

FYi

From the Information Policy Analysis Division

2010 Legislature convenes

The 2010 Minnesota Legislative Session began on February 4, 2010. A number of bills have already been introduced that impact the Data Practices Act (Minnesota Statutes, Chapter 13) and the Open Meeting Law (Minnesota Statutes, Chapter 13D). A few that may have the most impact are summarized below. Look for updates in future *FYi* newsletters.



[Senate File 2354](#) / [House File 2899](#)

- Chief authors are Senator Don Betzold and Representative Gene Pelowski
- Referred to Senate State and Local Government Operations and Oversight Committee and House State and Local Government Operations Reform, Technology and Elections Committee
- Adds to and amends Minnesota Statutes, Chapters 13 and 13D
- Persons seeking an order to compel compliance alleging a violation of the Data Practices Act, or making a complaint alleging a violation of the Open Meeting Law, must file with the Office of Administrative Hearings, as opposed to filing in court
- Orders issued by an Administrative Law Judge must be enforced in district court
- Bill details complaint filing process, which includes a \$1,000 filing fee, some of which may be refunded, depending on outcome of allegation
- Other sections: Process for probable cause review; hearing to resolve questions of law; evidentiary hearing; disposition; hearing procedures, costs, attorneys fees
- Repeals Minnesota Statutes, sections 13.08, subdivision 4, and 13D.06

[House File 2603](#)

- Chief author is Representative Joe Mullery
- Referred to House Civil Justice Committee
- Amends Minnesota Statutes, section 13.82 - prohibits law enforcement agencies from releasing arrest data in certain situations

[Senate File 2196](#) / [House File 2609](#)

- Chief authors are Senator Tony Lourey and Representative Paul Thissen
- Referred to Senate Judiciary Committee and House Civil Justice Committee
- Amends Minnesota Statutes, section 13.43, subdivision 5a - limitation on disclosure of certain personnel data

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Legislature convenes

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[Senate File 2327](#)

- Chief author is Senator Betzold
- Referred to Senate Judiciary Committee
- Amends Minnesota Statutes, section 13.15 - use of temporary cookies on government websites

[Senate File 2518](#)

- A proposal by the Department of Administration/IPAD
- Chief author is Senator Ann Rest
- Referred to Senate State and Local Government Operations and Oversight Committee
- Amends the Open Meeting Law
- Defines key terms (“meeting” and “public body”)
- Requires that a statutory section be cited when a meeting is closed to the public
- Requires web-posting of meeting materials and meeting notices if a public body has a website
- Requires that regular meeting schedules be web-posted or printed annually in a local newspaper for public bodies that do not have a website
- Amends posting requirements when a body’s regular meeting room is not publicly accessible (i.e. meeting rooms in secured buildings)
- Clarifies special meeting notice timelines to reference “business days”

Case law update

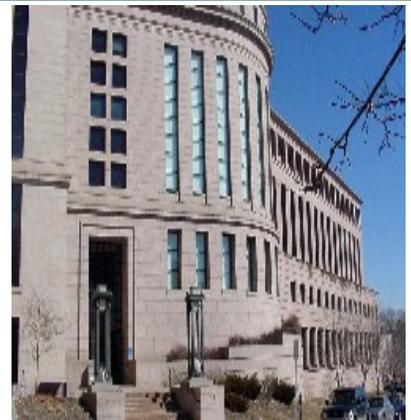
Bearder v. State, File No. 27-CV-09-5615 (Hennepin County District Court, November 24, 2009).*

Parents of children whose blood was collected and tested pursuant to the Minnesota Department of Health’s (MDH) Newborn Screening Program filed a complaint claiming that the State of Minnesota, MDH, and the Commissioner of Health violated Minnesota Statutes, section 13.386, by collecting, storing, using and disseminating the children’s blood and genetic information without written informed consent. Section 13.386 requires informed consent for the collection, use, storage and dissemination of genetic information as it is defined in that section.

The parents argued that MDH violated section 13.386 by not obtaining informed consent for use of the blood samples and test results beyond what is permitted under the Newborn Screening Program. They asserted that the initial taking of the blood samples for the Newborn Screening Program is lawful, but argued that retention, use, and dissemination of the blood samples after the initial collection is not legal.

The judge disagreed with the parents’ claims. For the children born after the enactment of section 13.386 in 2006, the judge found that the blood samples taken from the children are biological specimens, not genetic information, as defined in section 13.386. The judge also determined that because section 13.386 states that it applies “unless otherwise expressly provided by law,” it does not supersede specific existing law such as the Newborn Screening Program. As a result, the judge dismissed the parents’ complaint.

**This case was decided at the state district court level; therefore, it is not binding on other courts. Typically IPAD does not include district court cases in our FYI summaries, but did so here because this case refers to the genetic information section in the Data Practices Act.*



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.

Contractor data

[Opinion 09-022](#) An entity asked whether a city complied with Minnesota Statutes, Chapter 13, in responding to a data request. The city denied access stating that data were maintained by the city's contractor, not the city. Pursuant to Minnesota Statutes, section 13.05, subdivision 11, a private person is subject to Chapter 13 for data that relate to functions performed on behalf of a government entity. Terms of the contract between the city and its contractor stated the contractor was obligated to provide certain data to the city and that the city was responsible for providing or authorizing access to any data resulting from the contract. It appeared that the data requested by the city should exist according Minnesota Statutes, section 15.17 (official records) and Minnesota Statutes, section 138.17 (records management). The Commissioner opined that according to the contract, the city ultimately is responsible for responding to the data request and providing access to the public data that exist.



Grant application financial data

[Opinion 09-023](#) A state agency asked about the classification of financial data submitted as part of a grant application process. Minnesota Statutes, section 13.591 (subdivisions 1 and 2), classifies certain data submitted to a government entity by a business that requests financial assistance or a benefit financed by public funds. Minnesota Statutes, section 13.599, subdivision 2, classifies data submitted by grant applicants in response to a request for proposal (RFP) put out by a state agency. Section 13.599 contemplates a structured process, including a proposal, evaluation and selection. The Commissioner opined the agency's application process, which included a detailed notice in the state register and deadline by which proposals must be submitted, is also a structured process and the data in question therefore are appropriately classified pursuant to section 13.599.

Settlement agreement data

[Opinion 09-024](#) An individual asked whether a settlement agreement between a school district and an employee must include the substantive basis for the original complaint. Pursuant to Minnesota Statutes, section 13.43, subdivision 2(a)(6), an agreement that involves the payment of more than \$10,000 must include specific reasons for the agreement. The Commissioner opined that the terms of the agreement, which reveal the consideration provided by each party, constitute "specific reasons for the agreement." The Commissioner further opined that because a final disposition did not occur, the basis for the complaint is not public.

Performance evaluation data

[Opinion 09-025](#) A union asked whether the specific standards and accomplishments that provide the bases for performance bonuses paid to higher education staff are public. Pursuant to Minnesota Statutes, section 13.43, subdivision 2(a)(1), the basis for and the amount of any added remuneration in addition to salary of a government employee are public data. In its response to the union, the higher education institution provided a list of examples of goals that could be considered in awarding performance bonuses, but declined to list the specific performance goals achieved by each individual employee. The Commissioner agreed with the higher education institution that a more detailed description would require releasing private performance evaluation data.

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Opinion highlights

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Compliance isn't optional

[Opinion 09-027](#) An individual asked about her right to gain access to data from a city. The individual requested certain financial documents and did not receive any response. The Commissioner opined the city did not comply with Minnesota Statutes, Chapter 13. When a government entity receives a data request from an individual who is not the subject of the data, the entity is required to respond in an appropriate and prompt manner and within a reasonable time. In responding, the entity must provide the data, advise that the data are classified such that the requestor cannot have access, or inform the requestor the data do not exist. Some of the data the individual requested are likely official records. Minnesota Statutes, section 15.17 (official records) and Minnesota Statutes, section 138.17 (records management), require government entities to make and preserve records of their official actions - such data then would be available pursuant to Chapter 13.

Audio recording classification

[Opinion 10-001](#) A city asked about the classification of an audio recording of a closed meeting (the meeting must be recorded pursuant to Minnesota Statutes, section 13D.05, subdivision 1(d)). The Commissioner discussed that the provisions of Minnesota Statutes, Chapter 13, set forth how the data in recordings of closed meetings are classified. The city described a situation where the city council held closed sessions to discuss preliminary allegations made against an employee. The Commissioner opined that the data in the recording are classified pursuant to Minnesota Statutes, section 13.43.

Admin adopts new policy on social media

The Fall 2009 issue of *FYi* included an article about social media and its potential for use in government. In November, the Department of Administration adopted a policy on social media based on recommendations made by the work group convened by the Commissioner of Administration.

You can view Admin's policy at www.admin.state.mn.us/documents/web_2-0_policy.pdf.



Minnesota Department of Administration - Information Policy Analysis Division

201 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155

Phone 651.296.6733 | Fax 651.205.4219 | Email info.ipad@state.mn.us | www.ipad.state.mn.us

Staff: Laurie Beyer-Kropuenske, Director, Stacie Christensen, Janet Hey, Taya Moxley-Goldsmith, Jerod Rauk, Catherine Scott



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