

Advisory Opinion 17-002

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2016). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

Scott Wentz and Mathias Baden, on behalf of the *Woodbury Bulletin*, requested an advisory opinion regarding the classification of data the City of Woodbury (City) maintains.

Mark Vierling, attorney for the City, submitted comments on its behalf.

Mr. Baden asked the City's police department for access to certain data, as detailed below.

Issues:

Based on the opinion request, the Commissioner agreed to address the following issues:

1. *Did the City of Woodbury comply with Minnesota Statutes, Chapter 13 (the Data Practices Act), when it redacted the following data from initial complaint reports ("ICRs"), Documents 1A–4:*
 - *1A, 1B, and 1C: street address of the incident locations; data on a complainant, data about witnesses to the incidents; and data on arrestees;*
 - *2A, 2B, and 2C: name and age of a complainant, who appears to be one of the drivers involved in a traffic accident; other unspecified information; the date of birth for a juvenile who may have been a passenger in a vehicle in a traffic accident; birth dates and phone numbers for people believed to be involved in accident;*
 - *3A and 3B: street addresses for a fire concern and fire call, and complainant names, addresses and phone numbers; and*
 - *4: street address of the incident location and the name, home address, phone number, and date of birth of the complainant?*
2. *Did the City comply with the Data Practices Act when it did not release any data from the ICR on a law enforcement ride-along background check?*
3. *Did the City comply with the Data Practices Act when it did not release any data from ICRs identified in Documents 6A and 6B?*
4. *Did the City comply with the Data Practices Act when it redacted the date of birth of the defendant from a copy of a criminal complaint?*

Discussion:

Government data are presumed to be public unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.) Pursuant to section 13.03, subdivision 3(f), when an entity denies access to data, it must cite the specific statutory section or other legal basis for its denial.

Data that law enforcement agencies collect, create, and maintain are classified pursuant to Minnesota Statutes, section 13.82. Under subdivision 7, data collected or created by a law enforcement agency in order to prepare a case against a person for the commission of a crime or other offense for which the agency has primary investigative responsibility, are not public while the investigation is active, except for the data listed in subdivisions 2 (arrest data), 3 (request for service data), and 6 (response or incident data), which are always public. Absent a criminal investigation, law enforcement data are presumptively public.

However, notwithstanding subdivisions 2, 3, and 6, data that identify an individual whose identity qualifies for protection under subdivision 17 are private. Law enforcement agencies must protect some identities, and may protect others depending on the circumstances. The law enforcement agency is required to establish procedures to acquire data on individuals whose identities are protected under subdivision 17, in order to evaluate each situation and to exercise its discretion to determine whether an individual's identity (of relevance here, victims, witnesses, and 911 callers) qualifies for protection under subdivision 17.

Issue 1. *Did the City of Woodbury comply with Minnesota Statutes, Chapter 13 (the Data Practices Act), when it redacted the following data from initial complaint reports ("ICRs"), Documents 1A-4:*

- *1A: street address of the incident location; data on the complainant, victims, and witnesses to the incident; name, address, phone number and date of birth of an arrestee;*

In comments to the Commissioner, the City wrote:

The ICR "emanates from a 911 call, a medical emergency, and involves a juvenile." According to the City, there were 3 victims, and at the time the City gave Mr. Baden the ICR, the matter was still "pending under criminal investigation". The City redacted the names, addresses, phone numbers, and dates of birth, of the victim, the victim's mother, and a juvenile, pursuant to section 13.82, subdivision 17.

Section 13.82, subdivision 2, states that the name, age, sex and last known address of an adult who is cited, arrested, incarcerated or otherwise substantially deprived of liberty shall be public at all times in the originating agency. Accordingly, those data are public, and the City must provide access to them.

Here, the City also protected the identities of a 911 caller (i.e., the "complainant"), and adult and juvenile victims. As noted above, section 13.82, subdivision 17, permits a law enforcement agency to protect certain identities, under certain circumstances.

Under subdivision 17(f), the identity of a 911 caller, or the identity of a service subscriber whose phone was used to place the call, may be protected under two circumstances: if revealing the

identity would threaten the personal safety or property of any person, or, if the object of the call was to receive help in a *mental health* emergency.

In addition, adult and juvenile victims' identities may be protected if they so ask, *and* the law enforcement agency determines that revealing the individual's identity would threaten his/her safety or property. The same conditions apply to protecting the identity of adult witnesses. A law enforcement agency may protect the identity of a juvenile witness without a request if it determines that the subject matter warrants it.

The City did not provide information to the Commissioner confirming that revealing the identity of the 911 caller (complainant) would threaten the personal safety or property of any person, or, if the object of the call was to receive help in a *mental health* emergency. One of those conditions must apply in order to protect that identity. The City also did not confirm to the Commissioner that any of the witnesses had asked to have their names withheld because they feared for their safety, and whether the City reasonably determined that revealing the identity of the victim or witness would threaten the personal safety or property of the individual. The City could have redacted these identities if any of the above conditions applied.

Further, the City did not confirm whether it has the required procedures in place "to acquire the data and make the decisions necessary to protect the identity of individuals described in subdivision 17. Without additional factual information, the Commissioner is unable to determine whether it was appropriate for the City to withhold data based on section 13.82, subdivision 17.

- *1B: incident location address, names, addresses, phone numbers, and ages for two suspects who were arrested*

The City stated: "[t]his entire ICR was in an open investigation mode at the time that the preliminary ICR with partial redactions were allowed to be released, and as under a criminal investigation all redactions are allowed under Minn. Stat. § 13.82 subd.7."

For data on arrestees, the analysis is the same as in **1A** above. In addition, per section 13.82, subdivisions 2(a) and 6(a), the time, date and place of the action are always public, and may not be protected under subdivision 7.

- *1C: dates of birth and phone numbers for an arrestee and possible witnesses listed on the report*

The City wrote:

Predominantly, what has been deleted from this ICR are the phone numbers and the day and month of the date of birth of the individuals. As we review Minn. Stat. §13.82, it is only the age of the individuals that must be allowed, and thus, the Department's policy has been to leave the year of birth available for public viewing, but not to release the day and month of the date of birth section of the ICR. Additionally, we do not read Minn. Stat. §13.82 as requiring or making public the phone numbers of the individuals cited in the ICRs, and of course any phone number that would otherwise identify a 911 caller, crime victim, victim of domestic abuse, or Home Safe Program participant under subd.17 of Minn. Stat. §13.82, thus the Department had stricken [sic] from all the ICRs.

The Commissioner agrees that when there is an active investigation, the only data that are public about witnesses and victims under section 13.82, subdivision 6, are their names and addresses (unless they qualify for protection under subdivision 17). Therefore, the City may protect any other data about witnesses and victims as active criminal investigative data under subdivision 7, including their full dates of birth and phone numbers.

However, with respect to individuals who are cited, arrested, incarcerated, or otherwise deprived of liberty, law enforcement agencies must provide access to “age” data, per subdivision 2. Typically, the data that document the age of arrestees are the full dates of birth, and therefore the only way to provide the actual (i.e., to the day) age of the individual is by providing the full date of birth.

In its response to Issue 4, below, the City wrote that it redacts the month and day of an individual’s date of birth “as a matter of policy within the department,” because it is not required “under Minn. Stat. §13.82 or other provisions that require the age of the individual. It is the City’s belief that by release of the year of the date of birth, the requestor is more than capable of determining the age of the individual, and that access to the month and date of birth is not necessary beyond the release of the year.”

The Commissioner is aware that law enforcement agencies interpret the meaning of “age” differently; some provide full dates of birth of arrestees under subdivision 2, and others redact the month and day, and make public only the birth year, as the City does. Given the various interpretations, and the fact that the Legislature used both terms in section 13.82, the Commissioner concludes that the City properly redacted the month and day, but also would be in compliance if it provided the full date of birth as public arrest data. See also discussion of **2A–C** regarding the distinction between age and date of birth as those terms appear in section 13.82.

- *2A, 2B, and 2C: name and age of a complainant, who appears to be one of the drivers involved in a traffic accident; other unspecified information; the date of birth for a juvenile who may have been a passenger in a vehicle in a traffic accident; birth dates and phone numbers for people believed to be involved in accident*

The City wrote:

Again, we note that this call is a result of a 911 emergency call. The first redactions relate to the identification and address of the 911 caller, in addition to their phone number. Their year of birth is left public and available for reading. Their month and day of birth has been redacted for the reasons as noted above. The identification of the juvenile identified within the margin has also been identified, as this is a result of a vehicle accident, but the phone number and month and day of birth have been stricken as per department policy as statute requires only the age be disclosed.

Documents **2A**, **2B**, and **2C** are reports of traffic accidents.

In all three, the City redacted the full date of birth of each individual. Contrary to section 13.82, subdivision 2, which classifies the *age* of an arrested individual as always public, subdivision 6(k) explicitly makes public the dates of birth of the parties involved in a traffic accident. Thus,

the City should not have redacted the full dates of birth. As the Commissioner noted above, law enforcement agencies differ in their determinations about whether, in order to provide the age of an arrestee, they must provide the complete date of birth.

The City also redacted the identities, including phone number, of each 911 caller. The Commissioner cannot determine whether the City appropriately protected those identities. As discussed above under **1A** and **1C**, the City could have redacted the 911 caller identities if it had determined any of the relevant conditions applied to redact the identities. However, the City did not provide the Commissioner with information about its determinations to redact.

The City also redacted the date of birth and phone number of a juvenile party to the accident. The City did not protect the juvenile's identity, so the Commissioner assumes data about the juvenile are not otherwise classified as private under Minnesota Statutes, Chapter 260B, which governs certain data on juveniles. Accordingly, the juvenile's full date of birth is public. As noted above, the City may withhold the juvenile's phone number only if there is an active criminal investigation into the matter.

The Commissioner cannot determine if the City properly withheld access to the identity of the 911 caller. As discussed under **1A**, the City could have redacted the 911 caller identity if it had determined any of the relevant conditions applied to redact the identity. However, the City did not provide the Commissioner with information about its determination to redact.

- *3A and 3B: street addresses for a fire concern and fire call, and complainant names, addresses and phone numbers;*

Regarding Document **3A**, the City wrote:

Again we note the incident was as a result of a 911 call. The address of the 911 caller is not public data as required under Minn. Stat. §13.82 subd.17. Names associated with or address otherwise redacted within the other portions of the report refer back to the identification of the 911 caller and their address, which is also prohibited by statute. Phone numbers were redacted as previously noted as not required by Minn. Stat. §13.82.

See above discussions regarding the circumstances under which the City may protect those identities if the conditions set out in subdivision 17 are met. See also Issue 1, Documents **1A**, **2A–C**. The City can redact the phone numbers.

- *4: street address of the incident location and the name, home address, phone number, and date of birth of the complainant?*

The City wrote:

We note again that this is a result of a 911 call. The location of the 911 caller is redacted as provided by Minn. Stat. §13.82 subd.17. In addition, the names associated with the incident would otherwise identify the 911 caller, and were redacted along with the 911 caller's phone number; the 911 caller's phone number appears in 2 places within the report, and were redacted in both locations.

As noted above, the City can protect the identity of a 911 caller under two circumstances: if revealing the identity would threaten the personal safety or property of any person, or, if the object of the call was to receive help in a *mental health* emergency. See above discussions, Issue 1, Documents **1A**, **2A–C**.

***Issue 2.** Did the City comply with the Data Practices Act when it did not release any data from the ICR on a law enforcement ride-along background check?*

According to Mr. Wentz and Mr. Baden, the City stated that the ICR is not public because it “pertained to a ride-along background check”. The City wrote to the Commissioner:

Background checks of the participant of the ride along are protected by Minn. Stat. §13.87 subd. 1 (b). The individual on the ride along had no convictions of any offenses. The City conducts its background checks through the Office of the Minnesota Bureau of Criminal Apprehension, and it is our opinion that the individuals who participate in ride alongs whose backgrounds are secured by the Department for the purposes of the ride along are protected under Minn. Stat. §13.82.

The Commissioner has not seen the ICR, and therefore is not certain about the type or classification of data it contains. It appears that the City conducts criminal background checks on individuals who will participate in ride-alongs. Minnesota Statutes, section 13.87, applies to “all data maintained in criminal history records compiled by the Bureau of Criminal Apprehension” and classifies certain criminal history data as private. To the extent that the City maintains criminal history records from BCA, including those on ride-along participants, the data are private pursuant to section 13.87.

However, the City’s ICRs are classified pursuant to section 13.82, and the Commissioner cannot determine why or whether criminal history data would appear on an ICR, which typically documents the actions of a law enforcement agency. If the subject’s name is the only data that appears in both the ICR and the other data collected in the background check, then the name as it appears on the ICR is presumptively public under section 13.82. Further, data in the ICR classified by subdivisions 2, 3 and 6 are public.

***Issue 3.** Did the City comply with the Data Practices Act when it did not release any data from ICRs identified in Documents **6A** and **6B**?*

Regarding Mr. Wentz and Mr. Baden stated that the City “did not provide [the ICRs listed in Documents **6A** and **6B**] at all, citing multiple statutes.”

In response to Mr. Baden’s request for the identities of those involved in **6A**, the City cited section 13.82, subdivisions 5 and 7. The City stated to the Commissioner that **6A** contained data about a domestic abuse incident “where privacies are protected” under section 13.82, subdivision 17. The Commissioner respectfully disagrees that the City may protect data under subdivision 5, as it does not classify data, and subdivision 7 classifies only active criminal investigative data that are not explicitly public under subdivisions 2, 3, and 6. Regarding its redactions of identities pursuant to subdivision 17, see earlier discussion of Issue 1.

6B lists 20 ICRs requested by Mr. Baden, four of which have written notations following them, indicating that the City was withholding access from the entire ICRs pursuant to section 13.82, subdivision 7, and in 2 cases, under Minnesota Statutes, section 260B.171, which classifies as private peace officers' records of children who are or may be delinquent.

The Commissioner has not seen the specific ICRs at issue, but they very likely contain some public data under section 13.82, subdivisions 2, 3, or 6; for example, date and time of action, and identities of the individual officers who responded. Accordingly, the City should have provided access to the ICRs, redacted as appropriate.

***Issue 4.** Did the City comply with the Data Practices Act when it redacted the date of birth of the defendant from a copy of a criminal complaint?*

In its comments to the Commissioner, the City wrote:

The fully public version of the Complaint is available at the Washington County Courthouse for persons that wish to see this particular file. At the time of the request to the City of Woodbury the requestor made a request for the document not from the Court file but from the City's individual file.

Under section 13.82, subdivision 7, any investigative data presented in court are public. If the criminal complaint had been presented in court at the time the City provided Mr. Baden with a copy, then the full birthdate of the defendant is public. (See Issue 1, Documents **2A–2C**.)

Finally, a note about this provision in section 13.82, subdivision 17:

Data concerning individuals whose identities are protected by this subdivision are private data about those individuals. Law enforcement agencies shall establish procedures to acquire the data and make the decisions necessary to protect the identity of individuals described in clauses (c), (d), (f), and (g).

Accordingly, the identities of those individuals are not subject to automatic protection. Law enforcement agencies must exercise their discretion on a case-by-case basis and document those determinations.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issues raised is as follows:

1. The City of Woodbury complied with Minnesota Statutes, Chapter 13 (the Data Practices Act), when it redacted the following data from initial complaint reports ("ICRs"), Documents **1A–4**:
 - Victims', witnesses', and arrestees' phone numbers and dates of birth.

The City of Woodbury improperly withheld access to:

- Arrestees' name, age, and last known address

- Incident location address
- Full dates of birth of parties in traffic accidents

The Commissioner cannot determine whether the City appropriately protected the identities of:

- 911 callers, victims and witnesses, including street addresses of incidents
2. The City did not comply with the Data Practices Act when it did not release any data from the ICR on a law enforcement ride-along background check.
 3. The City did not comply with the Data Practices Act when it did not release any data from the 20 ICRs identified in Documents **6A** and **6B**. The City should have provided redacted copies of the ICRs.
 4. The City did not comply with the Data Practices Act when it redacted the full date of birth of the defendant from a copy of a criminal complaint, if the complaint had been presented in court at the time the City provided a copy to the public.

Matthew Massman
Commissioner

April 18, 2017