

# FYi

From the Information Policy Analysis Division

## 'Working to Serve You In New Ways'

*By Laurie Beyer-Kropuenske  
IPAD Director*

Coming into IPAD, I was so impressed by the knowledge of the staff and the thorny, complex calls and emails this office receives every day from government and citizen customers. I, along with many of you, have struggled with how to fully implement provisions of the Data Practices Act.

Some of the daily issues are as vexing today as they were 30 years ago when the Act was passed. It is challenging and hard work! There are many times when the answer IPAD gives is, "It depends on the government entity's policies and procedures."

Everyone wants to be proactive and draft policies that address everything that might happen. Of course, the situation that isn't thought of is the one that usually happens. Every day, IPAD gives advice that would have been more helpful if it had come sooner rather than later. I wished for a way to take your stories and use them to set up a data practices process for a real live agency.

Like so many others, IPAD has struggled with budget issues over the last several years. With increasing workloads and fewer resources, there was little chance of devoting exclusive time to just one agency. Luckily, an opportunity came up in Spring 2005 to perform contract work for the Bureau of Criminal Apprehension (BCA) of the Department of Public Safety. In addition to providing investigations, training and laboratory services, the BCA is the repository for millions of criminal history records.

IPAD could not have asked for a better client or bigger stakes. It was an enormous risk for both sides. From IPAD's perspective, it was nerve-racking to enter the world of paying customers and "deliverables." For the BCA, it must have been difficult to let the "data practices experts" know all the places they have struggled with implementing the Act. In the end, we took the leap together and, in the immortal response of Bob the Builder to the question, "Can we build it?" we said, "Yes, we can!"

After 18 months, the BCA has just implemented an entirely new data practices structure. They have an updated data inventory and brand new public and data subject access procedures. Their new system will be aided by step-by-step instructions for all BCA employees.

This project could not have been accomplished without the help of many BCA employees and especially with the support and leadership of former Superintendent Linda Finney, Bob Johnson, Dale Good and Joe Newton. Throughout the rest of the year, IPAD will continue to tweak the policies as new issues emerge or glitches are highlighted.

Since entering the world of fee-for-service, IPAD has added a number of other projects with the CrimNet office of the BCA, the Department of Health and, soon, the Department of Labor and Industry. We are learning so much that will allow us to serve you better. Making data practices real and practical is an exciting adventure for all of us.



# 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).

**06-022:** The City of Moorhead asked about the classification of certain arrest warrant information maintained in a spreadsheet. The spreadsheet contained the name, date of birth, last known address and the reason for the warrant. Minnesota Statutes, section 13.82, subdivision 19, classifies data in arrest warrant indices as confidential "until the defendant has been taken into custody, served with a warrant, or appears before the court, except when the law enforcement agency determines that the public purpose is served by making the information public." In the Commissioner's opinion, the spreadsheet constituted an index; therefore, the warrant data were confidential unless the City determined that releasing the data would serve a public purpose.

**06-023:** The Minnesota Department of Health asked about the classification of certain data stemming from a complaint from Employee A alleging improper behavior by Employee B. Employee A kept a copy of the complaint s/he submitted to the Department. Employee C witnessed the incident between Employees A and B. Employee C submitted a witness statement and kept a copy. The Commissioner opined that Employee A's copy of his/her complaint and Em-

ployee C's copy of his/her statement were government data. The Commissioner also opined that Employees A and C could disclose to the public only data of which they were the subject.

**06-025:** The City of Rice asked about whether it could release to Watab Township certain data the City maintained as a result of its contract with the Township. The City contracted with the Township to provide fire protection and emergency services. Watab Township is not subject to the requirements of Minnesota Statutes, Chapter 13. The Commissioner looked at the contract and found that it did not contain language pertaining to the City providing data to the Township. The Commissioner also examined the provisions in Chapter 13 that classify data in situations when a government entity contracts with a private person not subject to Chapter 13 and found that none of the provisions applied. Therefore, it did not appear that the City could release the data to the Township.

**06-026:** Anoka County asked about the classification of data indicating all licensed childcare providers who received childcare assistance payment for services rendered in the past month. The Commissioner opined that the data in question about licensed childcare providers were classified pursuant to Minnesota Statutes, section 13.46, subdivision 4, and, therefore, were private.

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## From the IPAD Toolbox

### How can I make a Data Practices request?

IPAD regularly receives questions asking about the proper way to make a data practices request. In addition to the recommendations included in the *Advice from the Swamp Fox* portion of this newsletter, there are two new resources available on IPAD's website about how to make a data practices request.

The first, *How to Make a Request for Public Data*, [www.ipad.state.mn.us/docs/dppubrequest.doc](http://www.ipad.state.mn.us/docs/dppubrequest.doc), includes the steps for making a data practices request for public data and the second, *How to Make a Data Practices Request for Data About You*, [www.ipad.state.mn.us/docs/dpdsrequest.doc](http://www.ipad.state.mn.us/docs/dpdsrequest.doc), includes the steps for making a data practices request when you are the subject of the data. The following information provides a summary of these resources.

- ▶ Contact the government entity and ask for the name of its "responsible authority" for data practices prior to making a request. A request should be submitted directly to the responsible authority to avoid any unnecessary delay.

- ▶ After identifying the responsible authority, ask about the entity's procedures for making a data practices request. The specific format used to request access to government data may vary depending on the public access procedures established by each government entity. The entity's access procedures must be in writing and available to the public. The procedures are required under Minnesota Statutes, section 13.03, subdivision 2 and section 13.05, subdivision 8; and Minnesota Rules 1205.0300, subpart 3.
- ▶ Many times the government entity will have a form for requesting access to data. Use this form to make a request. If the entity does not use a form, it is generally best to make a request in writing, provide a clear explanation of the data, and use one of the following

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# Advice from the Swamp Fox\*

\*Francis Marion, "the Swamp Fox," was a colonial officer from South Carolina in the Revolutionary War renowned for hiding in swamps while carrying out guerilla warfare against the British.

## Dear Swamp Fox:

I am a private citizen from Snow Falls County. I am interested in accessing the salaries of current and former Snow Falls County employees. I have been able to determine that I can legally access the names and salaries of the employees who work for Snow Falls County. However, I don't know how to request access to the information, or who has to answer my request. Do you have any guidance as to how I can most efficiently make my request for this information?

**Puzzled Private Citizen**

## Dear Puzzled Private Citizen:

Thank you for your question and I am happy to provide some guidance. It sounds like you are trying to make a request for access to public data under the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes, Chapter 13. The MGDPA includes a requirement that government entities must have written public access procedures detailing the process to follow when requesting access to government data. You can contact the government entity directly to request its public access procedures. You will want to follow the entity's specific procedures when requesting access to data about the salaries of county employees. Additionally, I will provide some general guidance in making your data practices request.

First, you will want to request the name of the government entity's "responsible authority" for data practices when you contact the entity to ask about its data practices public access procedures. The data practices responsible authority is the individual to whom you should direct your data practices request.

Second, you will want to prepare a specific request for the data. The entity may have a particular form to use in making your request for access to public data. If a form is not included in the entity's access procedures, it is best to submit your request in writing. You are not required to identify yourself when making your request for public data.

In your data request for county employee names and salaries, I would also recommend prioritizing the data you would like to access. For example, your request may be broad because you would like to access the names and salaries of all past and current county employees. However, you may want to inspect the salaries for only the current employees first. It is useful to provide as much detail as possible in your data request to help the county answer your request more efficiently.

In addition, your request should specify whether you would like to inspect the employee salaries, or if you would like to receive copies. The entity may charge you for copies of the data but inspection is free. If you wish to inspect the data, you may need to schedule an appointment at the offices of the entity.

You can find additional information about making a data practices request as a member of the public or as a data subject in the *From the IPAD Toolbox* portion of this newsletter.

**The Swamp Fox**

## IPAD Toolbox

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statements to help ensure the entity responds promptly to the request:

- "I am making a request for access to public data under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13."
- "I am making a request for access to data about myself under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13."
- "I am making a request for access to data as the parent or guardian of the data

subject under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13."

- ▶ Let the entity know whether the request is for inspecting the data, or is for copies of the data. The entity may charge for copies, but there is no cost for the inspection of data.



**The Carpenter**

# Court Case Update

*Columbus Concerned Citizens Inc. v. Minnesota Racing Commission, et. al.*, (Court of Appeals, A05-1743, June 6, 2006) (unpublished).

Columbus Concerned Citizens, Inc. alleged that Minnesota Racing Commission commissioners violated the Open Meeting Law by engaging in *ex parte* communications in the commission's decision to reconsider the denial of an application for a Class A racetrack license.

The Court of Appeals concluded that the *ex parte* contacts are not subject to the Open Meeting Law and any conversations between commissioners that consist of less than a quorum do not violate the law. In addition, the Court concluded that even if a violation of the Open Meeting Law was established, the violation does not permit the invalidation of the Commission's actions as a remedy.



**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).

Staff: Laurie Beyer-Kropuenske, *Director*, Stacie Christensen, Katie Engler, Janet Hey, Linda Miller and Catherine Scott.

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

For TTY communication, contact the Minnesota Relay Service at 800.627.3529 and ask them to place a call to 651.296.6733.

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## Stacie Christensen joins IPAD

Stacie Christensen joined IPAD on September 11, 2006, from Thomson-West. Please join us in welcoming her.

*Grothe v. Ramsey Action Programs, Inc.*, (Court of Appeals, A05-1503, June 6, 2006) (unpublished).

The Court of Appeals addressed Minnesota's Whistleblower Act in an employment termination case. The employee was terminated for misconduct based on an audit conducted by the Minnesota Department of Commerce that exposed documents falsified by the employee.

The termination was grieved in arbitration and the arbitrator concluded there was not just cause for the termination and ordered reinstatement with back pay and benefits. The employee then filed a complaint for violation of Minnesota's Whistleblower Act and defamation. The district court granted summary judgment for the employer on the whistleblower claim because the arbitration had "reversed" the employee's termination. The Court of Appeals disagreed, concluding that the arbitration had no preclusive effect on the whistleblower action. The Court based this on the employee's right to recover all damages available under the whistleblower statute and the right to a jury determination on whether the termination was legitimate.

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*Nelson v. Productive Alternatives, Inc.*, 715 N.W.2d 452 (Minn. 2006).

The Minnesota Supreme Court also addressed the Whistleblower Act in a case of wrongful termination. An individual was a member of a nonprofit and also employed by the same nonprofit. The employee alleged he was wrongfully discharged in retaliation for exercising his voting rights as a nonprofit member and that the discharge was a violation of public policy under Minnesota common law. The district court found that the common law wrongful discharge claim was precluded by Minnesota's Whistleblower Act. The Court of Appeals disagreed and the Supreme Court affirmed.

The Supreme Court discussed the at-will employment relationship and the common law cause of action for wrongful discharge in violation of public policy. The Court concluded that even though the Whistleblower Act does not preclude common law wrongful discharge claims, the employee's claim failed because there is not a clear public policy supporting a cause of action for a wrongful discharge in retaliation for voting as a nonprofit member.