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# Draft Proposed Updates to Minnesota Rules, Chapter 1205

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# 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](mailto:info.dpo@state.mn.us).

**Note:** This version of the proposed draft rules incorporates the strikethroughs and insertions.

A copy of the marked up draft proposed rules is available at: <https://mn.gov/admin/data-practices/rulemaking/>

## 1205.0100. HOW THESE RULES APPLY.

Subp. 2. **Purpose.** The purpose of this chapter is to aid government entities in implementing and administering Minnesota Statutes, chapter 13. This chapter is intended to guide entities so that while protection is given to not public data, government transparency, and the orderly and efficient operation of government are balanced.

Subp. 3. **Government entities.** This chapter shall apply to government entities as defined by Minnesota Statutes, section 13.02, subdivisions 11, 17, and 18.

Subp. 4. **Social service agencies and government contractors.** Nonprofit social service agencies meeting the requirements of Minnesota Statutes, section 13.02, subdivision 11 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 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 government data.

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

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.

## 1205.0200. DEFINITIONS (will need to be renumbered)

Subp. 1. **Scope.** The definitions in Minnesota Statutes, section 13.02 and this part apply to this chapter.

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.

1 Subp. 3. **Confidential data.** "Confidential data," as defined in Minnesota Statutes, section  
2 13.02, subdivision 3 include data which is expressly classified as confidential by either  
3 state statute, or federal law.

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

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

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

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

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

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

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

20 In such cases, the data are private.

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

25 Subp. 4. **Data on individuals.** "Data on individuals" as defined in Minnesota Statutes,  
26 section 13.02, subdivision 5, means data of which a living human being is the identifiable  
27 data subject, unless the identifying information are incidental, and the data are not  
28 accessible by name or identifying information.

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

31 Subp. \_\_. **Data not on individuals.** "Data not on individuals" as defined in Minnesota  
32 Statutes, section 13.02, subdivision 4, means data in which a living human being is not the  
33 identifiable subject. It includes identifying information on an individual that an entity can

1 demonstrate are incidental and the data are not accessible by the individual's name or  
2 other identifying data.

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

4 Subp. \_\_. **Data subject.** "Data subject" means the individual who can be identified in data  
5 on individuals. The data subject is provided specific access rights pursuant to Minnesota  
6 Statutes, section 13.04.

7 Subp. 6. **Government entity.** "Government entity" means any state agencies, political  
8 subdivisions, and statewide systems as those terms are defined in Minnesota Statutes,  
9 section 13.02.

10 "State agency" shall include any entity which is given power of statewide effect by statute or  
11 executive order.

12 "Political subdivision" shall include those local government entities which are given powers  
13 of less than statewide effect by statute or executive order.

14 "Statewide systems" shall include, but are not limited to, record keeping and data-  
15 administering systems established by statute, federal law, administrative decision or  
16 agreement, or joint powers agreement.

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

20 In the absence of an explicit private classification, data are private if a state statute or  
21 federal law provides substantially that:

22 A. Data shall not be available to the public but shall be available to the subject of that data.

23 B. Data shall not be available to anyone, except the data subject or the subject's  
24 designated representative such as an attorney.

25 C. Data shall be confidential and the individual the data is about may view the data at  
26 reasonable times.

27 D. Data shall be confidential and may be shown to the data subject at the discretion of the  
28 person holding the data. Such data shall be private if the state statute or federal law does  
29 not provide standards which limit the exercise of the discretion of the person maintaining  
30 the data.

31 E. Data are confidential, but the context of the statute or federal law in which the term  
32 confidential appears reasonably indicates the data are accessible by the individual who is  
33 the subject of the data.

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

4 Subp. 10. **Public data.** "Public data" shall mean government data on individuals or not on  
5 individuals that are not classified by state statute or federal law as not public.

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

13 Subp. 14. **Responsible authority in political subdivisions.** In political subdivisions, the  
14 responsible authority shall be as designated pursuant to Minnesota Statutes, section  
15 13.02, subdivision 16(b), unless otherwise provided by state law. In addition:

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

20 B. For cities, the city council shall appoint an individual who is an employee of the city. If  
21 the city does not have employees, the city council shall appoint an individual who is a  
22 volunteer with the city or a member of the city council.

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

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

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

1 Subp. 15. **Responsible authority in statewide systems.** Unless otherwise provided by  
2 state statute or executive order, the Commissioner designates as responsible authority of a  
3 statewide system an individual appointed by the statewide system pursuant to Minnesota  
4 Statutes, section 13.02, subdivision 16(a). Until an individual is appointed, the responsible  
5 authority will be the executive director or chief clerical officer for filing and recordkeeping  
6 purposes.

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

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

14 Subp. 16. **Summary data.** "Summary data," is defined in Minnesota Statutes, section  
15 13.02, subdivision 19, means data which has been extracted, manipulated, or summarized  
16 from private or confidential data, and from which all data elements that could link the data  
17 to a specific individual have been removed. "Summary data" includes, but is not limited to,  
18 statistical data, case studies, reports of incidents, and research reports. Once it is  
19 summarized from not public data on individuals, summary data remains summary if the  
20 responsible authority maintains any list of numbers or other data which could uniquely  
21 identify any individual in the summary data separated from the summary data and the  
22 responsible authority does not make such list or other data available to persons who gain  
23 access to, or possession of the summary data.

## 24 1205.0300. ACCESS TO PUBLIC DATA.

25 Subp. 2. **Who may access public data.** The responsible authority shall provide access to  
26 public data to any person, regardless of that person's interest in the data.

27 Subp. 4. **Calculating actual cost.** The responsible authority may charge the actual cost for  
28 copies of public data according to Minnesota Statutes, section 13.03, subdivision 3(c).

29 Actual costs may include the cost of materials and mailing fees. Government entities may  
30 establish a "fee schedule" of standard copying charges based upon actual costs incurred  
31 by the government entity or other statutory authority. Upon request, government entities  
32 must provide an itemization of the actual costs charged in response to a data request to the  
33 requester.

## 1205.0400. ACCESS TO PRIVATE DATA.

Subp. 2. **Who may access private data.** Access to private data shall be available only to the following: the subject of such data, as limited by any applicable statute, federal law, or temporary classification pursuant to Minnesota Statutes, section 13.06; individuals within the entity whose work assignments reasonably require access; 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 that specific data; and entities or individuals given access by the written informed consent 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.

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 government entity.

Subp. 5. **Calculating actual costs.** 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.** 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 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.

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

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

B. 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. 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



1 order governing such matters as divorce, separation, or custody, or a legally binding  
2 instrument which provides to the contrary.

3 Subp. 3. **Determination for withholding access.** The responsible authority may deny a  
4 parent or guardian access to private data about a minor, upon request of the minor. The  
5 responsible authority may require the minor data subject to submit a written request that  
6 the data be withheld. The written request shall set forth the reasons for denying parental  
7 access and shall be signed by the minor.

8 Upon receipt of such a request, the responsible authority shall determine whether denying  
9 access would be in the best interest of the minor. In making the determination, the  
10 responsible authority shall consider:

11 A. whether the minor is of sufficient age and maturity to explain the reasons for the request  
12 to deny access;

13 B. whether the minor is of sufficient age and maturity to understand the consequences of  
14 the request to deny access;

15 C. whether the minor's request to deny access would protect the minor from physical or  
16 emotional harm;

17 D. whether the minor's reasons for denying access are made in good faith;

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

21 F. any other circumstances relevant to the request.

22 Subp. 4. **Access to education records.** Family Educational Rights and Privacy Act, 20 USC  
23 1232g, defines and governs access to education records. The responsible authority cannot  
24 deny parents or guardians access to education records unless permitted by FERPA.

25 Subp. 5. **Denying access without a request from a minor.** Without a request from a minor,  
26 the responsible authority may deny parent or guardian access to private data about a  
27 minor, pursuant to the provisions of Minnesota Statutes, sections 144.291 to 144.298 or  
28 any other statute or federal law that allows or requires the responsible authority to do so.

## 29 1205.0600. ACCESS TO CONFIDENTIAL DATA.

30 Subp. 2. **Access to confidential data.** Access to confidential data is available only to the  
31 following:

32 A. individuals within the entity whose work assignments reasonably require access; and

1 B. entities and agencies who are authorized by statute, including Minnesota Statutes,  
2 section 13.05, or federal law to gain access to that specific data.

### 3 1205.0700. ACCESS TO SUMMARY DATA.

4 Subp. 4. **Responding to requests for summary data.** Within ten business days of the  
5 receipt of a written request for summary data, the responsible authority shall inform the  
6 requester of the estimated costs, pursuant to subpart 7, if any, and:

7 A. provide the summary data requested; or

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

10 C. provide a person outside of the government entity, which can include the requester or a  
11 government contractor, access to the private or confidential data for the purpose of  
12 preparing summary data, pursuant to Minnesota Statutes, section 13.05, subdivision 7, and  
13 subpart 5.

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

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

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

21 C. a statement that the preparer understands there may be civil or criminal penalties in the  
22 event that the private or confidential data is disclosed inappropriately.

23 Subp. 6. **Methods of preparing summary data.** Methods of preparing summary data  
24 include but are not limited to removing from any set of government data, or file, all data  
25 elements that uniquely identify an individual, as described in Minn. R. 1205.0200, subparts  
26 4 and 5 so that the data that remain fulfills the definition of summary data as defined by  
27 Minnesota Statutes, section 13.02, subdivision 19.

28 Removing data elements that uniquely identify an individual includes but is not limited to  
29 electronic or paper redaction, tearing off or cutting out the portions of paper records that  
30 contain identifying information, and 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.

1 Subp. 7. **Summary data costs.** The government entity may require payment of any portion  
2 of the costs to prepare summary data at any time. In calculating costs associated with the  
3 preparation of summary data, the responsible authority may:

4 A. consider the provisions of part 1205.0300;

5 B. charge no more than reasonable preparation costs, including the cost of a government  
6 contractor; and

7 C. consider the reasonable value to the entity of the summary data prepared and where  
8 appropriate reduce the costs assessed to the requesting person.

9 [Repeal 1205.0800. CLASSIFICATION OF DATA]

10 [Repeal 1205.0900. AUTHORITY OF THE RESONSIBLE AUTHORITY]

11 [Repeal 1205.1000. APPOINTMENT OF THE RESPONSIBLE AUTHORITY]

12 1205.1100. APPOINTMENT POWER OF THE RESPONSBLE AUTHORITY]

13  
14 Subpart 1. **Power to appoint designees.** Pursuant to Minnesota Statutes, section 13.03,  
15 subdivision 2, the responsible authority may, appoint designees who are employees of the  
16 government entity. When appointing designees, the responsible authority shall comply with  
17 the following.

18 Subp. 2. **Appointment in writing.** The responsible authority shall appoint any designee in  
19 writing.

20 1205.1200. DUTIES OF THE RESPONSIBLE AUTHORITY RELATING TO PUBLIC  
21 ACCOUNTABILITY

22 1205.1200. **Duties of the Responsible Authority Relating to Data Inventory.**

23 Subpart 1. General. Pursuant to Minnesota Statutes, section 13.05, the duties of the  
24 responsible authority include but are not limited to the following

25 1205.1300. DUTIES OF THE RESPONSIBLE AUTHORITY IN ADMINSTERING  
26 PRIVATE AND CONFIDENTIAL DATA.

27 Subpart 1. **Determining collection date.** To administer the requirements of Minnesota  
28 Statutes, section 13.05, subdivision 4, the responsible authority shall determine for each  
29 item identified in part 1205.1200, subpart 3 whether the data contained therein was  
30 collected prior to, on, or after August 1, 1975.

Subp. 2. **Reviewing data collected prior to August 1, 1975.** For data collected prior to August 1, 1975, the responsible authority shall:

A. review the enabling authority which mandated or necessitated the collection of the private or confidential data;

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

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

Subp. 3. **Reviewing data collected after August 1, 1975.** For private or confidential data collected on or after August 1, 1975, the responsible authority shall:

A. review the enabling authority which mandates or necessitates the collection of the data; and

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

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

### **1205.1400. AUTHORIZING RELEASE OR NEW USES OF GOVERNMENT DATA.**

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

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

Subp. 3. **Informed consent.** For the purposes of Minnesota Statutes, section 13.05, subdivision 4, paragraph (d), a data subject who

possesses and exercises sufficient mental capacity to make a decision which reflects an appreciation of the consequences of allowing the entity to initiate a different purpose, use, or release of private data is capable of providing informed consent.

1 Subp. 4. **Restrictions.** The responsible authority shall comply with the following:

2 A. The responsible authority shall not take any action to coerce any data subject to give  
3 informed consent.

4 B. Informed consent must be in writing and signed by the data subject.C. The responsible  
5 authority shall explain in writing the consequences of providing informed consent and the  
6 necessity of any different purpose or use.

7 D. If the responsible authority makes reasonable efforts to obtain the informed consent of a  
8 data subject and if those efforts are not acknowledged in any way, the responsible authority  
9 shall interpret the silence of the data subject as the giving of an implied consent to the  
10 different purpose or use of the data. For purposes of this item, reasonable efforts shall  
11 include:

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

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

16 D. The data subject may give informed consent to fewer than all of the data elements in any  
17 list of data elements presented by a responsible authority, thereby giving only partial  
18 consent. Only those elements that the data subject has expressly consented to shall  
19 become part of the different purpose or use.

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

## 22 1205.1500. DUTIES OF RESPONSIBLE AUTHORITY IN ADMINISTERING ALL 23 ENTITY DATA.

24 Subpart 1. **Plan to review and analyze data administration.** Pursuant to Minnesota  
25 Statutes, section 13.05, subdivision 3, the responsible authority shall formulate a plan to  
26 review and analyzethe data administration practices of the entity to ensure collection and  
27 storage of all data on individuals is limited to what is necessary for the administration of a  
28 government entity's programs authorized by the local government body, or state or federal  
29 law.

30 Subp. 2. **Definitions.** In the formulation of the plan described in subpart 1, the responsible  
31 authority shall establish procedures that comply with Minnesota Statutes, section 13.05,  
32 subdivision 5. For purposes of this part:

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

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

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

3 Subp. 4. **Determining need for data.** The responsible authority shall consider the following  
4 to aid in the determination of whether collection and storage of data and use and  
5 dissemination of private or confidential data is necessary. For purposes of this part, data is  
6 necessary if:

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

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

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

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

17 Subp. 5. **Unnecessary data.** For any data determined to be unnecessary pursuant to  
18 subpart 4, the responsible authority shall:

19 A. Take all actions, including modification of the government entity's data collection forms  
20 and data collection procedures, to ensure that all unnecessary data are no longer collected  
21 and stored and all private and confidential data determined to be unnecessary are no longer  
22 used and disseminated. Private data shall continue to be disseminated upon request by the  
23 data subject.

24 B. Follow disposal and destruction requirements of the Records Management Act,  
25 Minnesota Statutes, section 138.17.

## 26 1205.1600. ADMINISTRATIVE APPEAL.

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

33 Subp. 2. **Submitting an appeal; time limits.** .If the responsible authority does not inform  
34 the data subject of the right to appeal as required by Minnesota Statutes, section 13.04,  
35 subdivision 4(c)(2), the data subject must submit the notice of appeal to the commissioner  
36 within 180 days of the responsible authority's determination.

1 Subp. 3. **Contents of appeal notice.** The appeal notice shall be in writing, addressed to the  
2 commissioner, and contain the following information: A. the data subject's name, address,  
3 and phone number or email address, if any;

4 B. the name of the responsible authority and government entity maintaining the disputed  
5 data;

6 C. a description of the dispute, including copies of the disputed data about the data  
7 subject, the data subject's letter to the responsible authority challenging the accuracy or  
8 completeness of the data, and the responsible authority's determination; and

9 D. a description of the desired result of the appeal.

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

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

16 Upon receiving a notice of dismissal, data subjects may amend their appeal notice within  
17 30 days of the data of dismissal.

18 The administrative law judgemay recommend the dismissal of an appeal that is without  
19 merit or outside the commissioner's jurisdiction. The recommendation may happen during  
20 any stage of the contested case proceeding after all parties have had an opportunity to  
21 present their views.

22 Subp. 5. **Paying cost of appeal.** The government entity that maintains the disputed data is  
23 responsible for all costs related to the contested case proceeding.

## 24 1205.1700. GENERAL POWERS OF THE COMMISSIONER

25 Pursuant to Minnesota Statutes, section 13.073 and to assist in the general implementation  
26 and enforcement of Chapter 13, the commissioner shall direct personnel to provide policy  
27 analysis and support for members of the public and government entities.

## 28 NEW SECTION. POLICIES AND PROCEDURES

### 29 1205.\_\_\_\_. ACCESS POLICIES.

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

33 Subp. 2. **Access policies for the public and data subjects.** The access policies required by  
34 Minnesota Statutes, section 13.025, subdivisions 2 and 3 shall, include the responsible  
35 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.** 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.

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.

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.

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;
- 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.



- 1 Subp. 5. **Personnel training requirements.** The responsible authority shall:
- 2 A. educate entity personnel about authorized purposes and uses of not public data;
- 3 B. prepare administrative procedures to ensure all entity personnel receive training and
- 4 education regarding access to not public data; and
- 5 C. distribute procedures and materials to entity personnel that require compliance with the
- 6 entity's determination of authorized purposes and uses of not public data.

## 7 1205.\_\_\_\_. DATA INVENTORY.

8 Subpart 1. **General.** Pursuant to Minnesota Statutes, section 13.025, the duties of the

9 responsible authority include but are not limited to the following.

10 Subp. 2. **Data inventory requirements.** The responsible authority shall update the data

11 inventory required by Minnesota Statutes, section 13.025, subdivision 1, by August 1 of

12 each year. The responsible authority shall include the following in the data inventory: the

13 name, title, and address of designees appointed by the responsible authority; identification

14 of the files or systems for which each designee is responsible; and a citation of the state law

15 or federal law which classifies the data as private or confidential.

16 Subp. 3. **Plain language.** The responsible authority shall draft the descriptions of the types

17 of records, files, and processes in plain language.

## 18 1205.\_\_\_\_. SUMMARY DATA PROCEDURES

19 Subpart 1. **General.** Pursuant to Minnesota Statutes, section 13.05, the duties of the

20 responsible authority must comply with the following.

21 Subp. 2. **Procedures.** The responsible authority shall prepare and implement procedures to

22 ensure the government entity provides access to summary data pursuant to Minnesota

23 Statutes, section 13.05, subdivision 7. The procedures shall outline internal processes to

24 comply with the requirements of Minnesota Rules 1205.0700.

## 25 NEW SECTION. ACCESS TO NONPUBLIC AND PROTECTED NONPUBLIC DATA

### 26 1205.\_\_\_\_. ACCESS TO NONPUBLIC DATA

27 Subpart 1. **General.** Pursuant to Minnesota Statutes, sections 13.02, subdivision 9; and

28 13.05, the responsible authority shall comply with the following rules concerning access to

29 nonpublic data.

30 Subp. 2. **Who may access nonpublic data.** The access policies required by Minnesota

31 Statutes, section 13.025, subdivisions 2 and 3 shall, include the responsible authority's

32 name, job title and business address, and the name and job title of any designees selected

33 by the responsible authority. The document shall identify the government entity's data

34 practices compliance official.

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.** 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.

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.** 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.

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.

1 B. Opinion request from government entity.

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

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

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

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

11 The opinion request shall contain the following information:

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

13 B. A description of the nature of the dispute;

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

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

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

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

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