Data Practices and Open Meetings During the COVID-19 State of Emergency

March 26, 2020
We are a statewide resource

Data Practices Office

- Informal advice/technical assistance on data practices and the Open Meeting Law
- Commissioner of Administration advisory opinions
- Website and informational materials: https://mn.gov/admin/data-practices/
- Listserv and newsletters
- Legislative assistance
- Training
Guidance

Data Practices Office
We provide assistance and advice on data practices and open meetings to the public and government. Please contact us with your questions at 651-296-6733 and info.dpo@state.mn.us.

Our office has received several calls and emails about data practices and open meetings during the declared state of emergency. We have created a guidance document, Data Practices and Open Meeting Requirements During a State of Emergency, to help provide assistance on these issues.

Data Practices
Resources on types of data, our role, rules and requirements, how to request data, data warnings and notices, how to request temporary classification, and information about challenges and appeals.

Open Meeting Law
Information to help you understand the responsibilities and obligations imposed by the Open Meeting Law.

Advisory Opinions
Find Advisory Opinions issued by the Commissioner of Administration on data practices and the Open Meeting Law.

https://mn.gov/admin/data-practices/
Meetings via telephone or “other electronic means.

Presiding officer, chief legal counsel, or chief administrative officer determines that an in-person meeting or a meeting under section 13D.02 is not “practical or prudent.”

Best practice: document or memorialize that decision

- Based on public body process (resolution, a motion, meeting minutes, written declaration, etc.)
• All participating members can hear one another;

• Members of the public at the physical meeting location can hear all discussion "unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency";

• At least one member of the public body is present at the meeting location, "unless unfeasible due to the health pandemic or emergency"; and

• All votes are taken by roll call.
OML – Section 13D.021

• Remote public monitoring if “practical”
  • Can charge for “documented additional cost”

• Notice required as provided in 13D.04
  • Based on the type of meeting being held (regular, special, emergency)
  • 10-Day notice requirement in 13D.015 does not apply to meetings under 13D.021.
• Emergency meetings
  • Section 13D.04, subd. 3
  • Emergency is not defined
  • Notice not required
    • Good faith effort to notify media who have requested notice
  • Minutes required if matters not directly related to the emergency are discussed

• Closed meetings to “discuss emergency response procedures.”
  • Section 13D.05, subd. 5
1. Can our board/public body mandate that members participate in the meeting by phone or remotely?
   • This is mostly an internal process issue. Some entities may have bylaws or other authority to impose requirements on members. From Mar. 27-April 10, members will likely need to stay home based on the Governor’s executive order.

2. Who makes the determination that the use of the regular meeting location is not feasible?
   • 13D.021 does not say who makes this determination, but any of the individuals who make the practical or prudent determination could or others.
3. Assuming closure of a building meets the unfeasibility requirements, what are other examples that might make use of a regular meeting location unfeasible for the public body or members of the public?

- Closure of the building certainly counts, as does the Governor’s stay at home order, the Department of Health and the CDC guidelines around social distancing would also be a reasonable basis for the “not feasible” determination if the public body can’t accommodate social distancing.
4. Assuming it is feasible to hold a meeting in its regular location, can a public body turn away members of the public when the room cannot hold more people without violating social distancing recommendations?

- After the Stay at Home order expires and where we might still need to adhere to social distancing, as a practical matter, either:
  - Have a meeting space that will accommodate social distancing – and for smaller public bodies with low attendance, that may be possible – or
  - Not have in-person meetings. Allowing only some people in while turning away others seems to go against the idea of a meeting being open to the public.
5. How is a meeting conducted by “electronic means” different from a meeting conducted by “interactive television”?
   • Functionally, it will look the same, but the requirements are different

6. Do we still have to have a copy of the members materials in the room?
   • While not directly addressed in section 13D.021, if it is not feasible for anyone to be in the room, it is reasonable that the materials do not have to be in the room. Bodies should try to disseminated the materials another way.

7. Are actions that are typically taken by unanimous consent subject to the roll-call vote requirements under 13D.021?
   • Yes.
Other resources:

League of Minnesota City – #WeGotThis free webinars, recorded with some good practical advice.

https://www.lmc.org/learning-events/previous-events/recorded-webinars/
Data Practices

• Data practices obligations remain the same.

• Public requests: what constitutes a "reasonable, appropriate, and prompt" responses to data requests vary based on the circumstances.
  • Stay at home order
  • Access to buildings
  • Staff availability
  • Location of records

• Data subject requests: 10 business days
Considerations

• Have a Plan B
• Staff – do you have enough staff to respond to requests?
• Can you receive requests electronically?
• How will you keep not public data secure?
• Waiving copy fees
• Virtual inspection
1. If an entity’s storage vendor closes because of the state of emergency, is the entity still responsible for providing access to and/or copies of those records?

• It is reasonable to communicate to your data requester that the vendor is closed and you will provide the data as soon as reasonably possible after the vendor reopens. That is one of those circumstances that is really beyond the control of the entity and practically-speaking there just is not a way to get to that data.
2. If an entity closes its building to staff, must it make accommodations to permit certain staff to enter the building to make copies for data requests? Or can the entity inform requesters that paper copies will be available when the building re-opens and staff are permitted to return?

• Entities should plan for adjusting policies and procedures so that they can accommodate responding to data requests. During the time when the Stay at Home order is in place, paper copies may need to wait. But eventually, entities will need to develop ways to respond to requests for paper data, as we move forward.
Questions?

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