the entities which participate in the system jointly apply for such an appointment in a form~~
6 ~~provided by the commissioner of administration.~~

7 Unless otherwise provided by state statute or executive order, the Commissioner
8 designates as responsible authority of a statewide system an individual appointed by the
9 statewide system pursuant to Minnesota Statutes, section 13.02, subdivision 16(a). Until
10 an individual is appointed, the responsible authority will be the executive director or chief
11 clerical officer for filing and recordkeeping purposes.

12 ***New Subpart __. Responsible authority in government contractors.***

13 Subp. __. **Responsible authority in government contractors.** When a government entity
14 enters into a contract with a private person pursuant to Minnesota Statutes, section 13.05,
15 subdivision 11, the government entity's responsible authority retains all duties under
16 Chapter 13 regarding the administration of data resulting from contract.

17 The contract may designate a designee, as defined in Minnesota Statutes, section 13.02,
18 subdivision 6, in the government contractor for purposes of administering data that are the
19 subject of the contract.

20 ***Subpart 16. Summary data.***

21 Subp. 16. **Summary data.** "Summary data," ~~is as~~ defined in Minnesota Statutes, section
22 13.02, subdivision 19, means data which has been extracted, manipulated, or summarized
23 from private or confidential data, and from which all data elements that could link the data
24 to a specific individual have been removed. "Summary data" includes, but is not limited to,
25 statistical data, case studies, reports of incidents, and research reports. Once it is
26 summarized from ~~not public data on individuals~~ ~~private or confidential data~~, summary data
27 remains summary if the responsible authority maintains any list of numbers or other data
28 which could uniquely identify any individual in the summary data ~~physically~~ separated from
29 the summary data and the responsible authority does not make such list or other data
30 available to persons who gain access to, or possession of the summary data.

31 **1205.0300. ACCESS TO PUBLIC DATA.**

32 ***Subpart 2. Who may see public data.***

33 Subp. 2. **Who may see access public data.** The responsible authority shall provide access
34 to public data to any person, ~~without regard to the nature~~ regardless of that person's
35 interest in the data.

1 **Subpart 3. Access procedures.**

2 Subp. 3. ~~Access procedures.~~ The responsible authority shall establish procedures to
3 describe how such access may be gained. The procedures established shall be in
4 compliance with Minnesota Statutes, section 13.03. In such procedures, the responsible
5 authority may limit the time during which access to public data is available to the time
6 during which the normal operations of the agency are conducted. In such procedures, the
7 responsible authority shall provide for a response to a request for access within a
8 reasonable time.

9 **Subpart 4. Determining fee for copies.**

10 Subp. 4. ~~Determining fee for copies~~**Calculating actual cost.** The responsible authority
11 may charge the actual cost for copies of public data according to Minnesota Statutes,
12 section 13.03, subdivision 3(c). ~~a reasonable fee for providing copies of public data.~~

13 ~~In determining the amount of the reasonable fee, the responsible authority shall be guided~~
14 ~~by the following:~~

15 ~~A. the cost of materials, including paper, used to provide the copies;~~

16 ~~B. the cost of the labor required to prepare the copies;~~

17 ~~C. any schedule of standard copying charges as established by the agency in its normal~~
18 ~~course of operations;~~

19 ~~D. any special costs necessary to produce such copies from machine based record keeping~~
20 ~~systems, including but not limited to computers and microfilm systems; and~~

21 ~~E. mailing costs. _____~~

22 Actual costs may include the cost of materials and mailing fees. Government entities may
23 establish a “fee schedule” of standard copying charges based upon actual costs incurred
24 by the government entity or other statutory authority. Upon request, government entities
25 must provide an itemization of the actual costs charged in response to a data request to the
26 requester.

27 **1205.0400. ACCESS TO PRIVATE DATA.**

28 **Subpart 2. Who may see public data.**

29 Subp. 2. ~~Who may see~~**access private data.** Access to private data shall be available only
30 to the following: the subject of such data, as limited by any applicable statute, ~~or federal~~
31 ~~law,~~ or temporary classification pursuant to Minnesota Statutes, section 13.06; individuals
32 within the entity whose work assignments reasonably require access; entities and agencies
33 as determined by the responsible authority who are authorized by statute, including

Minnesota Statutes, section 13.05, subdivision 4, or federal law to gain access to that specific data; and entities or individuals given access by the ~~express~~ written informed consent ~~direction~~ of the data subject.

The responsible authority shall provide reasonable measures to verify the identity of a data subject or authorized representative of a data subject who seeks to gain access to private data.

Subpart 3. Access procedure.

~~Subp. 3. **Access procedure.** The responsible authority shall establish written procedures to assure that access is gained only by those parties identified in subpart 2.~~

~~In those procedures, the responsible authority shall provide for reasonable measures to assure, in those instances where an individual who seeks to gain access to private data asserts that he or she is the subject of that data or the authorized representative of the data subject, that the individual making the assertion is in fact the subject of the data or the authorized representative of the data subject. Examples of such reasonable measures include, but are not limited to, the following:~~

~~A. requiring the person seeking to gain access to appear at the offices of the entity to gain such access or, in lieu of a personal appearance, requiring the signature of any data subject who is unable to appear at the offices of the entity; and~~

~~B. requiring the person to provide reasonable identification.~~

Subpart 4. Time limits.

~~Subp. 4. **Time limits.** The responsible authority may limit the time that access is available to the data subject to the normal working hours of the agency ~~government~~ entity.~~

Subpart 5. Fees.

~~Subp. 5. **Fees** **Calculating actual costs.** The responsible authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data. The responsible authority may charge the data subject a reasonable fee for providing copies of private data.~~

~~In determining the amount of the reasonable fee, the responsible authority shall be guided by the criteria set out in part 1205.0300 concerning access to public data.~~

The responsible authority may charge the actual cost to make and certify copies of private data pursuant to Minnesota Statutes, section 13.04. Actual costs include the cost of materials, mailing fees, and employee time to make and certify copies. Upon request, government entities must provide an itemization of the actual costs charged in response to a data request to the data requester.

1205.0500. ACCESS TO PRIVATE DATA CONCERNING DATA SUBJECTS WHO ARE MINORS.

Subpart 1. General.

Subpart 1. **General.** Pursuant to Minnesota Statutes, sections 13.02, subdivisions 8 and 12; and 13.05, the responsible authority shall comply with the following rules concerning access to data.

In addition to the particular requirements of this part, access to private data concerning a minor data subject shall be subject to the requirements of part 1205.0400 concerning access to all private data.

Subpart 2. Who may see private data concerning minors.

Subp. 2. **Who may see access private data concerning about minors.** Access to private data concerning about minors shall be available only to the following:

A. ~~Those~~The parties identified as having access to private data under part 1205.0400, subpart 2.

B. ~~Subject to the provisions of Minnesota Statutes, section 13.02, subdivision 8, any other applicable statute, and the exception set out at subpart 3, item A, I~~ the parents or guardians of the minor data subject, unless the responsible authority determined the data should be withheld pursuant to the minor's request as provided in Minnesota Statutes, section 13.02, subdivision 8. For purposes of this part, I the responsible authority shall presume the parent or guardian has the authority to exercise the rights inherent in the act unless the responsible authority has been provided with evidence that there is a state law or court order governing such matters as divorce, separation, or custody, or a legally binding instrument which provides to the contrary.

Subpart 3. Access procedures for parents.

Subp. 3. ~~Access procedures for parents~~**Determination for withholding access.** Pursuant to the provisions of Minnesota Statutes, section 13.02, subdivision 8, the responsible authority shall establish procedures to provide access by the parents of a minor data subject to private data concerning that minor, subject to the following:

~~A. The responsible authority may deny parental a parent or guardian access to private data when the about a minor, upon request of the minor who is the subject of that data, requests that the responsible authority deny such access. The responsible authority shall provide minors from whom the entity collects private or confidential data with a notification that the minor individual has the right to request that parental access to private data be denied. The responsible authority may require the minor data subject to submit a written request that~~

1 the data be withheld. The written request shall set forth the reasons for denying parental
2 access and shall be signed by the minor.

3 ~~B.~~ Upon receipt of such a request, the responsible authority shall determine if honoring the
4 ~~request to whether denying parental~~ access would be in the best interest of the minor ~~data~~
5 ~~subject~~. In making the determination, the responsible authority shall ~~consider~~ be guided by
6 ~~at least the following:~~

7 (1) ~~A.~~ whether the minor is of sufficient age and maturity to ~~be able to~~ explain the reasons
8 for ~~and to understand the consequences of~~ the request to deny access;

9 ~~B.~~ whether the minor is of sufficient age and maturity to understand the consequences of
10 the request to deny access;

11 (2) ~~C.~~ whether the ~~personal situation of the minor's request to deny access would protect~~
12 ~~the minor is such that denying parental access may protect the minor data subject from~~
13 physical or emotional harm;

14 (3) ~~D.~~ whether ~~there is ground for believing that the minor's data subject's reasons for~~
15 ~~precluding parental access are reasonably accurate~~ denying access are made in good faith;

16 (4) ~~whether the data in question is of such a nature that disclosure of it to the parent could~~
17 ~~lead to physical or emotional harm to the minor data subject; and~~

18 (5) ~~E.~~ whether the data concerns medical, dental, or other health services provided
19 pursuant to Minnesota Statutes, sections 144.341 to 144.347. If so, the data may be
20 released only if failure to inform the parent would seriously jeopardize the health of the
21 minor; and

22 F. any other circumstances relevant to the request.

23 **Subpart 4. Parents' access to educational records.**

24 Subp. 4. ~~Parents' Access to educational records.~~ Family Educational Rights and Privacy
25 Act, 20 USC 1232g, defines and governs access to education records. The responsible
26 authority cannot deny parents or guardians access to education records unless permitted
27 by FERPA. ~~shall not deny access by parents to data that is considered an "education~~
28 ~~record," as that term is defined in Code of Federal Regulations, title 45, part 99, section~~
29 ~~99.3, unless the minor to whom the data pertains is enrolled as a full-time student in a~~
30 ~~postsecondary educational institution or the student has attained the age of 18. As of the~~
31 ~~date of the adoption of these rules, the term "education records" was defined by Code of~~
32 ~~Federal Regulations, title 45, part 99, section 99.3 as follows:~~

33 (a) "Education records" means those records which:

34 (1) ~~are directly related to a student; and~~

~~(2) are maintained by an educational agency or institution or by a party acting for the agency or institution.~~

~~(b) The term does not include:~~

~~(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:~~

~~(i) are in the sole possession of the maker thereof; and~~

~~(ii) are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.~~

~~(2) Records of a law enforcement unit of an educational agency or institution which are:~~

~~(i) maintained apart from the records described in paragraph (a) of this definition;~~

~~(ii) maintained solely for law enforcement purposes; and~~

~~(iii) not disclosed to individuals other than law enforcement officials of the same jurisdiction; provided that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.~~

~~(3)(i) Records relating to an individual who is employed by an educational agency or institution which:~~

~~(A) are made and maintained in the normal course of business;~~

~~(B) relate exclusively to the individual in that individual's capacity as an employee; and~~

~~(C) are not available for use for any other purpose.~~

~~(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.~~

~~(4) Records relating to an eligible student which are:~~

~~(i) created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;~~

~~(ii) created, maintained, or used only in connection with the provision of treatment to the student; and~~

~~(iii) not disclosed to anyone other than individuals providing the treatment; provided that the records can be personally reviewed by a physician or other appropriate professional of~~

1 the student's choice. For the purpose of this definition, "treatment" does not include
2 remedial educational activities or activities which are part of the program of instruction at
3 the educational agency or institution.

4 (5) Records of an educational agency or institution which contain only information relating
5 to a person after that person was no longer a student at the educational agency or
6 institution. An example would be information collected by an educational agency or
7 institution pertaining to the accomplishments of its alumni.

8 ***Subpart 5. Denying access without a request from a minor.***

9 Subp. 5. **Denying access without a request from a minor.** Without a request from a minor,
10 the responsible authority may deny ~~parental parent or guardian~~ access to private data
11 ~~on~~about a minor, pursuant to the provisions of Minnesota Statutes, sections 144.291 to
12 144.298 or any other statute or federal law that allows or requires the responsible authority
13 the authority to do so, if such state statute or federal law provides standards which limit
14 the exercise of the discretion of the responsible authority.

15 **1205.0600. ACCESS TO CONFIDENTIAL DATA.**

16 ***Subpart 2. Who may see confidential data.***

17 Subp. 2. ~~Who may see~~**Access to confidential data.** Access to confidential data is
18 available only to the following:

- 19 A. individuals within the entity whose work assignments reasonably require access; and
20 B. entities and agencies who are authorized by statute, including Minnesota Statutes,
21 section 13.05, or federal law to gain access to that specific data.

22 ***Subpart 3. Access procedures.***

23 Subp. 3. ~~Access procedures.~~ The responsible authority shall establish written procedures
24 to assure that access may be gained only by those parties identified in subpart 2:

25 In the drafting and administration of those procedures, the responsible authority shall
26 provide measures by which data subjects or their authorized representatives shall be
27 informed, upon request, if they are the subjects of confidential data:

28 The responsible authority shall not disclose the actual confidential data to the data
29 subjects, but shall inform them whether confidential data concerning them is or is not
30 retained.

31 The responsible authority shall take reasonable measures to assure that the person making
32 inquiry is actually the individual data subject or the authorized representative of the data
33 subject. Reasonable measures include, but are not limited to:

- 1 ~~A. requiring the inquiring person to appear at the office of the entity to make his/her~~
2 ~~request;~~
- 3 ~~B. requiring the inquiring person to provide identification; or~~
- 4 ~~C. requiring the notarized signature of any data subject who is unable to appear at the~~
5 ~~offices of the entity.~~

6 1205.0700. ACCESS TO SUMMARY DATA.

7 **Subpart 2. Definitions.**

8 Subp. 2. Definitions. For the purposes of administering Minnesota Statutes, section 13.05,
9 subdivision 7, the following terms shall have the meanings given them:

10 A. "Administrative officer" includes, but is not limited to, the entity's research director,
11 statistician, or computer center director.

12 B. "Person outside" the entity includes the person requesting the summary data or any
13 other person designated by the person requesting the data.

14 **Subpart 3. Access procedures.**

15 Subp. 3. ~~Access procedures.~~ The responsible authority shall prepare and implement
16 procedures in his/her agency to assure that access to summary data is provided pursuant
17 to Minnesota Statutes, section 13.05, subdivision 7. In the preparation and administration
18 of such procedures, the responsible authority shall comply with the following:

19 **Subpart 4. Responding to requests for summary data.**

20 Subp. 4. **Responding to requests for summary data.** Preparation of summary data may be
21 requested by any person. The request shall be in writing in a form provided by the
22 responsible authority. Within ten business days of the receipt of such a written request for
23 summary data, the responsible authority shall inform the requester of the estimated costs,
24 pursuant to subpart 7, if any, pursuant to subpart 7 and subject to the provisions of that
25 subpart either and:

26 A. provide the summary data requested; or

27 B. provide a written statement to the requester, describing a time schedule for preparing
28 the requested summary data, including reasons for any time delays; or

29 C. provide access to a person outside of the government entity, which can include the
30 requester or a government contractor, access to the requester to the private or confidential
31 data for the purpose of the requester's preparation of preparing summary data, pursuant to
32 Minnesota Statutes, section 13.05, subdivision 7, and subpart 5, or

1 ~~D. provide a written statement to the requester stating reasons why the responsible~~
2 ~~authority has determined that the requester's access would compromise the private or~~
3 ~~confidential data.~~

4 **Subpart 5. Nondisclosure agreement.**

5 Subp. 5. **Nondisclosure agreement.** ~~When the responsible authority delegates preparation~~
6 ~~of summary data to a person outside of the government entity, the~~ A nondisclosure
7 agreement between the government entity and preparer, as required by Minnesota
8 Statutes, section 13.05, subdivision 7 shall contain at least the following:

9 A. a general description of the private or confidential data which is being used to prepare
10 summary data;

11 B. the purpose for which the summary data is being prepared; and

12 C. a statement that the preparer understands ~~he/she~~ there may be subject to the civil or
13 criminal penalties provisions of the act in the event that the private or confidential data is
14 disclosed inappropriately.

15 **Subpart 6. Methods of preparing summary data.**

16 Subp. 6. **Methods of preparing summary data.** Methods of preparing summary data
17 include but are not limited to the following:

18 ~~A. removing from any set of government data, aor file, or a record keeping system all unique~~
19 ~~personal identifiers data elements that uniquely identify an individual, as described in Minn.~~
20 ~~R. 1205.0200, subparts 4 and 5 so that the data that remains fulfills the definition of~~
21 ~~summary data as defined by Minnesota Statutes, section 13.02, subdivision 19; and.~~

22 ~~B. removing from the entity's report of any incident, or from any collection of data similar to~~
23 ~~an incident report, all unique personal identifiers so that the resulting report fulfills the~~
24 ~~definition of summary data in Minnesota Statutes, section 13.02, subdivision 19.~~

25 For the purpose of this part, ~~"removing all unique personal identifiers"~~ Removing data
26 ~~elements that uniquely identify an individual~~ includes but is not limited to ~~blacking out~~
27 ~~personal identifiers on paper records~~ electronic or paper redaction, tearing off or cutting out
28 the portions of paper records that contain the ~~personal identifiers~~ identifying information,
29 and programming computers in such a way that printed, terminal, or other forms of output
30 do not contain ~~personal identifiers~~ programming electronic records or applications so that
31 any form of output, including metadata, do not contain data elements that uniquely identify
32 an individual.

33 **Subpart 7. Paying for preparation of summary data.**

1 Subp. 7. ~~Paying for preparation of s~~**Summary data costs.** Any costs incurred in the
2 preparation of summary data shall be borne by the requesting person.~~The government~~
3 entity may require payment of any portion of the costs to prepare summary data at any
4 time. In ~~calculating~~ assessing the costs associated with the preparation of summary data,
5 the responsible authority shall~~may~~:

6 A. ~~be guided by~~consider the provisions of part 1205.0300 in determining costs;

7 B. ~~provide to the requesting person an estimate of the costs associated with the~~
8 preparation of the summary data;

9 C. ~~prior to preparing or supplying the summary data, collect any funds necessary to~~
10 reimburse the entity for its costs;

11 ~~D.~~ charge no more than reasonable copying costs when the summary data being
12 requested requires only copying and no other preparation costs, including the cost of a
13 government contractor; and

14 E. ~~take into account~~consider the reasonable value to the entity of the summary data
15 prepared and where appropriate reduce the costs assessed to the requesting person.

16 1205.0800. CLASSIFICATION OF DATA.

17 In order to comply with the provisions of Minnesota Statutes, sections 13.02, 13.04, and
18 13.05, the responsible authority shall:

19 A. ~~review and identify all of the types of data maintained by the entity, including data~~
20 retained as active and inactive;

21 B. ~~determine what types of data maintained by the entity are classified as private or~~
22 confidential, according to the definitions of those terms pursuant to part 1205.0200 and
23 Minnesota Statutes, section 13.02;

24 C. ~~identify either a state statute or provisions of federal law supporting any determination~~
25 that certain data is either private or confidential; and

26 D. ~~administer all agency data in accordance with the determinations made under item B.~~

27 1205.0900. AUTHORITY OF THE RESONSIBLE AUTHORITY.

28 Pursuant to Minnesota Statutes, sections 13.02 to 13.06, the responsible authority shall
29 have the authority to:

30 A. ~~implement the act and these rules in each entity;~~

31 B. ~~make good faith attempts to resolve all administrative controversies arising from the~~
32 entity's practices of creation, collection, use, and dissemination of data;

1 C. prescribe changes to the administration of the entity's programs, procedures, and design
2 of forms to bring those activities into compliance with the act and with this chapter;
3 D. take all administrative actions necessary to comply with the general requirements of the
4 act, particularly Minnesota Statutes, section 13.04, and this chapter; and
5 E. where necessary, direct designees to perform the detailed requirements of the act and
6 this chapter under the general supervision of the responsible authority.

7 1205.1000. APPOINTMENT OF THE RESPONSIBLE AUTHORITY

8 Pursuant to Minnesota Statutes, section 13.02, subdivision 16, the governing body of each
9 political subdivision and the governing body of each state agency whose activities are
10 subject to the direction of a governing body shall, by September 30, 1981, if it has not done
11 so, appoint a responsible authority. This part shall not affect the appointments of
12 responsible authorities made previous to the adoption of these rules. The governing body
13 shall confer on the responsible authority full administrative authority to carry out the duties
14 assigned by the act and by this chapter. Governing bodies may use the forms set forth in
15 part 1205.2000 to appoint the responsible authority.

16 1205.1100. APPOINTMENT POWER OF THE RESPONSBLE AUTHORITY

17 *Subpart 1. Power to appoint designees.*

18 Subpart 1. **Power to appoint designees.** Pursuant to Minnesota Statutes, section 13.03,
19 subdivision 2, the responsible authority shall ~~may, on deeming it to be in the best interest of~~
20 ~~the administration and enforcement of the act, appoint designees who shall be members of~~
21 ~~the staff of the~~ are employees of the government entity. ~~In the exercise of this appointment~~
22 ~~power~~ When appointing designees, the responsible authority shall comply with the
23 following.

24 *Subpart 2. Appointment order.*

25 Subp. 2. **Appointment order in writing.** The responsible authority ~~appointment order~~ shall
26 appoint any designee in writing. ~~be in writing and copies of the order constitute public data~~
27 ~~on individuals, pursuant to Minnesota Statutes, section 13.02, subdivision 15.~~

28 *Subpart 3. Instructing designees.*

29 Subp. 3. **Instructing designees.** The responsible authority shall instruct any designees in
30 the requirement of the act and of this chapter. If the responsible authority deems it
31 necessary, such instruction shall include:

32 A. distribution to designees of written materials describing the requirements of the act and
33 of this chapter;

34 B. preparation of training programs whose objective is to familiarize agency personnel with
35 the requirements of the act and of this chapter; and

1 C. requiring attendance of designees and other entity personnel at training programs held
2 within or outside the entity.

3 1205.1200. DUTIES OF THE RESPONSIBLE AUTHORITY RELATING TO PUBLIC 4 ACCOUNTABILITY

5 1205.1200. Duties of the Responsible Authority Relating to Public Accountability 6 Data Inventory.

7 **Subpart 1. General.**

8 Subpart 1. General. Pursuant to Minnesota Statutes, section 13.05, the duties of the
9 responsible authority shall include but are not be limited to the following.

10 **Subpart 2. Informing public where to direct inquiries.**

11 ~~Subp. 2. Informing public where to direct inquiries.~~ For the purposes of public
12 accountability, the responsible authority shall, by October 31, 1981, or until August 1 of
13 each year when the requirements of subpart 3 are fully complied with, place his/her name,
14 job title and business address, and the name(s) and job titles of any designees selected by
15 the responsible authority on a document. Such document shall be made available to the
16 public and/or posted in a conspicuous place by each entity. The document shall identify the
17 responsible authority or designees as the persons responsible for answering inquiries from
18 the public concerning the provisions of the act or of this chapter.

19 **Subpart 3. Information required by public notice.**

20 ~~Subp. 3. Information required by public notice.~~ In the public document to be prepared or
21 updated by August 1 of each year as required by Minnesota Statutes, section 13.05, the
22 responsible authority shall identify and describe by type all records, files, or processes
23 maintained by his/her entity, which contain private or confidential data. In addition to the
24 items to be placed in the public document as required by Minnesota Statutes, section
25 13.05, the responsible authority shall include the following: the name, title, and address of
26 designees appointed by the responsible authority; identification of the files or systems for
27 which each designee is responsible; and a citation of the state statute or federal law which
28 classifies each type of data as private or confidential.

29 **Subpart 4. Required readability in public notice.**

30 ~~Subp. 4. Required readability in public notice.~~ The responsible authority shall draft the
31 descriptions of the types of records, files, and processes in easily understandable English.
32 Technical or uncommon expressions understandable only by a minority of the general
33 public shall be avoided, except where required by the subject matter.

34 **Subpart 5. Form of public notice.**

35 ~~Subp. 5. Form of public notice.~~ The responsible authority may use the form set forth in part
36 1205.2000 to prepare this public document.

1 1205.1300. DUTIES OF THE RESPONSIBLE AUTHORITY IN ADMINISTERING
2 PRIVATE AND CONFIDENTIAL DATA.

3 **Subpart 1. Determining collection date.**

4 Subpart 1. ~~Determining collection date.~~ In order To administer the requirements of
5 Minnesota Statutes, section 13.05, subdivision 4, the responsible authority shall determine
6 for each ~~type of record, file, or process~~ item identified in part 1205.1200, ~~subpart 3~~ whether
7 the data contained therein was collected prior to, on, or ~~subsequent~~ after to August 1, 1975.

8 **Subpart 2. Reviewing earlier records.**

9 Subp. 2. ~~Reviewing earlier records~~ **data collected prior to August 1, 1975.** For each type
10 of record, file, or process containing data collected prior to August 1, 1975, the responsible
11 authority shall:

12 A. review the ~~federal, state, or local~~ legal enabling authority which mandated or
13 necessitated the collection of the private or confidential data;

14 B. based on that review, determine the lawful purpose for the collection of the data at the
15 time it was originally collected; and

16 C. direct the staff of the entity that private or confidential data collected prior to August 1,
17 1975, shall not be used, stored, or disseminated for any purpose, unless that purpose was
18 authorized by the enabling authority which was in effect at the time the data was originally
19 collected.

20 **Subpart 3. Reviewing later records.**

21 Subp. 3. ~~Reviewing later records~~ **data collected after August 1, 1975.** For each type of
22 record, file, or process containing private or confidential data collected on or ~~subsequent~~
23 to ~~after~~ August 1, 1975, the responsible authority shall:

24 A. review the ~~legal~~ enabling authority which mandates or necessitates the collection of the
25 data; and

26 B. identify the purposes for the collection of and the intended uses of all private or
27 confidential data that have been communicated to data subjects or should have been
28 communicated to data subjects at the time of data collection, pursuant to Minnesota
29 Statutes, section 13.04, subdivision 2.

30 **Subpart 4. Preparing lists.**

31 Subp. 4. ~~Preparing lists.~~ Using the purposes and uses identified in subparts 2 and 3, the
32 responsible authority shall:

33 A. ~~prepare lists which identify the uses of and purposes for the collection of private or~~
34 ~~confidential data for each type of record, file, or process identified in part 1205.1500. Each~~
35 ~~list shall identify all persons, agencies, or entities authorized by state or federal law to~~
36 ~~receive any data disseminated from the particular record, file, or process.~~

1 B. Pursuant to Minnesota Statutes, section 13.04, subdivision 2 either:

2 (1) attach each list identifying purposes, uses, and recipients of data to all agency forms
3 which collect the private or confidential data that will be retained in each record, file, or
4 process; or

5 (2) communicate, in any reasonable fashion, the contents of each list to data subjects at
6 the time particular data that will be retained in each record, file, or process is collected
7 from them. For purposes of this subitem, "reasonable fashion" shall include, but not be
8 limited to, oral communications made to data subjects and providing data subjects with
9 brochures that describe the entity's purposes for the collection of and the uses to be made
10 of private and confidential data.

11 **Subpart 5. Making policy.**

12 Subp. 5. **Making policy.** In administering the entity's private or confidential data consistent
13 with the provisions of these rules, the responsible authority shall:

14 A. educate entity personnel as to authorized purposes and uses;

15 B. prepare administrative procedures that will acquaint entity personnel with authorized
16 purposes and uses; and

17 C. distribute policy directives requiring compliance with the entity's determination of
18 authorized purposes and uses.

19 **1205.1400. AUTHORIZING NEW PURPOSES FOR DATA COLLECTION**

20 **1205.1400. AUTHORIZING RELEASE OR NEW PURPOSES FOR DATA COLLECTION USES**
21 **OF GOVERNMENT DATA.**

22 **Subpart 1. General Conditions.**

23 Subpart 1. **General conditions.** The responsible authority shall authorize a ~~new purpose for~~
24 ~~the collection of private or confidential data or a new different purpose or~~ use for private or
25 confidential data under any one of the following conditions: if subsequent ~~passage of~~
26 federal or state legislation requires initiation of a ~~new or~~ different purpose or use pursuant
27 to Minnesota Statutes, section 13.05, subdivision 4, clause (b), or the responsible authority,
28 prior to initiation of the ~~new or~~ different purpose or use, complies with the provisions of
29 either Minnesota Statutes, section 13.05, subdivision 4, clause (a), (c), or (d).

30 **Subpart 2. Statement.**

31 Subp. 2. **Statement.** For the purposes of administration of Minnesota Statutes, section
32 13.05, subdivision 4, ~~clause~~paragraph (a) or (c), the responsible authority shall file a
33 statement ~~in a form prescribed by~~ in writing to the commissioner.

34 **Subpart 3. Informed consent.**

1 Subp. 3. **Informed consent.** For the purposes of Minnesota Statutes, section 13.05,
2 subdivision 4, ~~clause paragraph (d), the following term shall have the meaning given it. a~~
3 data subject who

4 "Informed consent" means the data subject possesses and exercises sufficient mental
5 capacity to make a decision which reflects an appreciation of the consequences of allowing
6 the entity to initiate a new different purpose, or use, or release of the data in question private
7 data is capable of providing informed consent.

8 **Subpart 4. Restrictions.**

9 Subp. 4. **Restrictions.** ~~For the purposes of the administration of Minnesota Statutes,~~
10 ~~section 13.05, subdivision 4, clause (d), t~~The responsible authority shall comply with the
11 following:

12 A. The responsible authority shall not take any action to coerce any data subject to give an
13 "informed consent." ~~The responsible authority shall explain the necessity for or~~
14 ~~consequences of the new or different purpose or use.~~

15 B. ~~All informed consents shall be given~~Informed consent must be in writing and signed by
16 the data subject. Prior to any signature being affixed to it by the data subject, such writing
17 shall identify the consequences of the giving of informed consent.

18 C. The responsible authority shall explain in writing the consequences of providing informed
19 consent and the necessity of any different purpose or use.

20 D. If the responsible authority makes reasonable efforts to obtain the informed consent of
21 a data subject and if those efforts are not acknowledged in any way, the responsible
22 authority shall interpret the silence of the data subject as the giving of an implied consent to
23 the ~~new or~~ different purpose or use of the data. For purposes of this item, "reasonable
24 efforts" shall include:

25 (1) depositing in the United States mail, postage prepaid and directed to the last known
26 address of the data subject, at least two communications requesting informed consent;
27 and

28 (2) waiting for a period of not less than 60 days for a response to the second request.

29 D. The data subject may give informed consent to ~~less fewer~~ than all of the data elements in
30 any list of data elements presented by a responsible authority, thereby giving only partial
31 consent. Only those elements that the data subject has expressly consented to shall
32 become part of the ~~new or~~ different purpose or use.

33 E. The data subject may request that a government entity disclose private data to another
34 entity or person by providing informed consent.

35 **Subpart 5. Seeking informed consent for dissemination to insurer.**

36 Subp. 5. ~~Seeking informed consent for dissemination to insurer.~~ If the responsible
37 ~~authority seeks an individual's informed consent to the release of private data to an insurer~~

1 or the authorized representative of an insurer, the responsible authority shall comply with
2 the provisions of Minnesota Statutes, section 13.05, subdivision 4, paragraph (d), clauses
3 (1) to (7).

4 1205.1500. DUTIES OF RESPONSIBLE AUTHORITY IN ADMINISTERING ALL 5 ENTITY DATA.

6 **Subpart 1. Plan to review and analyze data administration.**

7 Subpart 1. **Plan to review and analyze data administration.** Pursuant to Minnesota
8 Statutes, section 13.05, subdivision 3, the responsible authority shall, ~~by March 1, 1983,~~
9 formulate a plan ~~that will provide for the~~ to review and ~~analysis~~ of the data administration
10 practices of the entity to ensure collection and storage of all data on individuals is limited to
11 what is necessary for the administration of a government entity's programs authorized by
12 the local government body, or state or federal law.

13 **Subpart 2. Definitions.**

14 Subp. 2. **Definitions.** In the formulation of the plan described in subpart 31, the responsible
15 authority shall ~~establish~~ provide for the establishment of administrative mechanisms and
16 procedures that comply with Minnesota Statutes, section 13.05, subdivision 5. For
17 purposes of this part:

18 A. "Accurate" means that the data in question is reasonably correct and free from error.

19 B. "Complete" means that the data in question reasonably reflects the history of an
20 individual's transactions with the particular entity. Omissions in an individual's history that
21 place the individual in a false light shall not be permitted.

22 C. "Current" means that the data in question must be logically related to the entity's
23 required and actual use of the data in its day to day operations.

24 **Subpart 3. List or index.**

25 Subp. 3. **List or index.** In the formulation of this plan, the responsible authority shall at least
26 provide for the preparation of a list of or index to all data or types of data currently collected;
27 stored, used, or disseminated by the entity. The list or index developed shall include the
28 identification of the state statute(s), federal law(s), or local ordinance(s) that authorize(s)
29 the programs or functions for which data or types of data are collected, or which
30 authorize(s) the actual collection, storage, use, or dissemination of data or types of data.
31 The plan shall further provide for the list or index to be updated when new or different data
32 collection, storage, use, or dissemination is authorized. This list or index shall be available
33 to members of the general public, upon request.

34 **Subpart 4. Determining need for data.**

35 Subp. 4. **Determining need for data.** The responsible authority shall ~~use this plan and the~~
36 ~~list or index developed~~ consider the following to aid in the determination of whether

collection and storage of data and use and dissemination of private or confidential data is necessary. For purposes of this part, data is necessary if:

A. the ~~particular~~ data is both required to carry out programs and functions that are expressly or impliedly authorized by a provision of state statute, federal law, or a local ordinance; and periodically examined, updated, modified, or referred to by the entity; or

B. the ~~government~~ entity would be unable to fulfill its duties without undue or increased burden or expense, if the ~~particular~~ data were not collected, stored, used, or disseminated; or

C. retention of the ~~particular~~ data is required in the event that a legal action is brought against or by the ~~government~~ entity; or

D. retention of the ~~particular~~ data is essential to comply with a state or federal requirement that data be retained for a specified period for the purposes of auditing, records retention, historical interest, and other similar purposes.

Subpart 5. Treating unnecessary data.

Subp. 5. ~~Treating u~~**Unnecessary data.** For any data determined to be ~~not~~ unnecessary pursuant to subpart 4, the responsible authority shall ~~provide for the following activities in the entity's plan:~~

A. ~~Take~~ing all actions, including modification of the ~~government~~ entity's data collection forms and data collection procedures, to ~~ensure~~assure that all unnecessary data ~~is~~are no longer collected and stored and all private and confidential data determined to be ~~not~~ unnecessary ~~is~~are no longer used and disseminated. Private data shall continue to be disseminated upon request by the data subject.

B. ~~Follow disposal and destruction requirements~~Disposing of data determined to be not necessary pursuant to the procedures of the Records Management Act, Minnesota Statutes, section 138.17. Inquiries concerning procedures for disposition of data may be directed to the Records Management Division, Department of Administration, Saint Paul, Minnesota 55155.

1205.1600. ADMINISTRATIVE APPEAL.

Subpart 1. Procedure.

Subpart 1. **Procedure.** Pursuant to Minnesota Statutes, section 13.04, subdivision 4, a data subject or individual may appeal an adverse determination of a responsible authority's determination that data about the data subject are accurate and complete to the commissioner of administration. The appeal shall follow the procedures established in Minnesota Statutes, chapter 14, as amended, and the rules of the Office of Administrative Hearings relating to contested case proceedings. The commissioner shall establish procedures for processing appeals.

Subpart 2. Submitting an appeal; time limits.

1 Subp. 2. **Submitting an appeal; time limits.** Notice of an appeal must be submitted to the
2 commissioner within a reasonable time of the determination made by the responsible
3 authority pursuant to Minnesota Statutes, section 13.04, subdivision 4. For purposes of this
4 subpart, "reasonable time" shall mean 180 days unless the responsible authority has
5 provided the individual with a written statement which informs the individual of the right to
6 appeal the determination to the commissioner. In the event this statement is provided,
7 "reasonable time" for purposes of this subpart shall mean 60 days. ~~If the responsible~~
8 ~~authority does not inform the data subject of the right to appeal as required by Minnesota~~
9 ~~Statutes, section 13.04, subdivision 4(c)(2), the data subject must submit the notice of~~
10 ~~appeal to the commissioner within 180 days of the responsible authority's determination.~~

11 **Subpart 3. Contents of appeal notice.**

12 Subp. 3. **Contents of appeal notice.** The ~~appeal~~ notice shall be in writing, ~~and addressed to~~
13 ~~the commissioner, and contain the following information: to: Commissioner of~~
14 ~~Administration, State of Minnesota, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.~~

15 The notice shall contain the following information:

16 A. the ~~data subject's~~ name, address, and phone number ~~or email address, if any, of the~~
17 ~~appealing party;~~

18 B. the name of the responsible authority and ~~the government entity maintaining the~~
19 ~~disputed data which he or she represents;~~

20 C. a description of the ~~nature of the dispute, including copies of the disputed data about the~~
21 ~~data subject, the data subject's letter to the responsible authority challenging the accuracy~~
22 ~~or completeness of the data, and the responsible authority's determination a description of~~
23 ~~the data; and~~

24 D. a description of the desired result of the appeal; ~~upon written request of the data subject~~
25 ~~stating reasons, the appeal may be processed under the name of a pseudonym.~~

26 **Subpart 4. Grounds for dismissing appeals.**

27 Subp. 4. **Grounds for dismissing appeals.** The commissioner may ~~dismiss appeals~~
28 ~~pursuant to the criteria in Minnesota Statutes, section 13.04, subdivision 4(e).~~

29 ~~When a government entity maintaining the disputed data asserts the data were previously~~
30 ~~presented as evidence in a court proceeding in which the data subject was a party, the~~
31 ~~entity must notify the commissioner within 10 business days of learning about the data~~
32 ~~subject's appeal.~~

33 ~~Upon receiving a notice of dismissal, data subjects may amend their appeal notice within~~
34 ~~30 days of the data of dismissal.~~

35 The administrative law judge, ~~at any stage of the proceedings, after all parties have had an~~
36 ~~opportunity to present their views, may recommend dismissal of any sham, capricious, or~~
37 ~~frivolous case, or any case not within the may recommend the dismissal of an appeal that is~~

without merit or outside the commissioner's jurisdiction. The recommendation may happen during any stage of the contested case proceeding after all parties have had an opportunity to present their views. of the Department of Administration.

Subpart 5. Repaying cost of appeal.

Subp. 5. ~~Rep~~**Paying cost of appeal.** The government entity that maintains the disputed data is responsible for all costs related to the contested case proceeding. The Department of Administration shall be reimbursed for all costs associated with the contested case proceeding by the entity whose responsible authority has been the impetus for the individual's appeal to the commissioner. The commissioner shall establish appropriate accounting procedures to provide to the entity an itemized invoice.

1205.1700. GENERAL POWERS OF THE COMMISSIONER.

Pursuant to Minnesota Statutes, section 13.07305, subdivision 2 and to assist in the general implementation and enforcement of the act Chapter 13, the commissioner shall direct personnel to provide policy analysis and support for members of the public and government entities. have the following powers:

A. If the commissioner determines that certain information is relevant to monitoring any entity's data collection and handling practices, policies, and procedures, the commissioner shall require the responsible authority of such entity to submit the information.

B. Any inquiries concerning the act or these rules and any information submissions required to be made by item A shall be directed to: Data Privacy Division, Department of Administration, State of Minnesota, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

C. The Data Privacy Division shall respond promptly to all inquiries within personnel and budgetary limitations.

NEW SECTION. POLICIES AND PROCEDURES

1205.____. ACCESS POLICIES.

Subpart 1. General.

Subpart 1. **General.** Pursuant to Minnesota Statutes, section 13.025, the responsible authority must comply with the following in preparing public and data subject access policies.

Subpart 2. Access policies for the public and data subjects.

Subp. 2. **Access policies for the public and data subjects.** The access policies required by Minnesota Statutes, section 13.025, subdivisions 2 and 3 shall, include the responsible authority's name, job title and business address, and the name and job title of any designees appointed by the responsible authority. The policies shall identify the government entity's data practices compliance official.

1205.____. ACCESS PROCEDURES.

Subpart 1. General.

Subpart 1. **General.** Pursuant to Minnesota Statutes, section 13.025 and Minnesota Statutes, section 13.05, the responsible authority must establish procedures that govern data subject access and ensure appropriate safeguards for not public data on individuals. Pursuant to Minnesota Statutes, section 13.03, the responsible authority must establish procedures for responding to requests for public data.

Subpart 2. Public data access procedures.

Subp. 2. **Public data access procedures.** The responsible authority shall establish written procedures to ensure the government entity responds to data requests in an appropriate and prompt manner.

Subpart 3. Private data access procedures.

Subp. 3. **Private data access procedures.** The responsible authority shall establish written procedures to ensure that only those identified in Minnesota Rule 1205.0400, subpart 2 access private data.

In the procedures, the responsible authority shall establish reasonable measures to verify the identity of a data subject, or entity or individual provided written informed consent by the data subject, who seeks to access private data. Reasonable measures may include, but are not limited to, the following:

- A. requiring those requesting access to appear in person;
- B. requiring the signature of any data subject who is unable to appear at the offices of the entity; and
- C. requiring the person to provide identification.

Subpart 4. Confidential data access procedures.

Subp. 4. **Confidential data access procedures.** The responsible authority shall establish written procedures to ensure only those identified in Minnesota Rule 1205.0600, subpart 2 access confidential data. In the procedures, the responsible authority shall provide reasonable measures for a data subject, to request and be informed, whether they are the subjects of confidential data. The responsible authority shall not disclose the actual confidential data to the data subject.

The responsible authority shall take reasonable measures to ensure that the person making the request is the individual data subject. Reasonable measures include, but are not limited to:

- A. requiring the data subject to appear in-person;

1 B. requiring the signature of any data subject who is unable to appear at the offices of
2 the entity; and

3 C. requiring the person to provide identification.

4 **Subpart 5. Personnel training requirements.**

5 Subp. 5. **Personnel training requirements.** The responsible authority shall:

6 A. educate entity personnel about authorized purposes and uses of not public data;

7 B. prepare administrative procedures to ensure all entity personnel receive training and
8 education regarding access to not public data; and

9 C. distribute procedures and materials to entity personnel that require compliance with the
10 entity's determination of authorized purposes and uses of not public data.

11 **1205.____. DATA INVENTORY.**

12 **Subpart 1. General.**

13 Subpart 1. **General.** Pursuant to Minnesota Statutes, section 13.025, the duties of the
14 responsible authority include but are not limited to the following.

15 **Subpart 2. Data inventory requirements.**

16 Subp. 2. **Data inventory requirements.** The responsible authority shall update the data
17 inventory required by Minnesota Statutes, section 13.025, subdivision 1, by August 1 of
18 each year. The responsible authority shall include the following in the data inventory: the
19 name, title, and address of designees appointed by the responsible authority; identification
20 of the files or systems for which each designee is responsible; and a citation of the state law
21 or federal law which classifies the data as private or confidential.

22 **Subpart 3. Plain language.**

23 Subp. 3. **Plain language.** The responsible authority shall draft the descriptions of the types
24 of records, files, and processes in plain language.

25 **1205.____. SUMMARY DATA PROCEDURES.**

26 **Subpart 1. General.**

27 Subpart 1. **General.** Pursuant to Minnesota Statutes, section 13.05, the duties of the
28 responsible authority must comply with the following.

29 **Subpart 2. Procedures.**

30 Subp. 2. **Procedures.** The responsible authority shall prepare and implement procedures to
31 ensure the government entity provides access to summary data pursuant to Minnesota
32 Statutes, section 13.05, subdivision 7. The procedures shall outline internal processes to
33 comply with the requirements of Minnesota Rules 1205.0700.

NEW SECTION. ACCESS TO NONPUBLIC AND PROTECTED NONPUBLIC DATA

1205.____. ACCESS TO NONPUBLIC DATA.

Subpart 1. General.

Subpart 1. **General.** Pursuant to Minnesota Statutes, sections 13.02, subdivision 9; and 13.05, the responsible authority shall comply with the following rules concerning access to nonpublic data.

Subpart 2. Who may access nonpublic data.

Subp. 2. **Who may access nonpublic data.** The access policies required by Minnesota Statutes, section 13.025, subdivisions 2 and 3 shall, include the responsible authority's name, job title and business address, and the name and job title of any designees selected by the responsible authority. The document shall identify the government entity's data practices compliance official.

Subpart 3. Time limits.

Subp. 3. **Time limits.** The responsible authority may limit the time that access to the nonpublic data is available to normal working hours of the government entity.

1205.____. ACCESS TO PROTECTED NONPUBLIC DATA.

Subpart 1. General.

Subpart 1. **General.** Pursuant to Minnesota Statutes, sections 13.02, subdivision 13 and 13.05, the responsible authority shall comply with the following rules concerning access to protected nonpublic data.

Subpart 2. Access to protected nonpublic data.

Subp. 2. **Access to protected nonpublic data.** Access to protected nonpublic data is available only to the following:

- A. Individuals within the entity whose work assignments reasonably require access; and
- B. Those authorized by statute or federal law access that specific data.
- C. Unless otherwise provided by statute or federal law, the subject of data not on individuals cannot consent to sharing protected nonpublic data.

NEW SECTION. ADVISORY OPINIONS

1205.____. ADVISORY OPINION PROCESS.

Subpart 1. General.

Subpart 1. **General.** Pursuant to Minnesota Statutes, section 13.072, the commissioner of administration has the permissive authority to issue non-binding advisory opinions on issues related to data practices. The advisory opinion process shall follow the procedures set out in this rule.

Subpart 2. Request for data practices advisory opinion.

Subp. 2. **Request for data practices advisory opinion.** Pursuant to Minnesota Statutes, section 13.072, subd. 1, a government entity or a person disagreeing with a government entity's determination may request a data practices advisory opinion. A request is subject to the following:

A. Opinion request from a person disagreeing with a government entity's determination.

(1) A requester must have a determination from a government entity on the issue raised in the opinion request.

(2) A request is limited to a determination on the person's rights as a subject of government data or right to have access to government data.

(3) The commissioner will consider one request per requester at a time.

(4) Requests may raise multiple issues.

(5) The commissioner will not accept an anonymous request.

a. Pursuant to Minnesota Statutes, section 13.072, subd. 4, the Commissioner may issue an advisory opinion using a pseudonym for an individual.

B. Opinion request from government entity.

(1) A request from a government entity must be submitted by an individual within the entity authorized to make a request, including but not limited to the responsible authority or the entity's legal counsel.

(2) An entity's request should include all relevant statutes; and

(3) An entity should identify all not public data submitted with the opinion request and cite the statute classifying the data.

Subpart 3. Time limits.

Subp. 3. **Contents of an advisory opinion request.** The request shall be in writing and directed to the commissioner of administration or individual designated by the commissioner.

The opinion request shall contain the following information:

A. The name and contact information of the requesting party;

B. A description of the nature of the dispute;

1 C. If the request is from a member of the public or data subject, the request must
2 also include:

3 i. A copy of the government entity's determination or a description of the
4 determination; and

5 ii. A copy of the data request or a description of the request, including to
6 whom the data request was submitted;

7 D. An allegation that an entity has not responded to a request shall constitute a
8 determination for purposes of requesting an opinion.

9 ***Subpart 4. Informal resolution.***

10 Subp. 3. **Informal resolution.** The commissioner may engage in informal resolution prior to
11 deciding whether to accept an opinion request.