



New Guides - Free for the Taking!

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In this edition of FYi, I am highlighting IPAD's creation of two new guides. One is the *Guide for Members of the Public Requesting Information*. The other is the *Guide for Requesting Information about You*. IPAD developed these documents as a replacement for the *Model Policy: Public Access to Government Data and Rights of Subjects of Data*, which was created in 2000.

IPAD has prepared two versions of each of the guides. One is set up so that government entities can fill in the blanks as appropriate. In the second version, IPAD has filled in the blanks using examples from a fictitious government entity. A set of questions will help government entities complete their own set of guide documents.

The guide directed at members of the public discusses the public's data access rights as outlined in Minnesota Statutes, section 13.03. The document is written to comply with the requirement in section 13.03, subdivision 2, that government entities prepare public access procedures.

The guide that applies to data subjects discusses their data access rights and other rights outlined in Chapter 13, including the right to receive a Tennesen warning notice, the right to challenge the accuracy and/or completeness of data, and the right to have their data protected. The document is written to comply with the requirement in section 13.05, subdivision 8, that government entities prepare a document that sets forth the rights of data subjects.

Both guides contain a sample data practices contacts document, a sample data request form, and a sample copy fee schedule. The guide for data subjects contains a sample document containing standards for verifying the identity of the data subject.

According to language in section 13.03, the guide for members of the public should be updated at least annually. IPAD recommends the same for the data subject guide. IPAD also recommends updating (1) the data practices contact information when staff changes occur and (2) the actual cost copy charge calculations as hourly wage rates are revised.

We hope you will use these guides to prepare your own. They serve the dual function of fulfilling certain government entity obligations and informing the public and data subjects of their rights under Chapter 13. The guides are located on IPAD's website at www.ipad.state.mn.us/infoguides.html.

Genetic Information Work Group – Update

Members of the Minnesota Genetic Information Work Group completed discussion of two topics within their legislative charge and recommended changes that will be included in the final genetic information report due to the Legislature in January 2009. The recommendations relate to the following topics.

Cancer Surveillance System

The Cancer Surveillance System is a program operated by the Minnesota Department of Health. Members recommended that a patient must consent to any contact the Health Department has with the patient's relatives, if contacting relatives is necessary for the program. Although current law requires consent from the physician before the Health Department can interview patients or their relatives, group members decided that there is no need to detail a role for the physician because patients should control contact with their relatives.

Access by relatives to three-generation pedigrees

Three-generation pedigrees can be pictorial representations or narratives of family history created by medical providers based on a patient's recollection. Members recommended that the patient who is being treated should be considered the data subject, for purposes of Minnesota Statutes, Chapter 13, of a three-generation pedigree maintained by any government entity. As the legislative charge specifically directed the group to consider pedigrees maintained at the Minnesota Department of Health, members also chose to recommend that access to the pedigrees should be the same for all other government and private medical providers.

More information about the work group is on IPAD's website at www.ipad.state.mn.us/geneticinfo.html.

Join IPAD's Electronic Mailing List

Would you like to be notified when IPAD publishes its next electronic newsletter, creates a new electronic resource piece, when appellate courts issue decisions that relate to data practices or the Open Meeting Law, or when the Minnesota Legislature amends relevant statutes? If so, you may wish to sign up for IPAD's email list service. To subscribe, go to www.ipad.state.mn.us/listserv.html and enter your email address. You also may unsubscribe at that same page on IPAD's website.

Please note that as a subscriber, the only messages you receive will originate from IPAD; in other words, subscribers are not able to send messages to the mailing list. If you have any questions, contact us at info.ipad@state.mn.us.

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.

07-022: An individual asked whether a state agency properly withheld access to the home addresses of individual members of an advisory group. The Commissioner opined that the data are public based on the general presumption in Minnesota law that all government data are public unless otherwise classified. Note: The state agency subsequently submitted a request for a temporary classification regarding the home address data. On February 21, 2008, the Commissioner approved the application. Those data now are private. For more information, visit IPAD’s website at www.ipad.state.mn.us/tempclass.html.

07-024: An individual asked whether two city council committees meeting jointly complied with the Open Meeting Law requirement in Minnesota Statutes, section 13D.01, subdivision 6(a). This provision states that when printed materials related to agenda items have been distributed or made available to all members of the governing body, at least one copy of those materials must be available in the meeting room while the body considers the subject matter. The Commissioner opined that, during their joint meeting, the two city council committees did not comply with the Open Meeting Law requirement.

07-025: An individual asked whether a “working group” of a city council complied with the meeting notice requirement in Minnesota Statutes, section 13D.04, subdivision 1. Minnesota Statutes, Chapter 13D, is often referred to as the Open Meeting Law. The Commissioner, citing language in *Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. Ct. App. 1993), opined that because the working group is not subject to the Open Meeting Law, it is not required to follow the notice requirements outlined in Chapter 13D.

07-027: A county asked about the classification of certain data relating to a former employee. The county terminated the individual’s employment during his/her probationary period. The former employee was not subject to a collective bargaining agreement. Because a final disposition under Minnesota Statutes, section 13.43, subdivision 2(b), had occurred, the Commissioner opined that data constituting the specific reasons for and documenting the basis of the disciplinary action are public data – see section 13.43, subdivision 2(a)(5). (Also public are the employee’s name and the fact that a complaint or charge exists – see section 13.43, subdivision 2(a)(4).)

2007 Legislative Session – Update

IPAD’s summary of legislation from the 2007 Legislative Session has been updated. The additions include provisions from session law chapters outside of Session Law Chapter 129 (Omnibus Data Practices) and Session Law Chapter 110, legislation related to public bodies subject to all or part of the Open Meeting Law, and provisions that allow data sharing between entities. The updated summary is on IPAD’s homepage at www.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.*

Help with Determining Copy Fees

IPAD recently updated its information piece on copy fees and has created a new piece that focuses on allowable charges when the data requestor is the subject of the data. The guide for charging for copies when the data requestor is a member of the public (Minnesota Statutes, section 13.03) is posted on IPAD's website at www.ipad.state.mn.us/docs/copyfees1303.pdf. The guide for charging copies when the data requestor is the data subject (Minnesota Statutes, section 13.04) is posted on IPAD's website at www.ipad.state.mn.us/docs/copyfees1304.pdf.

New Temporary Classifications of Data

The Commissioner of Administration has approved the following applications for temporary classification of data.

Applications related to Certain Research and Evaluation Data

The Commissioner approved applications submitted by the Minnesota Department of Agriculture. The applications requested temporary private and nonpublic classifications for identifying data about individuals or organizations collected for non-regulatory research or evaluation purposes. The classifications apply only to the Minnesota Department of Agriculture. The Commissioner approved the applications on February 12, 2008, and they will be reviewed by the Attorney General under authority in Minnesota Statutes, section 13.06, subdivision 5.

Application Related to Certain Home Contact Data

The Commissioner approved an application submitted by the Minnesota Pollution Control Agency. The application requests a temporary private classification of data related to certain home contact data on applicants for appointment or appointees for volunteer positions in state or local government that are not filled pursuant to the open appointment process in Minnesota Statutes, Chapter 15. The data in this application do not relate to data on individuals in elective positions. Based on the Commissioner's determination that this application has statewide applicability, the classification applies to all similar government entities. The Commissioner approved the application on February 21, 2008, and it will be reviewed by the Attorney General under authority in Minnesota Statutes, section 13.06, subdivision 5.

More information about temporary classifications of data is on IPAD's website at www.ipad.state.mn.us/tempclass.html.

Court Case Update

McDeid v. Minn. Dept. of Human Services, A06-1446 (Minn. Ct. App., December 11, 2007, unpublished).

A letter was written by a patient in the Minnesota Sex Offender Program (MSOP) about an escape of MSOP patients. The escapees identified in the letter were prosecuted. The letter, which included the name of the patient who authored the letter, was released to the prosecuting attorney and to the defense. The patient alleged that the release of the letter was an improper disclosure of private welfare data under Minnesota Statutes, section 13.46.

The Court of Appeals held that under Minnesota Statutes, section 13.46, subdivision 2(a)(4), welfare data can be disclosed “to an agent of the welfare system, including a law enforcement person, attorney, or investigator acting for it in the investigation or prosecution of a criminal or civil proceeding relating to the administration of a program.” The release of the letter was for purposes of prosecuting the escapees, which relates to administration of MSOP. Therefore, release to the prosecuting attorney was proper.

The Court also determined that the prosecuting attorney was governed by the rules of criminal procedure, rather than Minnesota Statutes, Chapter 13 (Data Practices Act), based on Minnesota Statutes, section 13.393. Section 13.393 exempts attorneys acting in a professional capacity for a government entity from the requirements of the Data Practices Act. The Court held that the rules of criminal procedure permitted release of the letter to the defense.

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 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.



**Information Policy
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