

FYi

From the Information Policy Analysis Division

Legislative Update: 2007 Session

The following are highlights from the 2007 Legislative Session relating to data practices issues. Also included are the 2007 changes to the Open Meeting Law. A summary of the entire 2007 Omnibus Data Practices Bill, changes to the Open Meeting Law, and a summary of the recodification of the Minnesota Health Records act is located on IPAD's website at www.ipad.state.mn.us. All of the legislative changes are effective August 1, 2007, unless otherwise noted.

Omnibus Data Practices Act Minnesota Session Laws 2007 Chapter 129

- Change to a reference in section 13.02, subdivision 8, about those who are mentally incompetent in the definition of "individuals." (section 1)
- Substitution of "government entity" for the phrase, or part of the phrase, "state agency, political subdivision or statewide system" throughout Chapter 13. (sections 2, 5, 6, 10-23, 24-38, 43, and 45)
- Language added to section 13.03, subdivision 4, to preserve the treatment/classification of data moving from the judicial branch to the executive branch. These data are also known as "traveling data." (section 3)
- Section 13.04, subdivision 3, is amended to make it possible for a designee to respond to a data subject's request for data. The term "compiling" is deleted from section 13.04, subdivision 3. (section 4)
- Clarification in section 13.072, subdivision 1, that an opinion of the Attorney General must be numbered and published, as well as written, to take precedence over an advisory opinion issued by the Commissioner of Administration. (section 7)
- Amendment to the penalty language in section 13.08, subdivision 4, so that only written advisory opinions of the Commissioner of Administration can be used to offset the \$300 fine. (section 8)
- Update to the date of the federal regulations governing directory information in schools from July 1, 1993, to January 1, 2007, in section 13.32, subdivision 5. The major change in the federal regulations has been the inclusion of email address as an item of data that can be designated as directory information. (section 9)
- Part of a Social Security number is now classified as private data in section 13.355, subdivision 1. (section 11)
- Clarification that section 13.43, subdivision 2(e), affects complaint data about public officials in state

Update on Social Security Numbers

The 2007 Spring Issue of FYi focused on Social Security number (SSN) issues. SSNs are classified as private pursuant to Minnesota Statutes, section 13.355. During this past Legislative Session, the Minnesota Legislature enacted a provision that broadens the classification to include part of an individual's SSN as well as the individual's entire number. Therefore, a government entity must now provide an individual with a Tennessee warning notice when it collects any part of an individual's SSN. The change went into effect on August 1, 2007. IPAD is revising its SSN resource pieces so they reflect the amended language.

Health Records

The Omnibus Health and Human Services (HHS) Bill, Chapter 147, contains the recodification of Minnesota Statutes, section 144.335 (Access to Health Records). The purpose of the recodification is twofold: to enable the electronic exchange of health information and to make the law easier to understand. The new language will be located in sections 144.291 through 144.298. Changes went into effect on July 1, 2007.

For more specific information on the changes, please visit IPAD's website www.ipad.state.mn.us or visit the Minnesota Department of Health's website www.health.state.mn.us/divs/opa/govrelat.html, which includes a summary of the entire HHS Omnibus Bill.

Legislative Update

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agencies and not other units of government. (section 23)

- Section 13.87, subdivision 1, is amended to create a mechanism to disassociate an individual's name or other identifying data with a criminal history from the public criminal history data when the association is determined to be erroneous. (section 44)
- Criminal justice agencies and public defenders are given access to driver's license photos related to their job duties at Driver and Vehicle Services within the Department of Public Safety for certain purposes in Section 171.07, subdivision 1a. (section 49)
- Section 325E.59 is amended to move the effective date of language about the private sector's use of Social Security numbers (SSN) to July 1, 2008. The repealer in Chapter 129, section 57, removes the "grandfather" provision that would allow the private sector already using an SSN to continue that use past the effective date of the new provision. The repealer was effective May 25, 2007. (sections 55, 56, and 57)
- The repealers are contained in Chapter 129, section 58. The first repealer completes the

transfer of language about data at the Bureau of Mediation Services (see Chapter 129, section 42). The second repeals language in section 325E.59, subdivision 2, that would have allowed the private sector to continue to use Social Security numbers in certain circumstances. The repeal of 325E.59, subdivision 2, was effective May 25, 2007.

Open Meeting Law Changes Minnesota Session Laws 2007 Chapter 110

- A new section, 13D.021, is added to the Open Meeting Law, which authorizes the conduct of meetings by telephone or other electronic means if certain conditions are met. The primary condition is that there is a health pandemic or an emergency declared under Chapter 12 (emergencies; disasters). Monitoring from remote sites is authorized and the person doing the monitoring may be asked to cover any additional cost. (section 1)
- Amendment to section 13D.05, subdivision 2, to require that a meeting be closed to discuss an individual's medical records that have been received from a private sector provider. Prior to the amendment, only medical records from government entities provided a basis for closing a meeting. This section was effective May 22, 2007. (section 2)

Opinion Highlights

Below we have highlighted a recent advisory opinion by the Commissioner of Administration. All opinions are available on the IPAD website, www.ipad.state.mn.us.

07-013: A newspaper asked whether the City of Thief River Falls properly denied access to the make, year, and model of vehicles involved in traffic accidents. The City argued the data are not public because they are contained in traffic accident report documents submitted to the Minnesota Department of Public Safety (DPS) (see Minnesota Statutes, section 169.09), and because neither Minnesota Statutes, section 13.82, subdivision 3 (request for service) nor subdivision 6 (response or incident) explicitly lists the data as public. The City noted it maintains the vehicle data in forms, reports, etc. other than the DPS traffic accident report documents. The Commissioner opined that if there was an active investigation involving data about a particular vehicle, the City did comply with Chapter 13 in denying access to the data. But if there was no active criminal investigation involving data about a particular vehicle, they are public. The Commissioner also noted it would be helpful if the Legislature clarified its intent on these issues.



**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.

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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.

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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From the IPAD Toolbox*

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

New Data Practices PowerPoint

IPAD has developed a new PowerPoint presentation to assist responsible authorities and data practices compliance officials with interpreting and implementing the general provisions of the Data Practices Act. The PowerPoint is available at www.ipad.state.mn.us/dpgoveducation.html. The new PowerPoint consists of both slides and speaker's notes. Users are encouraged to view the slides as a general outline of the information and use the speaker's notes as an explanation of the slides. The PowerPoint slides may be modified and used as an educational tool to instruct employees that have specific data practices related duties.

Court Case Update

In the Matter of GlaxoSmithKline, plc., 732 N.W.2d 257 (Minn. 2007).

The Minnesota Supreme Court concluded that both a confidentiality agreement entered into by GlaxoSmithKline and the State, and a protective order issued by the district court limit the State's discretion under Minnesota Statutes, section 13.39, subdivision 2(a), to allow public access to protected nonpublic data. Section 13.39, subdivision 2(a), allows a government entity to release confidential or protected nonpublic data if it determines access will aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest.

Additionally, the Court held that data classified in section 13.39, as civil investigative data, which are attached to a complaint and filed with a court become part of a "court record" and are public under the Data Practices Act.