

Legislative Update: 2008 Session

The 2008 Omnibus Data Practices Bill (Minnesota Session Laws 2008, Chapter 315) includes a more than tripling of the maximum fine a court can assess if it finds a government entity did not comply with the Data Practices Act and a 10-fold increase in the minimum award for exemplary damages for a willful violation. The Legislature also enacted two new Open Meeting Law provisions (Minnesota Session Laws 2008, Chapter 335).

The following summary includes all of the provisions of the Data Practices Act and Open Meeting Law enacted by the Legislature. The effective date for all provisions is August 1, 2008, unless otherwise noted.

2008 Omnibus Data Practices Bill Minnesota Session Laws 2008 – Chapter 315

Section 6.715, subdivision 5 (new): Requires that when the state auditor discloses data relating to an audit for the purpose of review and verification of the data, the recipient must protect the data from unlawful disclosure. (Chapter 315, section 1)

Section 13.03, subdivision 3(c): "Compiling" is deleted. In 2007, the Legislature also deleted "compiling" in section 13.04. (Chapter 315, section 2)

Section 13.08, subdivision 1: Increases the possible award of exemplary damages for a willful violation of the Data Practices Act. Threshold now is \$1,000 (up from \$100) and ceiling now is \$15,000 (up from \$10,000). (Chapter 315, section 3)

Section 13.08, subdivision 4: Increases from \$300 to \$1,000 the fine that can be assessed if a government entity is found not to have complied with the Data Practices Act. (Chapter 315, section 4)

Section 13.202 (new): Is a cross-reference to Minnesota Statutes, section 473.674 (new), that classifies, as not public, data about individuals and organizations that pay for automated parking through the Metropolitan Airports Commission. (Chapter 315, sections 5 and 21)

Section 13.32, subdivision 11 (new): Authorizes sharing of certain, specific listed data between the Department of Education and the Office of Higher Education. (Chapter 315, section 6)



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Section 13.355, subdivision 3 (new): Prohibits the use of Social Security numbers on the face of mailings to or from government entities. (Chapter 315, section 7)

Section 13.39, subdivision 2: Substitutes "government entity" for "state agency, political subdivision or statewide system." (Chapter 315, section 8)

Section 13.39, subdivision 2a: Changes the verb from "data is" to "data are." (Chapter 315, section 9)

Section 13.601, subdivision 3: Now classifies only data about applicants for appointment to a public body and individuals who have been appointed to a public body. Lists the types of data about applicants that are public and states that all other data about applicants are private. Once an individual is appointed, additional data about that individual become public. The language does not apply to data collected as part of the open appointments process under Minnesota Statutes, section 15.0597. (Chapter 315, section 10)

Section 13.6905, subdivision 28a (new): Is a cross-reference to Minnesota Statutes, section 299F.28, which classifies, as nonpublic, data on the storage and use of explosives at the *state fire marshal's office* and 299F.75 (new), which classifies, as nonpublic, data on the storage or use of explosives at *government entities*. Both sections are effective July 1, 2009. (Chapter 315, sections 11, 17, and 18)

Section 123B.03, subdivision 2: Requires school hiring authority to inform an applicant for employment or volunteerism if his/her application is denied based on the results of a background check. Also applies to current employees or volunteers who are being terminated based on the results of a background check. (Chapter 315, section 12)

Section 123B.03, subdivision 3: Adds intermediate school districts in the list of school entities that must perform criminal history background checks. Defines the term "security violation." (Chapter 315, section 13)

Section 123B.03, subdivision 4 (new): Allows schools to contract with a third party to perform background checks. The state compact officer at the Bureau of Criminal Apprehension must approve the contract and certain notices must be provided to the subject of the check. (Chapter 315, section 14)

Section 260B.171, subdivision 5: Updates a reference to section 13.82 relating to traffic accident data. (Chapter 315, section 15)

Section 268.19, subdivision 1: Authorizes the Department of Employment and Economic Development to share certain data with the Department of Corrections for preconfinement and postconfinement employment tracking for case planning. Effective July 1, 2008. (Chapter 315, section 16)

Section 332.70 (new): Regulates "business screening services," which collect criminal record information on individuals and are not part of government. Sets requirements for how business screening services conduct their businesses. Effective July 1, 2009. (Chapter 315, section 19)



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Section 383B.917, subdivision 1: Authorizes sharing of certain medical data between the Hennepin Healthcare System, Inc., and other specific entities. Effective May 16, 2008. (Chapter 315, section 20)

Section 518.10: Requires the separate filing of documents containing Social Security numbers in child support or spousal maintenance proceedings. The Social Security number document must be maintained in a portion of the court file or records that is not accessible to the general public. Reflects recent changes to the court rules. (Chapter 315, section 22)

Changes to Minnesota Statutes, Chapter 13D, the Open Meeting Law Minnesota Session Laws 2008 – Chapter 335

Section 13D.05, subdivision 1(d)(new): Requires that all closed meetings of a public body be electronically recorded at the expense of the public body. Exception is those meetings closed as permitted by the attorney-client privilege. Recordings must be preserved for at least three years, unless otherwise provided by law. (Chapter 335, section 1)

Section 13D.06, subdivision 4(d): The court now may award monetary penalties or attorney fees when it finds “an intent to violate” the statute as opposed to “a specific intent” to violate the statute. (Chapter 335, section 2)

Section 13D.06, subdivision 4(e) (new): The court now shall award reasonable attorney fees to a prevailing plaintiff if defendant public body was the subject of a Commissioner of Administration advisory opinion. The court must give deference to the advisory opinion. (Chapter 335, section 2)

“Get Ahead in the Data Practices World!”

Two IPAD workshops in June focused on completing the public and data subject access procedures required in the Data Practices Act (Minnesota Statutes, sections 13.03, subdivision 2(b), and 13.05, subdivision 8). The following are a few comments from participants about what they considered the most valuable aspects of the workshop.

- *Information was exactly what I needed - training format was great*
- *The small groups – filling out the guides and hearing other cities’ experiences with data practices*
- *Great balance between presentation, small group and Q&A*
- *Samples of Guides extremely helpful*

Future workshop dates are in the early planning stages. Look for more information in upcoming IPAD listsev messages.

Opinion Highlights

The following are highlights of recent advisory opinions by the Commissioner of Administration. All opinions are available on IPAD's website www.ipad.state.mn.us.

08-008: A school district asked about the classification of certain data about a former district employee. The Commissioner opined that the majority of the data in question were public pursuant to Minnesota Statutes, section 13.43. She also discussed an issue regarding the definition of personnel data in section 13.43. Although such data are defined as data on individuals that a government entity "collects," section 13.43 also describes and classifies many data that are, for example, created (specific reasons for final disciplinary action, performance evaluations), received (complaints or charges against an employee), or maintained. The Commissioner stated, therefore, that to classify under section 13.43 only those data that an entity collects would render most of the section meaningless.

08-009: A political subdivision asked about the classification of data in an unpublished manuscript that was provided to the entity by a third party. The Commissioner opined that data in the manuscript were government data and were public pursuant to the presumption in Minnesota Statutes, Chapter 13. Because the third party owned the copyright on the manuscript, the Commissioner concluded that the entity must allow the public to inspect the data but must obtain permission from the third party before providing a copy to the public. See Attorney General Opinion 852 (December 4, 1995) and Advisory Opinion 02-012.

08-010: An individual asked whether a higher education institution properly withheld grade distribution data for courses taught during a particular academic semester. The Commissioner opined that to the extent the data in question are collected, created, and maintained as tools for evaluating faculty performance, the data are private pursuant to Minnesota Statutes, section 13.43. Otherwise, the data are public.

08-014: A school district asked about the classification of certain data about an employee in a report in which the Minnesota Department of Education (MDE) determined the employee had maltreated a student. The district disciplined the employee, using as a basis the MDE's determination in the maltreatment report. Pursuant to Minnesota Statutes, section 13.43, subdivision 2(a)(5), data documenting the basis for disciplinary action and specific reasons for the disciplinary action are public. The Commissioner opined, therefore, that any data in the report listed as public in section 13.43, subdivision 2(a)(5), are public. However, any data about students or other employees are private pursuant to Minnesota Statutes, sections 13.32, 13.43, and section 626.556, subdivision 11. (See also section 13.03, subdivision 4(c).)



Court Case Update

Intl. Brotherhood of Elec. Workers, Loc. No. 292 v. City of St. Cloud, 750 N.W.2d 307 (Minn. Ct. App. 2008).

Design Electric, Inc. (Design) is a commercial electrical contractor that was hired by the City of St. Cloud (City) to perform subcontracting work. Following Design’s completion of the work,

the City requested certified payroll records to confirm payment of the prevailing wage required under the Minnesota Prevailing Wage Law. The payroll records included individual employee names, addresses, telephone numbers, social security numbers, retirement savings, tax exemptions, wage and benefit rates, tax withholdings, hours and days worked, gender, race, age, and national origin. The International Brotherhood of Electrical Workers (IBEW) labor union requested copies of the payroll records from the City, which denied the requests.

The Minnesota Court of Appeals held that Minnesota Statutes, section 13.43, subdivision 6, allows a labor union to access public personnel data without limitation. The Court determined that because the employees’ home addresses are not of the public personnel data listed in section 13.43, subdivision 2, the home addresses cannot be disclosed to IBEW.

Current Temporary Classifications of Data

The temporary classifications of government data currently in effect:

Description of data	Affected entities	Classification	Status	Expiration
An employer or union’s position presented during Bureau of Mediation Services mediation and/or arbitration occurring as part of labor negotiations	All government entities	Protected nonpublic	Approved by Commissioner and Attorney General’s Office	June 1, 2009
Identifying data about individuals or organizations collected for non-regulatory research or evaluation purposes	Minnesota Department of Agriculture	Private or Nonpublic	Approved by Commissioner and Attorney General’s Office	June 1, 2010

Home contact data: The temporary classification related to home contact data on applicants for appointment or appointees for volunteer positions in state or local government was acted on by the Legislature during the 2008 Legislative Session. Effective August 1, 2008, the data are classified as described in Minnesota Statutes, section 13.601, subdivision 3. (See also Minnesota Session Laws 2008, Chapter 315, section 10.)

For more information about temporary classifications, visit www.ipad.state.mn.us/tempclass.html.

Genetic Information Work Group Update

The **Minnesota Genetic Information Work Group** reconvened on June 24 after breaking for the 2008 Legislative Session. The full work group will continue meeting monthly through November.

Discussion topics at the June 24 meeting included:

- An update on Minnesota and federal law related to genetics. The most relevant piece of legislation is the federal Genetic Information Nondiscrimination Act (GINA) that was signed by President Bush on May 21, 2008. GINA's provisions relate to the protection of genetic information in health insurance (effective May 21, 2009) and employment (effective November 21, 2009).
- An update from the group's committees and a review of draft sections of its report due to the Legislature on January 15, 2009.
- A lively exchange on an issue of relatively recent relevance to the protection of genetic information. This issue relates to potential searches of the convicted offender registry maintained by the Minnesota Bureau of Criminal Apprehension. Discussion continued at the July 22 meeting.

Work Group committees weighing genetic information safeguards and genetic secondary uses are also continuing to meet and will provide complete reports to the full work group this fall.

All work group and committee meetings are open to the public. Anyone with an interest in genetic information issues are welcome to attend. More information about the work group is available at www.ipad.state.mn.us/geneticinfo.html.



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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