

- Please mute yourself, turn on your camera, and say "Hi" in the Chat Panel to let us know you are here.
- If you are an attorney and would like CLE credits, please enter your attorney ID # into the chat panel as well.
- Camera and mute buttons are in the Participant Panel next to your name and at the bottom of the presentation screen.

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DEPARTMENT OF ADMINISTRATION

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WebEx Walkthrough

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Introductions

Please introduce yourself:

- Your name
- Your entity
- Your role in data practices
- Any burning questions you would like to discuss 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	Law Enforcement Data Overview
10:00	Break
10:15	Protected Identities & Morning Scenarios
11:30	Maltreatment data
Noon	Lunch
1:00	Law enforcement video discussion
1:45	Miscellaneous provisions
2:00	Break
2:15	Miscellaneous provisions, cont.
2:45	Afternoon law enforcement data scenarios
3:15	Final debrief, general Q&A, evaluations
3:30	End of day

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Today's Objectives

- Identify LE data provisions & requirements in the Minnesota Government Data Practices Act and other applicable statutes
 - Investigative data
 - Law enforcement videos
 - Miscellaneous provisions that apply to law enforcement work
- Apply Data Practices Act requirements in different situations

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Data practices laws

- **MN Government Data Practices Act, Ch. 13**
 - Presumes government data are public
 - Classifies data that are not public
 - Access rights for the public and data subjects
 - Data on individuals are accurate, complete, current, and secure
- **Official Records Act** requires preservation of all records necessary to a full and accurate knowledge of official activities
- **Records Management Statute** requires records retention schedules approved by records disposition panel
 - MN State Archives: www.mnhs.org/preserve/records/gov_services.htm

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Government data defined

Minn. Stat. §13.02, subd. 7

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



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Classification of government data

Classification	Meaning of Classification	Examples
Public	Available to anyone for any reason	Adult arrest information
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 	Inactive body camera footage, 911 audio
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 criminal investigative data

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Application

Applies to agencies which carry on a law enforcement function

- Municipal police and county sheriff departments
- Fire departments
- BCA, state patrol, POST
- Other agencies (DNR, DHS)

Does not include prosecuting attorneys

- Informal AG opinion disagrees with advisory opinion 01-079
- Public prosecutors in original provision; removed in 1981 amendment
- Section 13.393 applies to data held by government attorneys
- Local prosecution authorities are criminal justice agencies

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What's public?

Is there an active investigation?

- Yes:
 - The following data are public, subject to protection of certain identities:
 - Arrest data (subd. 2)
 - Request for service data (subd. 3)
 - Response or incident data (subd. 6)
 - Criminal investigative data presented in court (subd. 7)
- No:
 - All inactive investigation data are public (subject to several exceptions)

No investigation = Data are presumptively public

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Arrest data

Section 13.82, subd. 2

Actions taken to cite, arrest, incarcerate or otherwise substantially deprive an adult individual of liberty shall be public *at all times* in the originating agency:

- If adult:
 - Name, age, sex, and last known address of adults
 - Time, date, and place of action
 - Resistance, pursuit, weapons
 - Legal basis for action (charge, arrest or search warrant)
 - Agency, units and individuals taking action
 - Custody info (whether and where)
 - Use of ALPR, body cam, wiretapping (unless jeopardize investigation)
 - Manner received info leading to arrest and names of informants (unless protected identities)
- If juvenile (hearing not public): age and sex only

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Request for service data

Section 13.82, subd. 3

Requests by the public for law enforcement services **shall be public**:

- Nature of the request or the activity
- Name and address of the individual making the request (unless protected identity)
- Time and date of the request or complaint
- Response initiated and the response or incident report number



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Response or incident data

Section 13.82, subd. 6

Data describing the agency's response to a request for service, or actions taken by the agency on its own initiative **shall be public**:

- Date, time and place of the action
- Agencies, etc. participating in the action (unless protected identities)
- Any resistance encountered, pursuit engaged in, or weapons used
- Brief factual reconstruction of events associated with the action
- Names and addresses of witnesses to agency action or incident (unless protected identities)

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Response or incident data, cont.

- Names and addresses of any victims (unless protected identities)
- Name and location of the health care facility to which victims were taken
- Response or incident report number
- Use of body camera to document the agency's response
- Specific to **traffic accidents**:
 - Dates of birth of the parties involved
 - Whether the parties involved were wearing seat belts
 - Alcohol concentration of each driver

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Criminal investigations

Section 13.82, subd. 7

Active investigative data - data collected or created by law enforcement to prepare a case against a person are **confidential/protected nonpublic**

- Except:
 - Arrest, request for service, response or incident data (public)
 - Protected identities (private)
 - Public benefit data (discretion to release)
 - Exchange of information by law enforcement agencies – “pertinent and necessary” to an investigation
 - Prosecutor shall release to victim upon written request
 - Data presented as evidence in court

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Inactive investigative data

Inactive investigative data are **public**

Except:

- Jeopardize ongoing investigation (confidential/protected nonpublic)
- Reveal protected identities (private)
- Images and recordings (photographs, video, audio records) offensive to common sensibilities (private)
- Certain child or vulnerable adult abuse data (private)
- Certain body camera data (private)

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When are investigations inactive?

- Decision not to further pursue or prosecute the case
- Time to charge expires
- All rights to appeal exhausted or expired
- Not guilty/exonerated*



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Public benefit data

§ 13.82, subd. 15

- Applies to all confidential/protected nonpublic active investigative data (not protected IDs) AND any not public body camera or drone video data
- Public benefit data *may* be shared to
 - Aid in the law enforcement process,
 - Promote public safety, or
 - Dispel widespread rumor or unrest.

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What do you think?

Reporter Mary Richards requests a copy of a photo of Petunia, the famously ugly dog. The photo is related to an incident that was not part of a criminal investigation.

- Can the Mary have the photo?
- What if the photo is part of an active investigation?
- What about when the case becomes inactive?



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What do you think - answer

Reporter Mary Richards requests a copy of a photo of Petunia, the famously ugly dog. The photo is related to an incident that was not part of a criminal investigation.

- Can the Mary have the photo?
 - Yes, the photo is presumptively public
- What if the photo is part of an active investigation?
 - No, active investigative data and not subds. 2, 3, or 6
- What about when the case becomes inactive?
 - Yes, unless – offensive to common sensibilities ☺



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What questions do you have for us so far?

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Morning Break!

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Protecting identities
Section 13.82, subdivision 17 (Handout 105)

Must have procedures to acquire and protect certain identities

Protected identities are **private**

Identity is more than a name

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Identities you *must* protect

- Undercover law enforcement officer
- Victim or alleged victim of criminal sexual conduct or sex trafficking
- Deceased person unlawfully removed from a cemetery
- Mandated reporter
- Person making a 911 call or name and phone number of service subscriber if either:
 - Reason is for help in a mental health emergency; OR
 - Determine revealing identity would threaten safety of person or property

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Identities you *may* protect

Document determinations to protect:

- Paid or unpaid informant – threat to personal safety
- Victim or adult witness to a crime
 - Must ask AND
 - LEA determines that disclosure would threaten the personal safety or property of the individual
- Juvenile witness – LEA determines subject matter of the investigation justifies protection

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911 Calls

Section 13.82, subd. 4

- Recording of 911 call
 - Private data on the caller
- Transcript of 911 call
 - Public
 - Unless it reveals a protected ID under subd. 17
 - Person requesting transcript shall pay actual cost of transcription

• AO 25-009

- LEA did not respond appropriately to data request for 911 transcript when it initially denied the request & later provided a redacted transcript



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What do you think?

What is the classification of a recording of a call made to a police department non-emergency line (i.e., not 911)?



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What do you think - Answer

- The content of the call will determine classification.
- Active criminal investigation = confidential/protected nonpublic
- Property complaint data – identity of caller is confidential, § 13.44
- Other calls likely subject to public presumption
- No requirement to make a transcript

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What do you think?

A 13-year-old called 911 for assistance in a medical emergency. Her 9-year-old brother was having an allergic reaction.

What can be released to a media requester?



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What do you think - Answer Data about minors

- There is not a general protection for government data on minors (exception – DNR)
- There is not a general classification of medical data
- Audio of the 911 call is private
- Media/public can access the rest of the data about this call.
- Other classification for juvenile witnesses, juvenile victims, or juvenile bad actors (delinquents)

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Peace officer records of children resources

- Law enforcement Data on Juveniles (35 minutes):
 - <https://youtu.be/fuxkM0yC53Y?si=vJjal23Y9nZyWoeS>
- Law enforcement data and school sharing
 - <https://mn.gov/admin/data-practices/data/types/lawenforcement/law-enforcement-schools/>

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Morning Law Enforcement Scenarios

Handout 106 Breakout Session Discussion

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Breakout Rooms

- Handout 106 – Morning adult scenarios
- Click button to join group.
- Spokesperson = the person with the next birthday
- Take 15-20 minutes to review and discuss the scenarios and questions with the group.
- To exit breakout session - click the red circle at the bottom of screen and choose leave break out.





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Child and Adult Maltreatment Investigative Data

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Criminal maltreatment investigations

Minn. Stat. §13.82, subds. 8-11

- ID of a victim or alleged victim of child maltreatment or vulnerable adult maltreatment is always private (active or inactive)
- ID of a mandated reporter is private (subd. 17)
- ID of non-mandated reporters
 - Child maltreatment = confidential
 - Vulnerable adult maltreatment = private
- Active Investigative data are confidential/protected nonpublic (subd. 7)

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Criminal maltreatment investigations – inactive Minn. Stat. §13.82, subds. 8-11

- Inactive investigative data = private when:
 - Statute of limitations has run or
 - There was a decision not to move forward with an investigation or prosecution
- Inactive investigative data = public when there has been a court process and appeal rights have been exhausted or expired

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Maltreatment investigations – vulnerable adults Minn. Stat. §626.557

- A tribal agency, facility, service provider, vulnerable adult, primary support person for a vulnerable adult, state licensing board, federal or state agency, the ombudsman for long-term care, or the ombudsman for mental health and developmental disabilities, and local county agencies

- Prevent further maltreatment of a vulnerable adult
- Safeguard a vulnerable adult
- For an investigation under §626.557

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Maltreatment investigations – child maltreatment

Minn. Stat. §§260E.20, 260E.35

- Local welfare agencies
- Department of Health
- Department of Human Services
- Department of Education
- State and local child mortality review panel

- Broad authority to share not public data includes active investigative data
- The civil investigatory entity will maintain LE data as confidential/protected non-public until it is inactive.

- When a licensee has been found to have abused a student ([§260E.12](#))

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What do you think?

Mom reported that Dad abused their child. Ultimately, no criminal charges are filed. The case is now closed.

Dad requests access to the police file. What can he access?



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What do you think - Answer

Minn. Stat. § 13.82, subds. 8 & 9

- ID of victim child maltreatment under C. 260E = private.
- No charges OR statute of limitations has run = investigative data are private.
- Dad can have access to data about himself and his child (unless there is a court order limiting his rights, e.g., termination of parental rights).
- Mom would not get access to any data about Dad in these circumstances

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What do you think?

A member of the public requested a case file. The case is inactive but involved an investigation into maltreatment of a vulnerable adult by their caretaker.

What can the public access?



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What do you think - Answer

Answer:

13.82 subd. 7: Inactive data are public

But

13.82 subd. 10: Identifying data on victim and reporter of vulnerable adult maltreatment are private.

13.82 subd. 11: Inactive data related to alleged maltreatment of a vulnerable adult by a caregiver or facility are private in certain circumstances.

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What do you think?

A police department receives an inquiry from county social services. They are investigating suspected maltreatment of a child by their parent. You have one active case and two inactive cases that did not result in charges.

What should the PD provide?



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What do you think - Answer

Answer:

260E.20 and 260E.35: Social services may have access to active investigative data on the same incident, as well as inactive investigative data related to alleged maltreatment by the parents or of the child.

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What do you think?

911 receives a call that a stranger has assaulted a vulnerable adult. Law enforcement investigates. A member of the public asks for the report.

Should you redact the vulnerable adult's name?



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What do you think - Answer

Answer:

- Subd. 10 – A victim of vulnerable adult maltreatment is private.
- However, this is not an instance of vulnerable adult maltreatment under section 626.557.
- Victim ID is public under subds. 6 (response or incident)
- Consider if subd. 17 protected IDs for victims applies

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What other questions do you have?

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Lunch break!
1 hour