

Data Practices Policy – Not Public Data in Commission Proceedings

The Minnesota Public Utilities Commission (Commission) operates an eDockets and eFiling system in cooperation with the Minnesota Department of Commerce. eFiling is used to create the formal record that the Commission reviews before making a decision. Some data filed in eDockets may be marked as “not public” and access may be restricted pursuant to the Minnesota Government Data Practices Act (MGDPA). The most common type of not public data filed with the Commission is trade secret data.

This policy outlines how data filers must identify not public data that is filed, how data requesters may request access to the not public data, and how the Commission will handle not public data in the eFiling system and during Commission meetings.

Definitions

“Data filer” means the person or entity that filed data with the Commission.

“Data requester” means the person or entity that is requesting data from the Commission.

“Not public data” means any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic, consistent with the MGDPA.

Filing Not Public Data

Not public data may be filed into the eDockets system pursuant to Minnesota Rules 7829.0500, including the following requirements:

- Any documents that include not public data must be labeled as “**NOT PUBLIC DOCUMENT – NOT FOR PUBLIC DISCLOSURE**” or a similar phrase.
- A not public document must be accompanied by a public version that has all of the not public data excised or redacted, and is marked as “**PUBLIC DOCUMENT – NOT PUBLIC DATA HAS BEEN EXCISED**” or a similar phrase
- Not public data that is redacted must be specifically marked on each page at the beginning and the end of the data that has been redacted with brackets or underlined, such as **[TRADE SECRET DATA BEGINS . . . TRADE SECRET DATA ENDS]**.
- If an entire document or a substantial part of the document is redacted, it must identify: the nature of the material, its authors, its general import, and the date on which it was prepared.
- All not public data that is filed must include a statement justifying why it should be treated as not public pursuant to the MGDPA

Data filers are responsible for complying with the requirements of Minnesota Rules 7829.0500, and failure to do so may result in data being labeled as public. The Commission is not responsible or liable for any errors made by data filers when attempting to file not public information.

State Agency Access to Not Public Data in the eFiling System

The State has access to not public data in the eFiling system, including the Public Utilities Commission, the Department of Commerce, and the Office of the Attorney General. Access is limited to those employees whose work assignments reasonably require access and to other agencies, entities, and the subject of the data as authorized by state and federal law. The Commission exercises care in copying and storing not public data to prevent improper disclosure both within and outside of the agencies.

Consultants hired to aid the state agencies in the execution of their duties may also have access to the data, and pursuant to statutory mandate are contractually bound to handle the data in accordance with the requirements of the MGDPA as if the consultant were a government entity. The Commission will not be held responsible for the actions of such a consultant if the consultant has contractually agreed to manage the data as required by the MGDPA.

Requesting Access to Not Public Data in the eFiling System

Not public data is protected from disclosure to the public by the MGDPA. Individuals may request access to the not public data by contacting the entity that filed the data directly, challenging whether the data should be classified as not public, or by filing a request for a protective order related to the data.

a. Request Access from the Data Filer

Data requesters may ask the data filer who filed the not public data to provide it. To do so, data requesters should contact the data filer directly. The data filer may provide the data but is not required to do so.

b. Challenge the Not Public Designation

Data requesters may challenge the designation of data in the eFiling system. A challenge must be made in writing and must either 1) sent to both the Commission's Responsible Authority listed in Appendix A and the data filer, or 2) be eFiled in the same docket as the data in question.

Upon receiving a request for access to not public data filed with the Commission, the Responsible Authority will review the statement of justification originally filed with the data to determine whether the data is properly classified as not public. The Responsible Authority may contact the data requester or the data filer to get more information about the dispute as needed to properly resolve the issue. The Responsible Authority will determine whether the data is properly classified and will inform the data requestor and the data filer of the determination. If it is determined that any or all of the data is improperly classified as not public, it will be re-classified as public in the eFiling system ten business days after notice is provided. The Responsible Authority will also inform both the data requester and the data filer of their right to challenge the decision in district court pursuant to Minn. Stat. § 13.08.

Where requests to reclassify data involve complex issues or important public policy concerns, the Responsible Authority may refer the matter to the full Commission for a notice and comment period.

c. Filing a Request for a Protective Order

In some situations, the Commission or partner agencies may have the authority to issue a protective order to facilitate access to not public data or to permit trade secret data to be discussed during an agenda meeting. A request must be made by eFiling in the relevant eDocket.

Handling Not Public Data During Commission Meetings

All meetings where the Commission transacts public business must be open to the public pursuant to the Open Meeting Law, Minnesota Statutes Chapter 13D. Except as expressly authorized by law, meetings may not be closed to discuss not public data. When not public data is relevant to an item before the Commission, the Commission may:

- Discuss the not public data by reference without disclosing it directly
- Close a meeting to discuss not public data that is subject to a protective order
- Discuss the not public information during the open meeting, if it is necessary to conduct the business or agenda before the Commission



Sasha Bergman, Executive Secretary

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