

# FYi

From the Information Policy Analysis Division



## Legislative update: 2009 session

The 2009 legislative session ended May 18 without an omnibus data practices bill but with numerous changes to the Data Practices Act (Minnesota Statutes, Chapter 13), the Open Meeting Law (Minnesota Statutes, Chapter 13D), and other laws with data practices and open meeting implications.

The following summary, an annual feature of the summer issue of *FYi*, highlights many of these changes; the effective date for all provisions is August 1, 2009 unless otherwise noted.

### Changes to Chapter 13

**Section 13.04, subdivision 4a (new):** Requires challenges to the accuracy and/or completeness of government data made by individuals in the Minnesota Sex Offender Program to be submitted to the Department of Human Services' Data Practices Compliance Official. (Chapter 111, section 1)

**Section 13.32, subdivision 10a (new):** Allows a parent or guardian to designate an individual to participate in a school conference and receive any data on the child necessary and relevant to the conference discussion. The parent or guardian must provide the school with prior written consent. Effective for the 2009-2010 school year and later. (Chapter 96, Article 2, section 1)

**Section 13.3215, subdivisions 1 and 3 (both new):** Classify certain financial, business, or proprietary data collected, created, received, or maintained by the University of Minnesota in connection with investments as nonpublic data and lists exceptions that are public. Effective May 23, 2009. (Chapter 178, article 2, section 1)

**Section 13.381, subdivision 18 (new):** Data collected from health care companies and providers for purposes of approval of rural health cooperative arrangements are classified under Minnesota Statutes, section 62R.09, which classifies the data as nonpublic or private. (Chapter 97, section 1)

**Section 13.384, subdivisions 2 and 3:** Adds the alternative of "health care agent" as the person a public hospital must notify when an emergency patient is unable to communicate a request that directory information be private and adds "health care agent" to list of exceptions to whom private medical data can be disclosed. (Chapter 108, sections 1 and 2)

**Section 13.43, subdivision 17 (new):** Allows government employee home contact information to be used and shared by government entities for continuity of operations and emergencies. (Chapter 142, article 1, section 1)

**Section 13.43, subdivision 18 (new):** Allows state employee personnel data to be shared with the Department of Administration for workers' compensation activities as provided in Minnesota Statutes, Chapter 176. (Chapter 142, article 1, section 2)

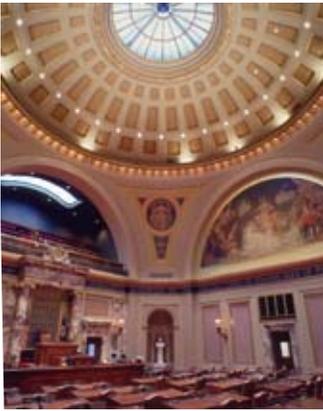
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Information Policy  
Analysis Division



# 2009 legislative session update

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**Section 13.46, subdivision 2 (a)(30) (new):** Child support data on the parents and the child may be disclosed to agencies administering the Social Security Act for the purpose of establishing who may have parental rights to a child. (Chapter 163, article 2, section 1)

**Section 13.46, subdivision 3:** Classifies data collected on welfare applicants used by the welfare system in an investigation as confidential or protected nonpublic. (Chapter 142, article 1, section 3)

**Section 13.46, subdivision 4, section 626.556, subdivision 10f, and section 626.557, subdivision 12b:** Provide circumstances where data regarding welfare license denials, unless otherwise specified, are public data. Names of reporters of alleged maltreatment or licensing violations, unless otherwise specified, are confidential data. (Chapter 142, article 1, section 4 and article 2, sections 45 and 47)

**Section 13.643, subdivision 7 (new):** Classifies, as private or nonpublic, data collected by the Department of Agriculture that identify contact information of study participants or location of research sites during the monitoring or assessment of farm practices. Location of wells and samples collected from public water supplies are public. (Chapter 94, article 1, section 8)

**Section 13.7931 subdivision 6, and section 84.0874 (both new):** Classify the name, address, driver's license number and date of birth for individuals seeking a license from the Department of Natural Resources as private data, but may be disclosed to law enforcement. Except for a driver's license number, the data may be shared with other government entities and for natural resources recruitment and retention. Effective March 1, 2010. (Chapter 176, article 2, sections 1 and 4)

**Section 13.87, subdivision 1:** Removes the reference to the criminal justice information system. (Chapter 59, article 6, Section 1)

## New cross-references in Chapter 13

**Section 13.4967, subdivision 2c (new):** Cross-reference to Minnesota Statutes, section 290B.04, which classifies as private certain income data on applicants to the senior citizen tax deferral program collected and maintained by the Department of Revenue. (Chapter 86, article 2, section

**Section 13.4967, subdivision 6a (new):** Cross-reference to Minnesota Statutes, section 298.22, subdivision 12, which classifies as private or nonpublic data collected by the Commissioner of Revenue to determine eligibility of an applicant for certain loan or equity investments. (Chapter 86, article 2, section 3)

**Section 13.681, subdivision 7 (new):** Cross-reference to Minnesota Statutes, section 216C.44, subdivision 5, which classifies as nonpublic data provided by a business on the completed inventory for business energy use accountability. (Chapter 86, article 2, section 4).

**Section 13.716, subdivision 7:** Changes a cross-reference to the statute classifying viatical settlements data provided to the Commissioner of Commerce from Minnesota Statutes, section 60A.968, subdivision 2, to section 60A.9575. (Chapter 62, section 1)

**Section 13.805, subdivision 3 (new):** Cross-reference to Minnesota Statutes, section 5B.07, subdivision 1, that classifies as private the name and address of "safe at home" participants maintained by local government in connection with a city code violation. Effective May 20, 2009. (Chapter 105, section 4)

**Section 13.871, subdivision 12 (new):** Cross-references Minnesota Statutes, section 611A.0393, (new) that classifies contact information provided by a citizen signing up for disability accessible crime alerts as private data. (Chapter 22, sections 1 and 2)

## Other data practices and open meetings changes

### **Data Protection for Victims of Violence—Safe at Home Program (Minnesota Statutes, Chapter 5B)**

**Section 5B.07, subdivision 1(b) (new):** A "safe at home" participant's name and address maintained by local government in connection with an active investigation or inspection of an alleged health code, building code, fire code, or city ordinance violation allegedly committed by the program participant are private data. (Chapter 105, section 2)

**Section 5B.10, subdivisions 1 and 2 (new):** Prohibits a landlord from displaying the "safe at home" participant's name at an address. Allows a landlord to provide the name to local government in response to an investigation or inspection of an alleged health, building, fire or city code violation allegedly committed by the program participant. (Chapter 105, section 3)

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## Insurance Data

**Section 60A.08, subdivision 15 (new):** All insurance forms, rates and related information filed with the Commissioner of Commerce under Minnesota Statutes, section 61A.02, are nonpublic data until the filing becomes effective. (Chapter 178, article 1, section 5 and article 2, section 2)

## Education Data

**Section 123B.045, subdivision 4 (new):** Site-governed schools (school district created) are subject to Minnesota Statutes, Chapter 13. (Chapter 96, article 2, section 33)

**Section 124D.10, subdivision 8(l):** Charter schools are subject to Minnesota Statutes, Chapter 13. Effective May 17, 2009. (Chapter 96, article 2, section 41)

## Veterans and Driver's License Data

**Section 171.12, subdivision 5a (new):** A veteran designation on an application for a driver's license, instruction permit, or Minnesota identification card is classified as private data. (Chapter 94, article 3, section 12)

## Workers' Compensation Data

**Section 176.135, subdivision 8 (new):** Data collected by the Department of Labor and Industry to analyze the costs and outcomes of treatment in the workers' compensation system are confidential and protected nonpublic, except that the commissioner may publish aggregate statistics or other summary data. Effective May 13, 2009. (Chapter 75, section 8)

## Human Services Data

**Section 256.01, subdivision 14b(g) (new):** A Minnesota Indian tribe, in establishing a local child mortality review panel, shall have access to nonpublic data under Minnesota Statutes, section 256.01, subdivision 12, paragraphs (c) to (e). (Chapter 163, article 2, section 2)

**Section 260C.150, subdivision 3(b) (new):** The Department of Human Services may disclose otherwise private data under Minnesota Statutes, section 13.46, or section 626.556, to identify and locate both parents of a child. (Chapter 163, article 2, section 19)

## Corrections and Criminal Justice Data

**Section 270B.14, subdivision 16:** The Commissioner of Revenue may disclose data regarding harassment of a Department of Revenue employee to law enforcement. Once the data are received by the law enforcement authority they are classified under Minnesota Statutes, section 13.82. Effective May 17, 2009. (Chapter 88, article 11, section 1)

**Section 609.324, subdivision 5:** The notation on a driving record that a person was convicted of patronizing a prostitute while using a motor vehicle is public data if the person has been convicted previously of patronizing a prostitute or another violation under Minnesota Statutes, sections 609.324, or 609.322. (Chapter 170, section 4)

## Public Meetings

**Section 13D.015 (new):** Allows state-level public bodies to conduct meetings by telephone or other electronic means if certain conditions are met, including posting notice on the entity's web site at least 10 days before the meeting. (Chapter 80, section 1)

**Section 123B.045, subdivision 4 (new):** Site-governed schools (school district created) are subject to Minnesota Statutes, Chapter 13D. (Chapter 96, article 2, section 33)

**Section 134.31, subdivision 7 (new):** Allows the Advisory Committee for the Minnesota Braille and Talking Book library to conduct meetings by telephone or other electronic means if certain conditions are met (does not include a 10-day prior notice requirement). (Chapter 96, article 5, section 8)

## Records Retention Task Force

**Minnesota Session Laws 2009, chapter 152, section 24:** Creates a records retention task force, consisting of the Minnesota Clerks and Finance Officers Association and the Minnesota Historical Society, that must conduct a study to review permanent retention schedules of all government bodies and report its recommendations to the Legislature by February 15, 2010.



# 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).

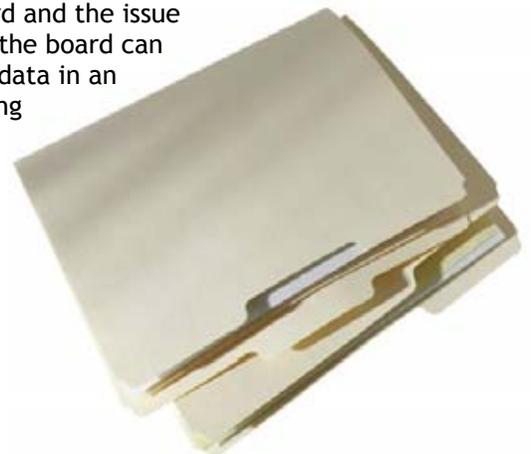
**09-009** A city asked about the classification of the names of business owners contained in a business plan submitted to a city as part of a request for financial assistance. The Commissioner discussed that business plans remain not public after a government entity provides public financial assistance to a business pursuant to Minnesota Statutes, section 13.591, subdivision 2. The commissioner opined that business plan data, and the data contained therein, are not public.

**09-010** A county asked about the classification of financial information, including tax returns, submitted by responders to a request for qualifications. The county received a disaster mitigation grant from the Federal Emergency Management Agency to assist property owners with the cost of sprinklers designed to protect homes or businesses from wildfires. The county qualifies vendors to install sprinkler systems and inquired whether Minnesota Statutes, section 13.591, could protect financial information submitted by the vendors. Section 13.591, subdivisions 1 and 2, protect certain data submitted to government entities by businesses requesting financial assistance or a benefit financed by public funds. The Commissioner opined that section 13.591 does not apply to this situation because the property owners, not the vendors, receive the financial assistance. The Commissioner concluded the data are public pursuant to the general presumption in Minnesota Statutes, Chapter 13.

**09-011** A county asked whether it had to produce data it does not maintain and is not required to collect. The county received a request for bi-weekly certified payroll information related to a building construction project. The building is not funded by state or federal funds and is not subject to prevailing wage payments and reporting requirements; therefore, the county is not required and does not collect payroll data from the contractors. The Commissioner opined that Minnesota Statutes, Chapter 13, does not require government entities to create data but rather to provide access to existing data. Therefore the county is not obligated to produce data it does not maintain and is not required to collect.

**09-012** A state agency asked two questions. The first was whether it can share private or nonpublic *grant response* data with a county's board and staff, and whether the board can discuss the data in an open meeting. The agency is statutorily required to ask the county to assist with the grant evaluation process. The Commissioner discussed that Minnesota Statute, section 13.599, subdivision 4, clause (b), allows a granting agency to share nonpublic data with outside individuals taking part in the evaluation process provided they do not further disseminate the not public data. The Commissioner also discussed that pursuant to Minnesota Statute, section 13D.05, subdivision 1, the private/nonpublic data may be discussed at an open meeting if the disclosure is within the scope of the public body's authority and is reasonably necessary to conduct the business or agenda. In addition, the agency may obtain the informed consent of the grantees pursuant to Minnesota Statute, section 13.05, subdivision 4(d).

The second question was whether the granting agency can share data it creates or maintains as parts of its *grant evaluation* process and discuss the data at an open meeting. The Commissioner discussed that data the granting agency creates or maintains as part of the evaluation process are classified pursuant to Minnesota Statute, section 13.599, subdivision 4(a), as protected nonpublic until completion of the evaluation process. The Commissioner concluded only staff within the government entity who need the data to do their jobs can access the data. Therefore, the agency cannot share its evaluation process data with the county board and the issue of whether the board can discuss the data in an open meeting is moot.



# Case law update

*Intl. Brotherhood of Elec. Workers, Loc. No. 292 v. City of St. Cloud and Design Electric Inc.*, 765 N.W.2d 64 (Minn. 2009).

In 2006, the International Brotherhood of Electric Workers (IBEW) labor union was denied a request for copies of payroll records by the City of St. Cloud (City), which obtained the records from a subcontractor, Design Electric, Inc. (Design), to confirm payment of the prevailing wage required under the Minnesota Prevailing Wage Law. The Minnesota Court of Appeals held the subcontractor's payroll records were personnel data under Minnesota Statutes, section 13.43.

On appeal, the Minnesota Supreme Court disagreed with the Court of Appeals and held section 13.43 does not apply to the payroll data and the data are public under the general presumption in Minnesota Statutes, Chapter 13. The Court discussed the language in section 13.43, highlighting that the section only applies to individuals and that the definition of "individual" in Minnesota Statutes, section 13.02, subdivision 8, does not include a corporation such as Design. The Court found that even though Design's employees are individuals, the individual employees are not acting as the City's independent contractors; Design is the City's contractor so section 13.43 does not apply to Design's employees.

The Court concluded that unless the data are protected by another provision in Chapter 13 (i.e., Social Security numbers in Minnesota Statutes, section 13.355), Design's employee payroll data maintained by the City are public.



## Temporary classifications of data

"Temporary classifications" are otherwise public data the Commissioner of Administration has deemed to be not public. Each classification has an expiration date. 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. The status of several recent temporary classifications are:

- Data related to an employer or union's labor negotiation position presented during Bureau of Mediation Services mediation/arbitration, **expired June 1, 2009**
- Certain data collected by the Department of Agriculture for farm practices research/evaluation, **enacted into law in Minnesota Session Laws 2009, chapter 94, article 1, section 8**
- Names, addresses, and phone numbers of persons issued pet licenses by the City of Duluth, **disapproved by the Commissioner, reverted to public on May 26, 2009**

More information about temporary classifications is available at [www.ipad.state.mn.us/tempclass.html](http://www.ipad.state.mn.us/tempclass.html).

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