

## Legislative Update: 2006 Session

*The following are actions of the 2006 Legislature that relate to data practices and Open Meeting Law issues. All changes are effective August 1, 2006, unless otherwise noted.*

### Chapter 196 (HF 2514) – Uniform Securities Act (2002)

Section 44 follows the general presumption in Minnesota law that records in a government entity are public. The section then provides for the protection of certain records. The new language will be codified at section 80A.84.

### Chapter 198 (HF 3663) – Veteran's Home Board – Open Meeting Law

The Veteran's Home Board may now conduct meetings via telephone conference call. The requirements for the call are found in section 198.003, subdivision 6 and were effective May 11, 2006.

### Chapter 212 (HF 3488) – Revisor's bill

In Article 1, cross-reference language is added to section 325E.61 (section 17) and then subdivision 6 of that section is moved to section 13.055 (section 24). Subdivision 6 is the language that directs government entities to do a security assessment.

Article 2 contains changes related to data practices. There are 3 changes: (a) amending section 13.322, subd. 3 related to the Higher Education Services Office; (b) adding a subdivision to section 13.322 providing direction to language about Social Security numbers in section 325E.59 (higher ed only); and (c) providing a cross-reference for CIBRS

(Comprehensive Incident-Based Reporting System).

### Chapter 214 (SF 2750) – Eminent domain

In section 5 (amending section 117.036), there is now a requirement that a government entity provide an owner of a property subject to taking with a copy of each appraisal that has been obtained either at the time the offer is made, or no later than 60 days before presenting a petition. This section also has a requirement that if an owner wishes to be reimbursed for an appraisal, a copy of the appraisal has to be provided to the government entity as part of the reimbursement request.

The provisions were effective for eminent domain actions occurring on or after May 20, 2006.

### Chapter 219 (SF 2528) – Task force on credit card payments

The use of credit and debit cards to pay for transactions with local units of government is the focus of a study that must be presented to the Legislature in 2007. The language creating the task force was effective May 22, 2006.

### Chapter 233 (SF 2002) – Identity theft

While most of this bill relates to the private sector, two provisions are directed to government. Section 1 amends section 13.05, subdivision 5 to require that all not public data be destroyed in a

# Opinion Highlights

*The following are highlights of recent advisory opinions by the Commissioner of Administration. All Commissioner's opinions are available on the IPAD web site at [www.ipad.state.mn.us](http://www.ipad.state.mn.us).*

**06-012:** An individual asked whether the Brunswick Town Board had complied with Minnesota Statutes, Chapter 13D, the Open Meeting Law. The Commissioner opined that the Board was not in compliance when it met outside the borders of Brunswick Township; Chapter 13D does not provide bases upon which a public body can be excused from holding a meeting within the borders of the public body. Second, the Commissioner opined that the Board had not met the special meeting notice requirements set forth in section 13D.04, subdivision 2(a), and, therefore, was not in compliance with Chapter 13D. Third, the Commissioner opined that because the Board failed to provide the statement required by section 13D.01, subdivision 3, before closing two meetings, the Board was not in compliance with Chapter 13D.

**06-013:** Anoka County asked about the classification of certain data relating to the registration of legal non-licensed child care providers, specifically data connected to a provider having received payment from Minnesota's child care assistance programs. Data about legal non-licensed providers are classified by Minnesota Statutes, section 13.46, subdivision 4, licensing data. Licensing data are not public unless there is language specifically stating that the data are public. The Commissioner opined that because section 13.46, subdivision 4, does not state that the date on which a provider receives an assistance program payment is public, the data at issue are private.

**06-018:** An individual asked whether the Minnesota Department of Labor and Industry had complied with Chapter 13 in responding to a request for data stemming from a wage complaint filed by an employee against her former employer. The Commissioner agreed with the Department that while the investigation was ongoing, the data were classified as not public pursuant to section 13.39. The Commissioner also agreed that the requestor could not gain access to other individuals' Social Security numbers. Social Security numbers are private pursuant to section 13.355. The Commissioner, however, did not agree with the Department's decision to withhold certain data pursuant to Minnesota Statutes, section 270B.02. Chapter 270B applies to tax return information collected and maintained by the Minnesota Department of Revenue. The data maintained by Labor and Industry appeared not to be the type classified by Chapter 270B. Therefore, the data are public pursuant to section 13.03, subdivision 1.

**06-021:** School District 186, Pequot Lakes, asked about the classification of certain data contained in a letter referenced at a District School Board meeting about a District employee. Following a closed session of a Board meeting, the Board passed a motion placing the employee on paid administrative leave and placing the letter in her personnel file. The District argued that because it had not taken disciplinary action against the employee, the data in the letter were private pursuant to section 13.43. The Commissioner agreed but noted that if placing the employee on administrative leave was related to someone having complained about the employee, it would seem the investigation was still ongoing.

## From the IPAD Toolbox\*

*\*From the IPAD Toolbox highlights resources for citizens to use in exercising their rights, and for government entities to use in improving compliance with Chapter 13 and other data practices laws.*

Did you know that government entities are required to update both their policies and procedures governing access and their list of private and confidential data once each year? And did you know that the deadline for updating these documents is August 1?

Minnesota Statutes, section 13.03, subdivision 2 (b) is the location of the requirement for policies and

procedures about access, and the requirement that they be updated each year. IPAD designed a model policy to help entities meet this requirement, which is available on IPAD's website at [www.ipad.state.mn.us/docs/model\\_policy.doc](http://www.ipad.state.mn.us/docs/model_policy.doc).

Section 13.05, subdivision 1 requires that the list of private and confidential data elements along with identifying information about the responsible authority be prepared. An inventory form to assist government entities in meeting this requirement is available on IPAD's website at [www.ipad.state.mn.us/docs/dataclassinvn.doc](http://www.ipad.state.mn.us/docs/dataclassinvn.doc).

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way that “prevents its contents from being determined.”

Section 6 amends section 138.17, subd. 7 to require that records containing not public data be destroyed in a way that “prevents their contents from being determined.”

## Chapter 241 (HF 3185) – Bioprocess piping

Section 1 adds a new section to Chapter 13 (section 13.7911) that classifies data about bioprocess piping as nonpublic. The new language includes a definition of bioprocess piping.

## Chapter 242 (SF 2743) Safe At Home Program

Beginning September 1, 2007, the Office of the Secretary of State will be operating a new program that will provide people who want to minimize their risk from domestic violence, sexual assault or stalking with a way to establish an address that is not generally accessible to the public. The new provisions will be found in Chapter 5B and include a classification for the data as private (see section 7). A cross-reference to the new language in Chapter 5B is coded in section 12.

## Chapter 253 (SF 3132) – Omnibus Data Practices Bill

Section 1 prohibits the Campaign Finance and Disclosure Board from posting certain data on its website by adding a new section 10A.027.

Section 2 extends the amount of time the Commissioner of Administration has to accept or reject an advisory opinion request from 5 calendar days to 5 business days (amends section 13.072, subd. 1).

Section 3 classifies data related to the testing of water, particularly for lead and copper. The language comes from a temporary classification of data ap-

proved by the Commissioner of Administration and adds a subdivision to section 13.3805.

Section 4 adds a new section to the Data Practices Act that classifies “genetic information.” Section 13.386 classifies data as private and sets limits on collection, storage, use and dissemination. It appears not to affect existing language that controls genetic data. This provision is effective for genetic information collected on or after August 1, 2006.

Section 5 identifies a new type of data, “name and index service data,” at the Bureau of Criminal Apprehension (BCA). New subdivision 4 of section 13.87 classifies these data as either private or confidential, depending on the existence of an active criminal investigation. (See also Ch. 260, article 3, section 3.)

Section 6 amends section 136A.162 to classify data about students who receive financial aid from the Higher Education Services Office as private.

Sections 7 and 8 amend two subdivisions in section 138.17 to remove language directing the Commissioner of Administration to perform several func-

tions related to records management. The general requirement for government entities to manage their records has not changed.

Section 9 amends a provision related to the genetic testing of newborns. After the amendment is effective, section 144.128 will require the Commissioner of Health to provide a separate form to request destruction of test samples and results and to respond to a request for destruction within a certain period of time.

Section 10 adds language to section 144.335 (Medical Records Act) to authorize the release of specific items of data to a family member or caretaker who is assisting an individual who is receiving mental



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health care. Several conditions must be met before the release can occur.

Sections 11 and 12 authorize the use of a tribal identification card issued by a Minnesota tribal government as an acceptable form of identification. The card must satisfy several criteria before it will be recognized (see new section 171.072).

Section 13 amends section 181.032 to require that employers who provide earnings to their employees electronically make a computer and printer available during working hours so that an employee can print an earnings statement. The new language also requires an employer to provide a written earnings statement, if the employee makes a written request.

Section 14 amends section 270C.03, subdivision 1 to authorize the Commissioner of Revenue to share data with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives. The language was needed due to reorganization of agencies at the federal level.

Sections 15 and 18 authorize the Department of Public Safety to use a subscription service to promote and enhance officer safety during a tactical operation involving multiple law enforcement agencies by notifying officers of possible conflicts. Subscription service data are classified as criminal investigative data as provided in section 13.82. (See also Ch. 260, article 3, section 15.)

Section 16 adds the Department of Correction's Fugitive Apprehension Unit to the definition of "law enforcement agency" that is authorized to use the Comprehensive Incident-Based Reporting System (CIBRS). (Amends section 299C.40) (See also Ch. 260, article 3, section 14.)

Section 17 also relates to CIBRS. It amends section 299C.40 and provides that if an individual wants to authorize a third party to get access to records about the individual in CIBRS, the individual must appear in person at the BCA or a participating law enforcement agency to provide the informed consent to make the release.

Section 19 amends section 325E.59 that governs the private sector's use of Social Security numbers (SSN). Subdivision 1 is amended to permit the exchange of an SSN when required for nursing homes to make reports mandated by federal regulations. It also adds general prohibitions on the use of the SSN as a primary account number or to sell an SSN obtained during the regular course of business. Access to SSNs must be restricted to those employees who require access in order to do their job.

Section 20 creates a new section 325F.675 that directs how telephone records can and cannot be used.

Penalties are provided, as are security requirements for the records.

Section 21 adds the medical examiner to the list of parties who must be notified of the suspicious death of a vulnerable adult (amends section 626.557).

Section 22 directs the Commissioner of Administration to create a working group on genetic information and produce certain reports by January 15, 2008.

## Chapter 255 (SF 3480) – Omnibus Insurance Bill

This law contains a compact called the Interstate Insurance Product Regulation Commission. This is a joint venture of states that choose to join and its purpose is to review and approve various type of insurance. In Minnesota, the Commissioner of Commerce is the representative to the Commission. There are provisions relating to notice of meetings, when and how meetings are open to the public, and directs the Commission to develop rules about public inspection of its records.

## Chapter 257 (HF 2480) – Twins Stadium

In new section 473.579, subdivision 10, Twins' financial information and other records accessed by the Ballpark Authority to verify the terms of the lease or use agreement are classified as nonpublic.

## Chapter 260 (HF 2656) Omnibus Public Safety Bill

Article 3, section 2 adds a subdivision to section 13.82 that prohibits the destruction of photographs of juvenile offenders. The section was effective July 1, 2006.

Article 3, section 3 adds a subdivision to section 13.87 that describes and classifies "name and event index service" data held at the Bureau of Criminal Apprehension. The data may be classified as private or confidential, depending on the status of any underlying investigation. This section was effective July 1, 2006. (See also Ch. 253, section 5.)

Article 3, section 14 adds the Department of Correction's Fugitive Apprehension Unit to the definition of "law enforcement agency" that is authorized to use the Comprehensive Incident-Based Reporting System (CIBRS). (Amends section 299C.40.) This section was effective July 1, 2006. (See also Ch. 253, section 16.)

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# Court Case Update

As part of an investigation into whether drug companies had refused to supply Canadian pharmacies that were serving Minnesota patients, the Attorney General issued a civil investigative demand to GlaxoSmithKline (GSK). Before producing any documents, GSK demanded that a confidentiality agreement be put in place. After GSK produced documents, there was a dispute over how some of them were to be treated by the Attorney General, including whether they could be released.

In resolving the matter, the Court of Appeals analyzed section 13.39 (civil investigative data). GSK claimed that section 13.39 prohibits the release of data in a pending civil action. The Court concluded that subdivision 2 of section 13.39 gave the Attorney General discretion to determine if release of the data was appropriate. Subdivision 3 was also reviewed with the Court concluding that the filing of pleadings converted what had been civil investigative data in the attachments to public data in the courthouse.

Those who wish to apply the Court's analysis should remember that in order for data to be "civil

investigative data," the chief attorney for the government entity must declare them to be covered. The Court did not discuss this initial determination.

*In the Matter of  
GlaxoSmithKline plc,  
713 N.W.2d 48  
(Minn. Ct. App.  
2006)(A04-2150,  
April 18, 2006).*



The Minneapolis Public School District was found liable to the parent of a student for the improper destruction of data about the student. On appeal, the District argued that section 13.05, subdivision 5 (requires security safeguards for data on individuals) does not create a duty to an individual student. The Court of Appeals concluded that the language in section 13.05, subdivision 5 and that in section 13.08 (remedies) required a result contrary to that suggested by the District.

The Court also found that by not directing District employees in the proper method of destruction for student records, the responsible authority for the District had not established appropriate security safeguards and so had violated Chapter 13.

*Scott v Minneapolis Public Schools*, (Court of Appeals, A05-649, April 18, 2006).

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involving multiple law enforcement agencies by notifying officers of possible conflicts. This section was effective July 1, 2006. (See also Ch. 253, sections 15 and 18.)

Article 5, sections 1 and 2 amend portions of section 13.84 to update references to courts. These sections were effective July 1, 2006.

Article 5, section 53 extends the domestic fatality review team pilot project in Hennepin County (Fourth Judicial District) to December 31, 2008. The section was effective June 2, 2006.

Article 8, section 9 is part of a major revision of the laws that apply to medical examiners and coroners. Subdivision 7a of section 9 provides authority for private and public sector health-related records to be shared with a medical examiner or coroner. The section was effective July 1, 2006.

### Chapter 282 (HF 4162) – Omnibus Finance Bill

In Article 11, beginning with section 13 (line 79.16), a Boxing Commission is created. According to section 18 (line 80.29), notice of meetings must be given under Chapter 13D. As the Boxing Commission is within the definition of a "political subdivision" in section 13.02, subdivision 11, Chapter 13 also applies.



**Information Policy  
Analysis Division**

## Questions or comments?

Contact the Information Policy Analysis Division at 201 Administration Building, 50 Sherburne Avenue, St. Paul, MN, 55155; phone 800.657.3721 or 651.296.6733; fax 651.205.4219; email [info.ipad@state.mn.us](mailto:info.ipad@state.mn.us).

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This document can be made available in alternative formats, such as large print, Braille or audiotope by calling 651.296.6733.

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