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

WebEx walkthrough

• Mute/Unmute  
• Cameras  
• Chat, Participant, and Polling panels  
• Breakout sessions
**Introductions**

Please introduce yourself:
• Your name
• Your entity
• Your data practices role
• What city you are joining us from 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**

<table>
<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>8:30</td>
<td>Welcome and Introductions</td>
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<td>Data practices basics</td>
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<td>9:30</td>
<td>Personnel data overview</td>
</tr>
<tr>
<td>10:00</td>
<td>Take a break!</td>
</tr>
<tr>
<td>10:15</td>
<td>Correct personnel data example</td>
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<td>Morning redaction exercises</td>
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<td>Final debrief, general Q&amp;A, evaluations</td>
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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

Classification of Government Data

<table>
<thead>
<tr>
<th>Classification</th>
<th>Meaning of Classification</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>Available to anyone for any reason</td>
<td>Employee name, salary</td>
</tr>
<tr>
<td>Private/Nonpublic</td>
<td>Available to:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Data subject</td>
<td>Employee home address/phone number</td>
</tr>
<tr>
<td></td>
<td>• Those in entity whose work requires access</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Entities authorized by law</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Those authorized by data subject</td>
<td></td>
</tr>
<tr>
<td>Confidential/Protected</td>
<td>Available to:</td>
<td></td>
</tr>
<tr>
<td>Nonpublic</td>
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</tr>
<tr>
<td></td>
<td>• Entities authorized by law</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Not available to data subject</td>
<td></td>
</tr>
</tbody>
</table>

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?
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”.

Tennessen 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

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 Tennessen warning notice and the entity now wants to use or release the data in a different way
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)

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?

Personnel Data: Introduction

Questions on Data Practices Basics?
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

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
Put your answer in the Chat Panel

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
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

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

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?

Yes/No in the Chat Panel
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)

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

Morning break!
Questions?

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?

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
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 05-0175

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?

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
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

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

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

- Entity may share data to:
  - Conduct elections
  - Notify employees of fair share fee
  - Implement Chapters 179 and 179A
- Responsible authority determination
- Entity must share with labor organizations and BMS per BMS order
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

Redaction Exercise – Early Session
Small group discussion

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?
Breakout Rooms – Handout 2 and 3

- Introduce 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 “Ask for Help” button in the Participant Panel, if you need assistance.
- Click the red circle at the bottom of screen to exit.

Lunch break!

Questions?

Welcome back!

Please drop a “here” or “back” in Chat

Who has questions?
### Agenda - afternoon

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### Disciplinary actions and related data

Minnesota Statutes, section 13.43

### 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
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

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

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.
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

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

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
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

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.

Press Release – Employee Misconduct

Redactions

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

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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?

What do you think #7-answer

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

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
## 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

## 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

## 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
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?

What do you think #8-answer

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?

• If the employee was not a public official, then the data are private, because there can’t be a final disposition of disciplinary action. Existence and status are public.

• If the employee was a public official, some data might be public and some might be private depending on whether employee is State-level (all data related to the complaint are public) or local-level (only existence and status).

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
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

 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.

 Relevant case law, cont.

  - The video data are personnel data, if "maintained" exclusively because the subject of the data is a government employee.
  - The right of access to data extends to “the individual subject” even if the data identifies other individuals.
Resources

• Appropriate Use of Electronic Communication and Technology

• General personnel data guidance and relevant advisory opinions
  https://mn.gov/admin/data-practices/data/types/personnel/

• Minnesota Management and Budget Data Practices Manual

Afternoon break!

What questions do you have?
Redaction Exercise – Afternoon Session
Small group discussion

Breakout Rooms - Handouts #4, 5, & 6

- Introduce yourselves and 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.
- Use "Ask for Help" button in the Participant Panel, if you need assistance.
- Click the red circle at the bottom of screen to exit.

Scenarios
Small group discussion