



## Genetic Privacy in Minnesota

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In September, Commissioner of Administration Dana Badgerow kicked off the first meeting of the Minnesota Genetic Information Work Group. The 2007 Legislature directed the commissioner of administration to convene a work group “to develop principles for public policy on the use of genetic information” and to report its findings and any legislative recommendations by January 15, 2009. (2007 Minnesota Session Laws, chapter 148, article 2, section 74.) The 22-member work group has a wide variety of representatives from state and local government, advocacy groups, the judicial branch, the medical community, criminal justice agencies, and the public. The membership of the work group will mean a lot of diverse discussion on these significant policy issues facing Minnesota. The work group’s charge from the Legislature continues efforts spear-headed by Representative Phyllis Kahn and Representative Mary Liz Holberg. Specifically, the creation of the work group follows up on recommendations made by the commissioner of administration in her 2006 report to the Legislature on how genetic information is treated in Minnesota. (Minnesota Laws 2005, chapter 163, section 87.)

In addition to the work group’s overall charge to develop principles, it was directed to make recommendations on a number of issues highlighted in the 2006 report including access to genetic information by relatives of a data subject, secondary uses of genetic information by government and the private sector, and access to data and specimens collected as a part of a criminal investigation. To accomplish all of its work in the time available, the work group will utilize a number of smaller work groups (committees) that can delve more deeply into particular topics and bring recommendations back to the full work group for its consideration. Currently, small work groups have been created to focus on the following four topics:

- Access by Relatives
- Specimen/Sample Issues
- Genetic Information Safeguards
- Secondary Uses of Genetic Information

The small groups will invite subject matter experts to assist the members in discussing these topics. The access by relatives and specimen committees have already begun meeting and have had lively discussions.

**Continued on next page...**

The work group met for the first time on September 24, 2007. Members identified issues important to the work of the group and there was discussion of the legislative charge and group overview. At the second meeting on October 23, 2007, the focus was consideration of whether changes are needed to the consent

All of the work group and committee meetings are open to members of the public.

A section of IPAD's website is devoted to information about the work group and its committees. Please visit [www.ipad.state.mn.us/geneticinfo.html](http://www.ipad.state.mn.us/geneticinfo.html) for information about the legislative charge, meeting schedules, agendas and meeting notes. Along with me, the work group is being staffed by Katie Engler and Stacie Christensen of IPAD, as well as Judy Plante of the Department of Administration's Management Analysis and Development Division.

It's going to be an exciting 14 months. Whether in our personal or professional lives, the use of genetic information has implications for all of us. I hope you will follow the progress of the work group by attending meetings and visiting IPAD's website. Feel free to share any thoughts on issues at [info.ipad@state.mn.us](mailto:info.ipad@state.mn.us).

## 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 data practices related laws.*

### **New Data Practices Education Videos**

IPAD has developed three short educational videos about some of the general areas of the Data Practices Act (Minnesota Statutes, Chapter 13). The videos range in length from five to nine minutes. They are designed to be viewed by government entity employees who have specific data practices related duties and members of the public with an interest in data practices. The video topics include: data practices laws and terms, data classification in Minnesota, and making and responding to data practices requests. The videos are available on IPAD's website at [www.ipad.state.mn.us/dpvideos.html](http://www.ipad.state.mn.us/dpvideos.html).

IPAD has also developed a five-minute video providing a brief summary for those interested in learning more about data practices related legislative activity from the 2007 Legislative Session. This video is also available on IPAD's website at [www.ipad.state.mn.us](http://www.ipad.state.mn.us).

### **New Open Meeting Law PowerPoint**

IPAD has created a new Open Meeting Law PowerPoint presentation. The PowerPoint is designed to educate members of public bodies subject to the requirements of the Open Meeting Law (Minnesota Statutes, Chapter 13D) and members of the public with an interest in Open Meeting Law issues. The PowerPoint combines the requirements of Chapter 13D, the Minnesota appellate courts' interpretation of the law, and guidance offered by the Commissioner of Administration in advisory opinions. The PowerPoint gives users an outline of the information in the slides and has more in-depth comments within the speaker's notes section. The new PowerPoint is available on IPAD's website at [www.ipad.state.mn.us/omlppt.html](http://www.ipad.state.mn.us/omlppt.html).

## Opinion Highlights

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

**07-014:** An individual asked whether the Hampton Township Board of Supervisors complied with the Open Meeting Law (Minnesota Statutes, Chapter 13D), regarding four issues. Regarding the first issue, the Commissioner opined that the Board’s posted notice for a special meeting containing the statement “other legal issues may be discussed,” did not meet the notice requirement under section 13D.04, subdivision 2(a). The Commissioner was unable to resolve the second issue. Regarding the third issue, the Commissioner opined that limiting access to the journal of votes to the night of the Board’s monthly meeting did not comply with section 13D.01, subdivision 5. Regarding the fourth issue, the Commissioner opined that the Board did not comply with section 13D.01, subdivision 6, because, at several meetings, copies of zoning reports were not available in the meeting room for the public to review.

**07-016:** A school district explained that it videotapes certain locations within its schools. The district asked if the videotape created during an athletic event in a school gymnasium contained private educational or private personnel data, pursuant to Minnesota Statutes, Chapter 13. The athletic event was open to the public. The Commissioner, noting that Advisory Opinion 03-010 addressed a similar issue, discussed that because the event was open to the public, any incidents contained in the videotape could have been observed by any of the people attending the event. The Commissioner wrote that although certain of the data in the videotape might be private, the students and employees present at the event – either as participants or spectators – have, in effect, given consent for data about them to be released.

**07-021:** A school district asked whether it complied with Minnesota Statutes, Chapter 13, when it determined that a student’s name, which appears in certain data relating to an investigation of allegations of misconduct by a teacher, is only incidental to the data, and is not private educational data. (Because the district did not take disciplinary action against the teacher, minimal data about the investigation are public.) The Commissioner discussed that any private educational data about the student would be accessible to the parent of the data subject child. The District asserted that to the extent the student was mentioned in the reports, his/her identity was incidental - “...whether it was [him/her] or another student whom the teacher was alleged to have mistreated was immaterial to the investigation.” The Commissioner opined that the district’s determination was appropriate given that the district is in the best position to make a decision about which individuals are the subject of which data.

### Traffic Accident Data – Who Gets Access?

Based on the number of questions IPAD receives about traffic accident data, we know lots of government entities have questions about how to treat these types of data and lots of individuals have questions about getting access. The key to answering these questions is to read Minnesota Statutes, section 169.09 (motor vehicle accidents) together with Minnesota Statutes, section 13.82 (law enforcement data). IPAD recently created an information piece that addresses these issues. The document can be accessed from IPAD’s website at both of these locations: [www.ipad.state.mn.us/dpgoveducation.html](http://www.ipad.state.mn.us/dpgoveducation.html) and [www.ipad.state.mn.us/publicresources.html](http://www.ipad.state.mn.us/publicresources.html)

# Court Case Update

## ***Uckun v. Minn. St. Bd. of Med. Prac.*, 733 N.W.2d 778 (Minn. Ct. App. 2007).**

A medical doctor challenged the publication of a temporary suspension order by the Minnesota Board of Medical Practice on its website, alleging the publication violated the Data Practices Act (Minnesota Statutes, Chapter 13). The doctor argued that the suspension order was classified as private and confidential under the Data Practices Act and could not be disclosed to the public. The Board argued the suspension order was public.

The Court of Appeals discussed civil investigative data and noted that any data collected by an entity as part of an active investigation are confidential under Minnesota Statutes, section 13.39, subdivision 2(a), but may be disclosed to aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest. Based on the record, the Court determined that the data collected by the Board to instigate administrative proceedings were classified as confidential based on section 13.39. However, the Court concluded that the Board published the suspension order after finding a serious risk to the public. Therefore, the publication was permitted based on section 13.39, subdivision 2(a), to promote public health and safety.

## ***Davis v. City of Minneapolis*, A06-1114 (Minn. Ct. App. July 17, 2007, unpublished).**

A member of the public requested various data from the City of Minneapolis relating to the City's hiring of an employee. The central issue was whether a member of the public has standing as an aggrieved person under the Data Practices Act (Minnesota Statutes, Chapter 13) if denied access to data available as a matter of right under the Act.

The Minnesota Supreme Court had previously determined that a member of the public is an aggrieved person under Minnesota Statutes, section 13.08, when the person is denied access to data that are available as a matter of right. See *Wiegel v. City of St. Paul*, 639 N.W.2d 378 (Minn. 2002). In the *Davis* case, the Court of Appeals concluded that a member of the public has the burden to prove requested data exist to become an aggrieved person. *Davis* was unable to prove the requested data actually exist. Therefore, the Court found that he cannot be an aggrieved person under the Data Practices Act.

## **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 audiotape 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.

