

## Commissioner Submits Legislative Report on Genetic Information

The Commissioner of Administration recently submitted a report to the Minnesota Legislature that includes recommendations on the adequate protection, appropriate access and secondary uses of genetic information. The report is the result of efforts by a work group convened by the Commissioner.

The [full report](#) and [executive summary](#) were submitted to the Legislature on January 15, 2009. The following are highlights from the report's recommendations.

### Genetic Information Safeguards

The work group provided recommendations on the status of current protections in Minnesota law on genetic information, whether additional notice of rights and/or informed consent are needed for the collection and use of genetic information, the responsibilities of government entities that collect and maintain human biological specimens, and the need of some additional genetic information educational resources.

### The Minnesota Cancer Surveillance System

The work group provided recommendations on consent requirements for the Minnesota Department of Health's Cancer Surveillance System. Specifically, the patient, or specified representative, must consent to all interviews conducted as part of the program.

### Access by Relatives to Three-Generation Pedigrees

The work group provided recommendations on three-generation pedigrees, which are pictorial representations or narratives of family history based on a patient's recollection. Specifically, the patient is the only data subject (e.g. only the patient has access to the entire pedigree) and access to pedigrees maintained by the Minnesota Department of Health should be the same as access to pedigrees at other government entities and private medical providers.

### Access to Specimens Maintained by the Bureau of Criminal Apprehension (BCA)

The work group provided recommendations on the ability of crime victims to access their DNA profile and the report comparing profiles at the BCA. Alleged perpetrators have access to these items only if certain conditions are met or as provided for in the Rules of Criminal Procedure.



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# Genetic Information Report

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The group recommended requiring a court order for a crime victim's access to an actual specimen. The Rules of Criminal Procedure would control an alleged perpetrator's access to a specimen during a criminal proceeding and a court order would be required following the proceedings.

## Secondary Uses of Genetic Information

The work group provided recommendations on the range of options to use when deciding whether court orders may be used to access a human biological specimen, the range of options for who should make decisions about secondary uses of genetic information and human biological specimens (absent consent or a court order), and the secondary uses that should always be prohibited (absent consent, a court order, or statutory mandate).

Finally, the report provides information about the potential secondary uses of the BCA's convicted offender database for DNA searches to locate an unknown criminal who may be a close relative of a convicted offender already in the database. The work group asked the Legislature to be aware of this issue as something it may address in the future once more is known about the science and any unintended consequences.

## Next Data Access Guides Workshop is Feb. 6 in St. Paul

There are still openings for IPAD's practical, interactive workshop on data access guides on Friday, Feb. 6 in St. Paul.

Workshop participants will have the opportunity to create or improve the data access guides that are legally required by Minnesota Statutes, Chapter 13.

For more information and to register, visit [www.ipad.state.mn.us](http://www.ipad.state.mn.us).

## Minnesota's 2009 Legislative Session Begins

This year's legislative session is already underway. On the House side, data practices issues will be heard by the newly formed Civil Justice Committee, chaired by Rep. Joe Mullery.

On the Senate side, data practices issues will continue to be under the purview of the Judiciary Committee, chaired by Sen. Mee Moua. The Judiciary Committee's Subcommittee on Data Practices, chaired by Sen. Mary Olson, typically hears data practices bills in greater detail.

Open Meeting Law issues will continue to be addressed by the Senate State and Local Government Operations and Oversight Committee, chaired by Sen. Ann Rest, and the House State and Local Government Operations Reform Technology and Elections Committee, chaired by Rep. Gene Pelowski.

With the urgency of the state's large budget deficit, it is unclear whether there will be a great deal of focus on major open meeting law or data practices issues this session.

Be sure to look for session highlights in IPAD's Summer 2009 issue of *FYi*.

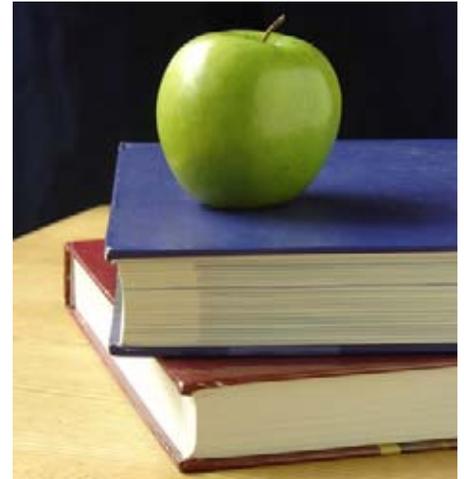


# U.S. Department of Education Issues Final Regulations on Education Records

The Spring 2008 issue of *FYi* highlighted the U.S. Department of Education's proposed changes to federal regulations implementing the Family Educational Rights and Privacy Act (FERPA). The Department has since issued final regulations, which were effective January 8, 2009.

The changes include:

- Clarification of permissible disclosures of education records to parents of eligible students and conditions that apply to disclosures in health and safety emergencies
- Clarification of permissible disclosures of student identifiers as directory information
- Disclosures of education records allowed to contractors and other outside parties in connection with the outsourcing of educational services
- Revision to definitions of key terms such as attendance, disclosure, education records, and personally identifiable information
- Clarification of permissible re-disclosures of education records by state and federal officials
- Update to investigation and enforcement provisions



The final regulations are available at:

[www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf](http://www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf)

The U.S. Department of Education's Family Policy Compliance Office has additional resources about FERPA, including more in-depth guidance about the final regulations, on its website:

[www.ed.gov/policy/gen/guid/fpco/index.html](http://www.ed.gov/policy/gen/guid/fpco/index.html)

## Current Temporary Classifications of Data

Temporary classifications of government data have the same effect as other not public data for the limited time period of the classification. Each classification has an expiration date, and if a government entity has the data, it must treat the data as not public until the classification expires, or until the Legislature acts on the classification.

Visit [www.ipad.state.mn.us/tempclasscurrent.html](http://www.ipad.state.mn.us/tempclasscurrent.html) for the temporary classifications of government data that are currently in effect.

# 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](http://www.ipad.state.mn.us).

**08-031.** A state agency asked about the classification of the data in its written decisions. Upon a review of the statutory provisions governing the agency, the Commissioner concluded that the data are public. (Minnesota Statutes, section 175A.06.) The Commissioner noted that if some of the data in the written decisions are Social Security numbers or bank account/credit card numbers, those data are private pursuant to Minnesota Statutes, sections 13.355 and 13.37, respectively.

**08-032.** An individual asked whether a city properly withheld certain data. The city police department, through an agreement with another law enforcement agency, initiated a criminal investigation into the activity of several of the city's police officers. Most, if not all, of the data in question became public when the status of the investigation changed to inactive. (Minnesota Statutes, section 13.82.) However, the city then began a personnel investigation. Data about employees are classified under Minnesota Statutes, section 13.43. Prior to there being a final disposition in a disciplinary action, very little data about personnel investigations are public. (Section 13.43, subdivision 2.) Based on language in Minnesota Statutes, section 645.26, the Commissioner opined that the data in question

are properly classified as public under section 13.82 and should have been released to the requestor.

**08-033.** An individual asked whether a city properly withheld the following data: "names, job titles and description, first and last date of employment, salary, pension and fringe benefit information for employees whose last date with the City was in August and September." As these data are public pursuant to Minnesota Statutes, section 13.43, subdivision 2, the Commissioner opined that the City should have released the data to the requestor.

**08-034.** A state agency asked whether a legislatively-created task force is subject to the Open Meeting Law (Minnesota Statutes, Chapter 13D). The Commissioner opined, based on language in section 13D.01, that the task force is subject to Chapter 13D. The Commissioner also opined on a number of other issues, including meeting locations, using a website to post meeting notices and votes taken, meeting by videoconference, and working groups.

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