Introductions

Please introduce yourself:
• Your name
• Your entity
• Your role in data practices
• Any burning questions you would like to discuss today

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>Session</th>
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<tbody>
<tr>
<td>8:30</td>
<td>Welcome and Introductions</td>
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<tr>
<td>8:45</td>
<td>Law Enforcement Data Overview</td>
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<tr>
<td>10:00</td>
<td>Break</td>
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<tr>
<td>10:15</td>
<td>Protected Identities &amp; Morning Scenarios</td>
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<tr>
<td>Noon</td>
<td>Lunch (on your own)</td>
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<tr>
<td>1:00</td>
<td>Morning recap &amp; law enforcement video discussion</td>
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<tr>
<td>1:45</td>
<td>Break</td>
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<td>1:50</td>
<td>Additional law enforcement provisions</td>
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<td>2:30</td>
<td>Break</td>
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<td>2:45</td>
<td>Afternoon law enforcement data scenarios</td>
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<td>3:15</td>
<td>Final debrief, general Q&amp;A, evaluations</td>
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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 video and audio recordings
  - Juvenile justice data
  - Miscellaneous provisions that apply to law enforcement work
- Apply Data Practices Act requirements in different situations

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](http://www.mnhs.org/preserve(records/gov_services.htm)
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)

Classification of Government Data

<table>
<thead>
<tr>
<th>Classification</th>
<th>Meaning of Classification</th>
<th>Examples</th>
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<tbody>
<tr>
<td>Public</td>
<td>Available to anyone for any reason</td>
<td>Adult arrest information</td>
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<tr>
<td>Private/Nonpublic</td>
<td>Available to:</td>
<td>Peace officer records of children</td>
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<td></td>
<td>• Data subject</td>
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<td></td>
<td>• Those in entity whose work requires access</td>
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<tr>
<td></td>
<td>• Entities authorized by law</td>
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<tr>
<td></td>
<td>• Those authorized by data subject</td>
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<tr>
<td>Confidential/Protected Nonpublic</td>
<td>Available to:</td>
<td>Active criminal investigative data</td>
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<tr>
<td></td>
<td>• Those in entity whose work requires access</td>
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<td></td>
<td>• Entities authorized by law</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Not available to data subject</td>
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Redaction Exercise

Handout M02
Application

- Applies to agencies which carry on a law enforcement function
- Includes:
  - Municipal police and county sheriff departments
  - Fire departments
  - BCA, state patrol, POST
- 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

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)
### 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

### 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

### 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)
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

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

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)
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*

Chapter 13 Check!

A member of the press requests a copy of a photo of Jeter, the famously ugly dog, from your agency. The photo is related to a case that was never investigated.

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

What questions do you have for us so far?
Morning Break!

Protecting identities
Section 13.82, subdivision 17 (M05)

- Must have procedures to acquire and protect certain identities
- Protected identities are private
- “Identity” is more than a name

Identities you must protect (Handout M05)

- 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
Identities you may protect

Document determinations to protect:
  • Paid or unpaid informant
  • Victim or adult witness to a crime
  • Juvenile witness

Chapter 13 Check!

Following a burglary of a local business, a member of the press requests the names for all witnesses and victims, who are as follows:
1) An undercover officer witness;
2) An adult cashier witness;
3) An adult cashier victim (who has no recollection of the incident)

Can the following identities be disclosed?
  • Undercover Officer?
  • Cashier Witness?
  • Cashier Victim?

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
Other not public law enforcement data
Section 13.82

• Child abuse data (private) – subds. 8 and 9
• Vulnerable adult data (private) – subds. 10 and 11
• Certain property data (private/nonpublic) – subd. 20
• Certain pawnshop data (private) – subd. 27
• Financial account or transaction numbers (private/nonpublic) – subd. 30

Data about minors

• There is no general protection for government data on minors (exception – DNR)
• Need to evaluate why entity is maintaining the data and whether there is an applicable classification
• Examples:
  • Minn. Stat. 13.538 Social Recreation Data
  • Minn. Stat. 13.46 Welfare Data
  • Minn. Stat. 13.43 Personnel data containing information on dependent children
• Law enforcement:
  • Minn. Stat. sec. 260B.171
  • Minn. Stat. sec. 13.82, subd. 17 minor witnesses and victims – not automatic

Morning Law Enforcement Scenarios

Handout M06
Breakout Session Discussion
Peace officer records on children

- Data maintained by law enforcement about alleged or delinquent juveniles
  - Private data, except when hearing is public (next slide)
  - No confidential data about juveniles
    - May withhold if disclosure interferes with an ongoing investigation

When is a hearing public? (M09)

- Hearing will be public:
  - Adult felony offense and child was at least 16 (including EJJ)
  - Juvenile certified as an adult
    - Adult felony offense committed by child age 14 and older
  - Adult laws and rules apply
Releasing juvenile data – required

- Pursuant to a juvenile court order
- To a parent or guardian
  - Unless it will interfere with an ongoing investigation
- To schools (see handout M12)
- To the public
  - Arrest data: redact identifying data
  - Only public data identifying juvenile are age and sex (§13.82, subd. 2(j))

Releasing juvenile data to victims – required

- By prosecuting authority to victim/representative of an alleged or criminal act
  - Minn. Stat. §260B.171, subd. 5(h)
- To process claims for crime victim reparations
  - Minn. Stat. §611A.56, subd. 2(6)

Releasing juvenile data – permitted

- To other law enforcement agencies
  - Exchange of information permissible if pertinent and necessary for law enforcement purposes
- To juvenile diversion programs
- To local social services agencies to promote the best interests of the juvenile
Juvenile witnesses & victims

- Data about juveniles who are victims or witnesses and not delinquent
  - Protection of juvenile witnesses/victims is not automatic (except CSC/trafficking victims) under §13.82, subd. 17
  - Establish procedures to make the decision about whether to protect the identity
- If juvenile witness/victim is delinquent/alleged delinquent, private under §260B.171, subd. 5

Juveniles and traffic incidents

§§169.09, 260B.171, subd. 5(d) & 260B.225 (M10)

- Releasing identifying data about juvenile traffic offenders depends on type of offense
  - “Adult court traffic offense”
    - Petty misdemeanor traffic violations
    - DWI violations
    - Misdemeanor/gross misdemeanor violations part of the DWI violation
  - “Major traffic offense”
    - All traffic violations other than adult court traffic offenses
      - Most non-DWI misdemeanors and gross misdemeanors

Juvenile traffic incidents – identity is public

“Adult court traffic offenses”

- Adult court has jurisdiction, these identities are public:
  - 16 and 17-year olds with petty misdemeanor traffic violations
    - Not part of same incident of misdemeanor being handled in juvenile court
  - 16 and 17-year olds suspected of DWI
  - 16 and 17-year olds suspected of misdemeanors or gross misdemeanor traffic offenses associated with DWI
Juvenile traffic incidents – identity is private

• “Major traffic offenses”
  Juvenile court has jurisdiction, these identities are private:
  - Juveniles taken into custody
  - Juveniles suspected of committing adult-level felonies
  - Juveniles associated with adult-level felonies
  - 16 and 17-year olds suspected of misdemeanors or gross misdemeanors

Chapter 13 Check!

A reporter asks to inspect police department records about an accident involving two juvenile drivers. Juvenile #1 was charged with driving with a suspended license (a misdemeanor); Juvenile #2 was charged with a DWI.

Can the reporter inspect the juveniles’ records?

Juvenile Justice Data Scenarios

Handout M11
Breakout Session Discussion
What other questions do you have?

Lunch break!
1 hour