Introduction to Data Practices

Data Practices Office
September 22, 2022

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

Agenda

<table>
<thead>
<tr>
<th>Time</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>9:00</td>
<td>Welcome and introductions</td>
</tr>
<tr>
<td>9:15</td>
<td>Data Practices Act overview</td>
</tr>
<tr>
<td>10:45</td>
<td>Break</td>
</tr>
<tr>
<td>10:55</td>
<td>Data Practices Act scenarios</td>
</tr>
<tr>
<td>11:35</td>
<td>Developing policies</td>
</tr>
<tr>
<td>11:55</td>
<td>Final questions and complete evaluations</td>
</tr>
</tbody>
</table>
Today’s Objectives

• Identify the broad requirements of the Minnesota Government Data Practices Act
• Understand general responsibilities under the Data Practices Act
  • Maintaining government data
  • Responding to data practices requests
  • Employees with data practices responsibilities
• Apply Data Practices Act requirements in different situations

Data Practices Act Overview

Data practices policy

Maintain proper balance
  • Public’s right to access public government data
  • Privacy rights of individuals
  • Government’s need to conduct business properly and efficiently
Minnesota Government Data Practices Act

• 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 be accurate, complete, current, and secure
• Minnesota Rules, Chapter 1205

Government data defined

“All data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.”

(Minn. Stat. § 13.02, subd. 7)

Other data practices related laws

• Official Records Act (Minn. Stat., section 15.17)
  • Make and preserve all records necessary to a full and accurate knowledge of official activities
• Records Management Statute (Minn. Stat., section 138.17)
  • Records retention schedules and records disposition panel
  • MN State Archives website
    www.mnhs.org/preserve/records/gov_services.htm
Lifecycle of government data

- Government Data Practices Act
  - Administer Data
- Official Records Act
  - Create and Maintain Data
- Records Management Statute
  - Destroy data

Official records vs. government data

- Government data
- Official records (Subject to records retention schedule)

What do you think?

- You have three versions of a report from last year including the final report.
  - What is the official record?
  - Are all the drafts government data?
  - Can you destroy the drafts?
Maintaining government data

• No requirement to maintain data in a particular format or organization system
• However...
  • Data must be "easily accessible for convenient use"

Government data

<table>
<thead>
<tr>
<th>Data on individuals</th>
<th>Data not on individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data that identify someone</td>
<td>Data that do not identify someone</td>
</tr>
<tr>
<td>• Employee's telephone number</td>
<td>• Makes and models of fleet trucks</td>
</tr>
<tr>
<td>• Name and address of adult arrestee</td>
<td>• Names of companies that are preferred vendors</td>
</tr>
<tr>
<td>• Athlete of the week photograph</td>
<td>• List of government websites</td>
</tr>
</tbody>
</table>

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 &amp; salary</td>
</tr>
<tr>
<td>Private/Nonpublic</td>
<td>Available to:</td>
<td>Employee home address &amp; home phone number</td>
</tr>
<tr>
<td></td>
<td>• Data subject</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Those in the entity whose work assignment 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 nonpublic</td>
<td>Available to:</td>
<td>Data collected as part of an active civil legal action</td>
</tr>
<tr>
<td></td>
<td>• Those in the entity whose work assignment requires access</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Entities authorized by law</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Not available to the data subject</td>
<td></td>
</tr>
</tbody>
</table>
Staff with data practices duties

- Responsible authority (RA)
- Data practices compliance official (DPCO)
- Designee
- Other staff with data practices responsibilities

Requests for data

Members of the public and data subjects can request data – to inspect or get copies

- Written requests
- Accepting requests
  - Note about email requests

Responsible authority

(Minn. Stat. §13.02, subd. 16 & Minn. Rules 1205.0200)

- State agency
- Constitutional officer
- County
  - Elected officials (county attorney, sheriff, etc.)
  - Employee appointed for data outside elected officials’ offices
  - County social services agency director (§13.46, subd. 10)
  - County veterans services officer (197.603, subd. 2)
- City or school district
  - Person appointed by council/board OR
  - City Clerk or superintendent
Responding to data requests
Member of the public (§13.03)

Guidelines for responding to requests
• Clarify if not clear
• Data do not exist
• Data exist and are public
• Data are not public
  ▪ Must give statutory basis for denying access
  ▪ If asked, must explain meaning (technical terminology, abbreviations, acronyms, etc.)

Responding to data requests
Data subject (§13.04)

Guidelines for responding to requests
• Clarify if not clear
• Data do not exist
• Data exist and are accessible
  ▪ Verify identity
  ▪ Six-month “exception”
• Data are confidential or private about someone else, or otherwise not public
  ▪ Must give statutory basis for denying access
• If asked, must explain (technical terminology, abbreviations, acronyms, etc.)

Requests outside of the Data Practices Act

• Creating data

• Responding to questions
### Response Time

<table>
<thead>
<tr>
<th></th>
<th>Member of the Public</th>
<th>Data Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Inspection</strong></td>
<td>Appropriate and prompt, a reasonable amount of time</td>
<td>Immediately, if possible or 10 business days</td>
</tr>
<tr>
<td><strong>Copies</strong></td>
<td>25¢ per page</td>
<td>Actual cost</td>
</tr>
<tr>
<td></td>
<td>100 or fewer, black and white, legal/letter size paper copies</td>
<td>+ Time to make and transmit</td>
</tr>
<tr>
<td></td>
<td>+ Actual cost</td>
<td>+ Materials</td>
</tr>
<tr>
<td></td>
<td>+ All other copies</td>
<td>+ No charge for search and retrieval</td>
</tr>
<tr>
<td></td>
<td>+ Time for search and retrieval</td>
<td>+ No charge to separate public from not public data</td>
</tr>
<tr>
<td></td>
<td>+ Time to make and transmit</td>
<td>+ No charge to redact private or confidential data about others</td>
</tr>
<tr>
<td></td>
<td>+ Materials</td>
<td>+ Electronic data</td>
</tr>
<tr>
<td></td>
<td>+ No charge to separate public from not public data</td>
<td></td>
</tr>
<tr>
<td></td>
<td>+ Electronic data</td>
<td></td>
</tr>
</tbody>
</table>

### Charging for Government Data

<table>
<thead>
<tr>
<th></th>
<th>Member of the Public</th>
<th>Data Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Inspection</strong></td>
<td>No charge or fee allowed</td>
<td>No charge or fee allowed</td>
</tr>
<tr>
<td><strong>Copies</strong></td>
<td>25¢ per page</td>
<td>+ Time to make and transmit</td>
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### What Do You Think?

A member of the public asks for your personal notes taken during a staff meeting.

- Are they public?
- How long do you have to respond?
**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

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**Informed Consent**  
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 must be in writing and cannot be coerced

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**Penalties and Remedies**

- Remedies (Minn. Stat. §13.08)
  - Action for damages, costs, and attorneys fees
  - Action to compel compliance
- Administrative remedy (Minn. Stat. §13.085)
  - Administrative hearing within 2 years of alleged violation
  - Action to compel compliance
- Penalties (Minn. Stat. §13.09)
  - Willful violation or knowing unauthorized acquisition of not public data = misdemeanor
  - Dismissal or suspension
- Advisory opinions (Minn. Stat. §13.072)
Data Challenges and Appeals
Minnesota Statutes, section 13.04, subd. 4 Minnesota Rule 1205.1600

Challenging the Accuracy and Completeness of Data

• Data being challenged must be:
  • Public or private
  • Data about the person submitting the challenge (or their minor child)

• The data challenge itself must be:
  • In writing
  • Addressed to the Responsible Authority

What do you need to do when you receive a data challenge?

• RA must respond within 30 days
  • Correct data if it is inaccurate/incomplete and notify past recipients of the inaccurate/incomplete data, OR
  • Notify the data subject that it is the RA’s position that the data are accurate and complete

• Disputed data can only be disclosed if a statement of disagreement is included with the data
Data Challenge Appeals

- Data subject can appeal to the Commissioner of Administration
- **Schwanke Case:**
  - Public employee can challenge performance evaluation data as inaccurate or incomplete under the data challenge appeal process
  - Commissioner does not have authority to dismiss appeals that are not resolved informally without first issuing a notice and order for a contested case hearing at the Office of Administrative Hearings
    - *Schwanke v. Minn. Dept. of Administration, 851 N.W.2d 591 (Minn. 2014)*

Data Breaches

- Applies to all government entities
- Defines “breach of the security of the data”
  - Unauthorized acquisition/unauthorized person accesses
  - Private or confidential data, with
    - **Intent** to use data for nongovernmental purposes
- RA must investigate and create a report that details any data breach as defined in the statute
- Annual security assessment for “personal information” (defined in §325E.61)
Data breach – State-level entities only

- Section 3.971, subd. 9
- Agencies subject to OLA audit must notify OLA when:
  - Not public government data may have been
    - Accessed or
    - Provided to a person,
    - Without lawful authorization
  - Broader reporting obligation than required by §13.055

What do you think?

Which of the following situations requires: Corrective Action Notice to OLA 13.055 Notice

<table>
<thead>
<tr>
<th>Situation</th>
<th>Corrective Action</th>
<th>Notice to OLA</th>
<th>13.055 Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accidentally accesses not public database</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Incorrectly types email address and sends not public data to wrong government employee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inadvertently reads report with not public data without appropriate work assignment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Looks up driver’s license data about new neighbor without appropriate work assignment</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Policies and Procedures

- Government entities must have policies
  - Responding to public data requests
  - Data subject rights and responding to data subject requests
  - Procedures to ensure that only those who have a work assignment can access not public data
  - Inventory listing private and confidential data

Model Policies/Procedures

Model documents:
https://mn.gov/admin/data-practices/data/rules/policies/

- Model Data Access Policies
  - Required by section 13.025
  - Model Policy for the Public
  - Model Policy for Data Subjects
- Model Data Inventory
  - Required by section 13.025
  - Identifies and describes private and confidential data maintained by the entity
- Model Policy for Ensuring the Security of Not Public Data
  - Required pursuant to Section 13.05
  - Methods of incorporating access policy into position descriptions

Questions?

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