


Please **mute** yourself, turn on your camera.


In Chat type which data elements are **public** about gov't employees:

- A. Payroll timesheets
- B. Gross salary
- C. Education background
- D. Home address
- E. Employee identification number
- F. ID badge photo
- G. Work email address

Welcome to the Personnel Data Workshop. We will begin shortly.



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Personnel Workshop

November 2023

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What is public?

- A. Your payroll timesheet
- B. Your gross salary
- C. Your education background
- D. Your home address
- E. Your employee identification number
- F. Work email address
- G. Your ID badge photo



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WebEx walkthrough


- Mute/Unmute
- Cameras
- Chat, Participant, and Polling panels
- Breakout sessions

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Introductions

Please introduce yourself:

- Your name
- Your entity
- Your data practices role
- What questions you have today

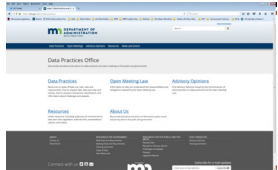


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Who we are and what we do

Data Practices Office

- Informal advice/technical assistance
- Commissioner of Administration advisory opinions
- Website and informational materials: <https://mn.gov/admin/data-practices/>
- Listserv and newsletters
- Legislative assistance
- Training



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Agenda

8:30	Welcome and Introductions
8:45	Data practices basics
9:10	Personnel data overview
10:00	Take a break!
10:15	Continue personnel data overview
10:45	Morning redaction exercises
11:15	Lunch (on your own)
12:15	Complaint and discipline data
1:30	Break
1:45	Afternoon redaction exercises
2:25	Scenarios
3:15	Final debrief, general Q&A, evaluations
3:30	End

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Government data practices

- Minnesota Statutes, Chapter 13
 - Presumes government data are public
 - Classifies data that are not public
 - Provides rights for the public and data subjects
 - Requires that data on individuals are accurate, complete, current, and secure
- Minnesota Rules, Chapter 1205

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Classification of Government Data


Classification	Meaning of Classification	Examples
Public	Available to anyone for any reason	Employee name, salary
Private/ Nonpublic	Available to: <ul style="list-style-type: none"> • Data subject • Those in entity whose work requires access • Entities authorized by law • Those authorized by data subject 	Employee home address/phone number
Confidential/ Protected Nonpublic	Available to: <ul style="list-style-type: none"> • Those in entity whose work requires access • Entities authorized by law Not available to data subject	Active civil investigative data

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What do you think #1

1. You email a candidate an invitation to interview for a position.
2. She accepts via email.
3. Email from an interview panelist saying they are running late.

How are these emails classified and can you delete any of them right away?



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Limitation on Collection of Government Data
Minn. Stat. §13.05, subd. 3 and Minn. Rules part 1205.1500, subp. 4

- Collection and storage of all data on individuals and
- Use and dissemination of private/confidential data:
 - Limited to data that are “necessary for the administration and management of programs specifically authorized by the Legislature, local governing body, or federal government”.

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Tennessee Warning Notice
(Minn. Stat. §13.04, subd. 2)

When collecting private or confidential data from an individual about that individual:

- State the purpose and intended use of data
- Inform the individual whether s/he may refuse or is legally required to provide the data
- Explain known consequences of supplying or refusing to supply the data
- Identify other persons or entities with statutory authority to access the data

- Examples: SSN, employee home address

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Informed Consent – when needed
 Minn. Stat. §13.05, subd. 4 & Minn. R. 1205.1400

- Permission for a new use or release of private government data
- Informed consent is necessary when:
 - The individual asks the entity to release private data to another entity or person
 - The entity wants to release private data to another entity or person
 - The data subject received a Tennessee warning notice and the entity now wants to use or release the data in a different way

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Informed Consent – how to provide
 Minn. Stat. §13.05, subd. 4 & Minn. R. 1205.1400

- Informed consent must be in writing and cannot be coerced.
- Explain the necessity for or consequences of the new or different purpose or use.
- Data subject can consent to all or some of the data identified in the informed consent.
- “Implied consent” where government has made reasonable efforts to obtain informed consent (see Minn. R. 1205.1400)


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What do you think #2

Your department is running a voluntary program for employees to promote healthy eating and exercise; can you collect the participants’ social security numbers?

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Personnel Data: Introduction

Questions on Data Practices Basics?

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Personnel data – defined

Government data *on individuals* maintained because an individual is or was an employee of a government entity, applicant for employment, volunteer, or independent contractor

Reverses general public presumption


- All personnel data are private except data specifically classified as public

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What do you think #3

Personnel data?

- A. Job posting for an administrative assistant
- B. Email from Data Practices Office staff to you about a copy cost question
- C. Resume
- D. Report on website design vendors with a staff member’s name on it



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Public personnel data includes

Section 13.43, subd. 2

- Name
- Actual gross salary
- Terms and conditions of employment
- Value and nature of employer paid fringe benefits
- Basis amount of added remuneration, including expense reimbursement
- Education and training background and previous work experience

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Public personnel data, cont.

- Work location and a work telephone number
- Work-related continuing education
- Payroll time sheets *or* other comparable data that are *only used* to account for employee's work time for payroll purposes
 - Except if disclosure would reveal the employee's *reasons* for the use of sick or other medical leave or other not public data

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Public disciplinary data

- Existence and status of complaints or charges, regardless of disciplinary action
- Final disposition of any disciplinary action plus the specific reasons for and data documenting the basis of the action
- Complete terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement
 - The agreement must include specific reasons for the agreement if more than \$10,000


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What do you think #4

Your entity has signed a contract with the superintendent/city manager/county administrator/executive director.

A member of the public would like a copy of the contract.

Can the requester see it?



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Employment contracts

- Terms and conditions of employment are public.
- Most, if not all, elements in an employment contract are likely public.
- Review the contract for any not public elements (e.g., identifying information about dependents)


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Photographs and videos of employees

- Is the employee the subject of the data?
 - If yes, then it is personnel data – photos and videos are not in § 13.43, subd. 2 = private data
 - If no, then it is not personnel data
 - Presumptively public, or
 - Could be classified by another provision depending on circumstances



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 DEPARTMENT OF ADMINISTRATION

Morning break!



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Questions?

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What do you think #5

- Government employees create and maintain various data as a part of their official tasks and duties.
 - Are all of the data that an employee creates or maintains personnel data?



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Not everything is personnel data

- Employee must be the identifiable subject of the data
- Consider:
 - Meeting notes
 - Reports
 - Correspondence about an official activity
- Some “personal” data

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Personal data

- How are emails and voicemail messages about an employee’s personal matters classified?
 - Government data?
 - Policy for incidental use of government equipment?
 - AO 01-075 and 05-017

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What do you think #6

A Government employee sends a work-related email from his personal email address on his phone.

- Are the data on his personal email account and/or phone government data?





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Government data on personal devices

- Employees can create government data on personal devices
- Employers might consider:
 - Policy on compliance with records retention and data requests
 - Policy on usage



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Data on applicants

13.43, subd. 3

- Everything is private except:
 - Veteran status
 - Relevant test scores
 - Rank on eligible list
 - Job history
 - Education and training
 - Work availability
- Names are private until a finalist
 - Finalist = selected for interview by appointing authority
- Consider treatment of resumes



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Elected officials

- Are elected officials “employees” covered by the personnel data section?
 - Entity determination
 - If not employees, data are presumptively public
 - Note Minn. Stat. §13.601
 - Unpublished MN Court of Appeals
 - *Krout v. City of Greenfield*, A11-1200, April 16, 2012
 - Confirms guidance in advisory opinions that entity should decide whether elected officials are employees

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Sharing with Unions
Minn. Stat. §13.43, subd. 6

- Entity must provide data to a union to extent necessary to:
 - Conduct elections
 - Investigate and process grievances
 - Implement Chapters 179 and 179A
- Entity must share with labor organizations and BMS per BMS order



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Personnel Data and the Open Meeting Law
Minn. Stat. Chapter 13D

- Must close meetings to discuss preliminary consideration of allegations or charges about an individual subject to the body's authority*
- May close meetings for performance evaluations of individuals subject to the public body's authority*
- Public bodies may discuss not public data in an open meeting without liability when:
 - The disclosure relates to a matter within the scope of the public body's authority and
 - Is reasonably necessary to conduct the business or agenda item before the body
- Data retain original classification
 - However, a "record of the meeting" is public
 - Advisory Opinion 21-002

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Redaction Exercise – Early Session

Small group discussion

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Redaction

- Separate not public data from responsive data
- At the data element level
- Identity can be more than a name
- Provide specific citation in support of redaction
 - At data element level or at document level?




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Redaction Exercise

- Reintroduce yourselves and pick a spokesperson (or person farthest from St. Paul)
- Take 15 minutes to review, redact, and discuss with the group
- Assume this is for a **member of the public requester**
- Use the “Ask for Help” button in the Participant Panel, if you need assistance.
- Click the red circle at the bottom of the screen to exit

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Lunch break!

Questions?

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Welcome back!

Who has questions?



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DEPARTMENT OF ADMINISTRATION

Disciplinary actions and related data

Minnesota Statutes, section 13.43

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What is a complaint or charge?

- Not defined in the law
- Largely within the discretion of the entity
- Something that results in an investigation or reported to HR
- What is an investigation?
 - Dependent on the circumstances, entity decision
 - E.g., Conversation with the employee or formal review and interviews with witnesses

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What is “discipline”?

- Not defined in the law
- Largely within the discretion of the entity
- Discipline:
 - Review collective bargaining agreements and HR policies
 - Minnesota Coalition on Government Information v. City of Minneapolis, et al., No. 27-CV-21-7237 (Feb. 6, 2023).
 - “An action imposed through the decision of a government entity to punish or penalize an individual within the scope of §13.43, subd. 2 consistent with the rights and obligations between the government entity and the individual data subject as established by law and/or collective bargaining.

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Disciplinary data


- While the complaint or charge against an employee is pending, the existence and status are public.
- All other related data are private during the investigation
 - Reminder: personnel data are not confidential – employee has access rights while investigation is pending



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Existence and status

- During an investigation, entity can say the complaint/charge:
 - Exists
 - Does not exist
- If a complaint/charge exists, entity can say this about status:
 - Complaint received
 - Pending
 - Under investigation
 - Resolved/complete/closed
- Note: Revealing “with or without pay” status



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Navarre v. South Washington County Schools 652 N.W.2d 9 (Minn. 2002)

- Complaints by parents, students, co-workers about a teacher
- School officials sent letters to parents, made statements in the media, while the complaints were pending.
- Court: statements describing the “quality or characteristic,” “nature and character,” or the “severity” of a complaint prior to final disposition of disciplinary action go **beyond existence and status**.

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Disciplinary data, part 2

- If no discipline following an investigation
 - No additional data become public, all related data remain private
- If there is a final disposition of disciplinary action
 - Specific reasons for the disciplinary action and data that document the basis of the action are public

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Final disposition

- For employees who are *not* subject to collective bargaining agreement, final disposition when:
 - Government entity makes its final decision about discipline regardless of later proceedings
 - Includes resignation if after final decision

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Final disposition, cont.

- Final disposition in collective bargaining agreements
 - Conclusion of arbitration proceedings, or
 - Failure of employee to elect arbitration
- Disciplinary action data are not public if:
 - Arbitrator sustains grievance, and
 - Reverses all aspects of discipline



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Disciplinary data, part 3

- Complainant Identity
 - Advisory Opinion 06-010
 - "The names and address of the complainants are data about the complainants"
 - *Demers v. City of Minneapolis*
 - If a government employee makes a complaint about another government employee, the complainant's identity is **private** personnel data *on the complainant*
 - If a member of the public makes a complaint about a government employee, his/her ID is **public**
 - Cannot be classified as personnel data, so presumptively public

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Press Release – Employee Misconduct


You are investigating a teacher for misconduct and your Communications Department wants to release the following statement. What do you think?

I am writing to let you know about a situation that affects our school community.

We received a complaint against Mr. Anderson, an English teacher. The complaint is under investigation and Mr. Anderson is on leave, which is standard practice.

Due to privacy laws and the ongoing investigation, I am unable to provide additional details about the situation. The safety of our students is always a top priority.


We hope you'll take this opportunity to encourage your child to talk to a trusted adult if they have concerns about school. Thank you for supporting your child and our school.



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What do you think #7

- City decides to suspend employee with a collective bargaining agreement following an investigation
- What data are public if:
 - Grievance process is pending?
 - The time to file a grievance expires?
 - Employee resigns **before** the decision to suspend?
 - Employee resigns **after** the decision to suspend and an arbitrator upholds the suspension?



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Public officials – state agencies

- Heads of state agencies and their deputies and assistants
- Members of boards or commissions the governor must appoint or other elective officers
- Executive or administrative heads of departments, bureaus, divisions, or institutions

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Public officials – local government

- Political subdivisions
 - Chief administrative officer, or equivalent
 - Three highest-paid employees in city or county with population over 15,000
 - Managers, chiefs, heads, or directors in cities over 7,500 and counties over 5,000
- School districts
 - Business managers, HR directors, ADs (50% of time in administration, supervision, etc.), chief financial officers, directors, superintendents, and principals

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Public official complaints/discipline

- All data related to a complaint or charge are public...
 - **State agencies**
 - Upon completion of an investigation, or
 - If public official resigns or is terminated while complaint or charge is pending

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Public official complaints/discipline, cont.

- All data related to a complaint or charge are public...
 - **Local government**
 - If complaint or charge results in discipline, or
 - If public official resigns or is terminated while complaint or charge is pending
 - Employee releases entity from liability for any legal claims arising out of the conduct that is the subject of the complaint as part of a settlement agreement

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What do you think #8

A complaint comes in about a *former* employee. Your entity does an investigation to determine whether there was misconduct. How are the complaint and investigative data classified?



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Settlement agreements

- The complete terms of an agreement settling a dispute arising out of the employment relationship are public.
- Specific reasons for a settlement agreement if payment is more than \$10,000
- Advisory Opinion 12-006

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Settlement agreements, cont.

- Government entities cannot enter into settlement agreements to limit access to personnel data
- This includes:
 - Agreement not to discuss, comment on data
 - Agreement limiting data subject's release of data
- Except:
 - Provision that limits employee from releasing private data that identified other employees

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Relevant case law

- *Schwanke v. Minn. Dept. of Administration*, 851 N.W.2d 591 (Minn. 2014)
 - Public employee can challenge performance evaluation data as inaccurate or incomplete under the data challenge appeal process
- *Harlow v. State of Minn. Dept. of Human Services, et al.*, 883 N.W. 2d 561 (Minn. 2016)
 - Identical data may simultaneously exist as both public and not public when classified differently in distinct locations or contexts

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Relevant case law, cont.

- *KSTP-TV v. Metro. Council*, 884 NW 2d 342 (Minn. 2016).
 - The video data are personnel data, if “maintained” exclusively because the subject of the data is a government employee
- *Burks v. Metro. Council*, 884 NW 2d 338 (Minn. 2016).
 - The right of access to data extends to “the individual subject” even if the data identifies other individuals

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Resources

- Appropriate Use of Electronic Communication and Technology
https://mn.gov/mmb/assets/1423-appropuseoftechpdf_tcm1059-322068.pdf
- General personnel data guidance and relevant advisory opinions
<https://mn.gov/admin/data-practices/data/types/personnel/>
- Minnesota Management and Budget Data Practices Manual
https://mn.gov/mmb/assets/Data-Practices-Personnel-Records_tcm1059-127062.pdf


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Afternoon break!

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What questions do you have?



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Redaction Exercise – Afternoon Session

Small group discussion

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Afternoon Redaction

- Pick a spokesperson (or person with the next birthday)
- Take 20 minutes to review, redact, and discuss with the group
- The requester is listed on the handout
- We will discuss your answers as a group
- Use the "Ask for Help" button in the Participant Panel, if you need assistance.
- Click the red circle at the bottom of the screen to exit.

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Scenarios

Small group discussion

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