

HR/LR Policy #1405

Duty to Furnish Information to Exclusive Representatives Regarding Contract Grievances

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 Authority: Labor Relations

OVERVIEW

Objective

To inform state agencies of their duty to furnish information to exclusive representatives as part of the grievance process.

Policy Statement

Under the Public Employment Labor Relations Act (PELRA), Appointing Authorities/designees must furnish to the exclusive representatives requested information that is necessary for the exclusive representatives to fulfill their duty of representation. Disclosure of such information must be consistent with the Minnesota Government Data Practices Act (MGDPA), the Minnesota Vulnerable Adults Act (MVAA), and any other applicable state or federal statute.

Scope

This policy applies to:

- All employees of executive branch agencies (M.S. 43A.02, subds. 2 & 22) and
- Classified employees of the Office of the Legislative Auditor, Minnesota State Retirement System, Public Employees Retirement Association, and Teachers Retirement Association (M.S. 43A.04, subd. 1(a)).

Definitions and Key Terms

Terms	Definitions
<i>Public data</i>	Data that is accessible to the public in accordance with the provisions of M.S. 13.03.
<i>Nonpublic data</i>	Data that is not on individuals, and that is made by state or federal law: (a) not accessible to the public; and (b) accessible to the subject—if any—of the data.

Terms	Definitions
<i>Private data on individuals</i>	Data that is on individuals, and that is made by state or federal law: (a) not public; and (b) accessible to the individual subject of the data.
<i>Confidential data</i>	Data that is made not public by state or federal law, and that is inaccessible to the individual subject of the data.

Exclusions

N/A

Statutory References

M.S. 179A, Public Employee Labor Relations Act (PELRA)

M.S. 13, Minnesota Government Data Practices Act (MGDPA)

M.S. 626.557, Minnesota Vulnerable Adults Act (MVAA)

GENERAL STANDARDS AND EXPECTATIONS

Under PELRA, exclusive representatives have rights to information which is relevant to enforcement of the collective bargaining agreement, and is necessary for them to make informed decisions about processing grievances. Consequently, and subject to these guidelines, Appointing Authorities/designees must furnish to exclusive representatives any requested information that is necessary for them to fulfill their duty of representation. Disclosure of such information must be consistent with MGDPA, the MVAA, and any other applicable state or federal statute.

I. WHAT INFORMATION SHOULD BE DISCLOSED TO THE EXCLUSIVE REPRESENTATIVES

An Appointing Authority/designee has no duty to supply exclusive representatives with information absent a written request.

Nonpublic data that is requested must be relevant to the exclusive representative's role in representing employees in the bargaining unit. Information is relevant if it appears to be "reasonably necessary" for the exclusive representative to perform its duty to investigate and process grievances or to fulfill its collective bargaining objectives. Unless the disclosure of data is prohibited by statute (e.g., MGDPA, MVAA) or plainly appears irrelevant, the information must be disclosed to the exclusive representative if so requested. If the Appointing Authority/designee withholds information on the basis of a provision of MGDPA, the Appointing Authority/designee is required to explain, in writing, the statutory basis for the refusal to provide such information.

Exclusive representatives have the same right to obtain **public data** as any other party. This right exists even if the data requested appears irrelevant to the grievance.

Information must be released to the exclusive representative in a useful and timely fashion. This does not necessarily mean that the Appointing Authority/designee must provide the information in the form requested. Under MGDPA,

however, the Appointing Authority/designee is required, if requested, to explain the meaning of the data being provided.

If the Appointing Authority/designee believes that collecting or compiling the requested information is unduly burdensome, or that the exclusive representative's request for information is too broad or vague, then this problem must be raised with the exclusive representative promptly. An Appointing Authority/designee cannot refuse to release information simply due to administrative hardships or solely because the request is not specific enough. Rather, in this situation, the Appointing Authority/designee must attempt to work out acceptable arrangements so the release of the information can accommodate the needs of both parties.

Unless there are specific contract provisions to the contrary, the Appointing Authority/designee can require that the exclusive representative pay the actual costs of gathering the information and making and compiling the copies.

II. INFORMATION THAT MAY BE PROTECTED

Certain information under MGDPA is considered "private" data on individuals. This means that only the individual who is the subject of the data has access to the data, unless the individual consents to the release of the data. Therefore, if an exclusive representative requests "private" data on an individual that is not reasonably necessary for the exclusive representative to perform its duties under PELRA, such information cannot be released until the exclusive representative presents to the Appointing Authority/designee a proper and appropriate consent form from the subject of the data permitting the release of information to the exclusive representative. If such consent is obtained, the data must be released to the exclusive representative.

Also, under the MVAA, certain types of information (such as data on residents, clients, patients, and names of individuals reporting resident abuse to the DHS licensing agency under that specific section of the statute) are "private" and may not be released to the exclusive representative unless the exclusive representative presents the Appointing Authority/designee an informed consent from the subject of the data or authorized guardian.

If the exclusive representative requests information that is "confidential" under MGDPA, the request must be denied.

III. FEAR OF RETALIATION AGAINST MANAGEMENT'S WITNESS

At times, the Appointing Authority/designee may have reason to believe that releasing the names of witnesses or their statements to the exclusive representative may subject witnesses to harassment. In general, a mere belief that witnesses may be subjected to harassment should not preclude releasing the names. There must be evidence that the witnesses are being or would be subjected to harassment if the exclusive representative were aware of the names. This type of situation would occur rarely. If it does occur, Minnesota Management & Budget's (MMB's) Labor Relations Division must be notified so that appropriate arrangements can be made to safeguard the witnesses. The names will eventually be released to the exclusive representative with witness statements or summaries thereof, but under controlled conditions.

IV. TIMING THE RELEASE OF DATA TO AN EXCLUSIVE REPRESENTATIVE

In general, an exclusive representative should not be given data or information prior to a formal grievance being filed. However if the Appointing Authority/designee believes that disclosing certain information to the exclusive representative could resolve a dispute and thereby preventing the filing of an official grievance, the Appointing Authority/designee may decide to disclose the information. Thus, "pre-grievance" disclosure is optional with the Appointing Authority/designee, consistent with all of the above guidelines.

MMB's Labor Relations Division encourages Appointing Authorities/designees to cooperate in the release of information at an early stage in the grievance process. Often grievances can be resolved at these earlier steps if the exclusive representative has access to information upon which to base a decision as to whether or not to proceed with the grievance. Accordingly, if an exclusive representative requests relevant information at the first or second step of the grievance procedure, the information should be released so long as the release is consistent with the standards set forth in this policy, unless the issue has not yet crystallized to the point where the Appointing Authority/designee can determine whether the requested information (if non-public) is relevant.

If the information has not been released at an earlier stage and an exclusive representative requests information at the third step of the grievance procedure, the Appointing Authority/designee must release the information. Under the standards discussed in this policy, the Appointing Authority/designee should consider meeting with the exclusive representative prior to the actual third step meeting to disclose as well as explain the information in a single setting. A third step meeting would then be held at a later time. Another option is to begin the third step meeting by providing the information to the exclusive representative, explaining it as necessary, and then proceeding with the meeting.

V. EXCEPTIONS

Each request for information should be reviewed on a case-by-case basis. The specific facts of any particular situation will determine the appropriate action. If the Appointing Authority/designee has any questions as to what information should be released and/or when it should be released, contact MMB's Labor Relations Division.

RESPONSIBILITIES

Agencies are responsible for the request:

Furnishing information regarding contract grievances to exclusive representatives pursuant to the provisions of this policy.

MMB is responsible for:

Negotiating and administering the provisions of state labor agreements, and assisting state agencies in determining what information may be released to exclusive representatives and when.

REFERENCES

Appendix K of AFSCME labor agreement

CONTACTS

MMB Labor Relations Representative

**Date policy content moved to new document template featuring updated branding, logo, formatting, and corrections to typographical errors. No change to policy content.*