

FYi

From the Information Policy Analysis Division

Gangs and data – what's next?

The Legislature is calling on a work group to sort out privacy implications concerning criminal investigative data and gang databases that arose following last year's meltdown of the Metro Gang Strike Force.

Among the provisions of a new law ([Chapter 383](#)) is a requirement that the Superintendent of the Bureau of Criminal Apprehension (BCA) convene a work group of stakeholders and interested parties to meet and report back to the Legislature by February 1, 2011. The group's statutory direction calls for a discussion of issues and laws pertaining to criminal intelligence data and gang databases and recommendations to the Legislature on proposed legislative changes for the classification, storage, dissemination and use of criminal investigative data, including data from other states. The work group of up to 20 members is also responsible for developing guidelines for governing the usage and collection of criminal investigative data held by law enforcement agencies.



During committee hearings on the legislation authored by Sen. Mee Moua and Rep. Michael Paymar ([SF2725/HF2965](#)), testifiers raised concerns about existing gang databases. Those concerns included the criteria that law enforcement uses to include someone in a database, how data about that person are classified and when, if ever, are old data purged from existing databases. Testimony also focused on the accuracy of data, whether law enforcement notifies parents when information about a child is entered into a database and how are databases are audited.

Law enforcement representatives emphasized that information in existing databases helps with criminal investigations, officer safety, prosecution and denying permits to carry.

As part of its report, the work group must outline proposals for legislative changes that would implement recommendations on which the group agrees.

In addition to establishing the work group, the new law repeals the Gang and Drug Oversight Council and creates the Violent Crime Coordinating Council. Specifically, the law:

- Outlines membership and duties of the new council
- Outlines duties of the Commissioner of the Minnesota Department of Public Safety
- Provides that evidence and seized cash/assets must be processed according to procedures established by participating agencies
- Provides that a multijurisdictional entity must create a governing board (one member must be a prosecutor) and outlines the prosecutor's role
 - Requires the Commissioner of Public Safety to submit an annual report to the Legislature
 - Requires the Bureau of Criminal Apprehension (BCA) to perform audits

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Information Policy
Analysis Division

Save the date: June 11 is next data practices workshop

IPAD is again offering its practical, interactive workshop to assist government entities with their policies on requests for government information. The workshop will be on Friday, June 11 in St. Paul. Workshop participants will have the opportunity to create or improve the policies that are required by Minnesota Statutes, Chapter 13.

For more information and to register, visit www.ipad.state.mn.us.

Legislative update

The 2010 Legislative Session has come to a close with two pieces of legislation that will have a major impact on data practices. The summer edition of *FYI*, will include a detailed breakout of data practices legislation, with these at the top of the list.

[Chapter 297](#)

- New administrative remedy for violations of Chapter 13 (Data Practices Act): Actions to compel compliance may be filed with the Office of Administrative Hearings. This remedy does not apply to violations of the Open Meeting Law (Chapter 13D)
- Signed by the Governor on May 10, 2010

[Chapter 365](#)

- Omnibus government data practices bill first introduced in the 2009 session
- Signed by the Governor on May 18, 2010

Note: [Senate File 2518](#)/[House File 2958](#) - Bills that included changes to the Open Meeting Law, which did not make it out of committee this session.



Case law update

The following cases were recently argued in front of the United States Supreme Court. Although not related specifically to data practices or public meetings, they offer important guidance on general privacy rights and open records laws.



[Ontario v. Quon](#)

Issue: Whether a public employee has a reasonable expectation of privacy in text messages on a work device where the public employer has no formal policy covering usage.

Argued: April 19, 2010 ([transcript](#))

Lower court decision: [Quon v. Arch Wireless, 529 F.3d 892 \(9th Cir. 2009\)](#)

[Doe v. Reed](#)

Issue: The constitutionality of a Washington state public records law that requires the disclosure of names on a referendum petition.

Argued: April 28, 2010 ([transcript](#))

Lower court decision: [Doe v. Reed, 586 F.3d 671 \(9th Cir. 2009\)](#).

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.

Employee disciplinary data classification

Opinion 10-002 A school district asked about the classification of certain data it maintained related to an employee whom the district disciplined. The employee grieved the discipline and the matter eventually was referred to arbitration. Prior to the arbitration hearing, the school and the employee settled. According to the district, as part of the settlement, the employee agreed to be disciplined. The labor union representing the employee disagreed, stating that the employee was not disciplined. Data related to former or current employees are classified by Minnesota Statutes, section 13.43. Pursuant to section 13.43, subdivision 2(a)(5), certain data become public after a "final disposition." Section 13.43, subdivision 2(b), describes when there is a final disposition in the context of arbitration: at the conclusion of arbitration proceedings or when the employee fails to elect arbitration. The Commissioner opined that in this case, if disciplinary action was part of the resolution, there was a final disposition of that disciplinary action within the meaning of section 13.43, subdivision 2(b). Accordingly, the data listed in section 13.43, subdivision 2(b), are public, as well as the terms of the agreement settling the dispute (section 13.43, subdivision 2(a)(6)). However, if the employee was not disciplined by the District, only the following data are public: the existence and status of the complaint or charge (section 13.43, subdivision 2(a)(4)), and the terms settling the disagreement.

County agricultural societies subject to Chapter 13

Opinion 10-004 A county agricultural society asked if it was subject to Minnesota Statutes, Chapter 13. Political subdivisions, some of which are entities created pursuant to law, are subject to Chapter 13 (Minnesota Statutes, section 13.02, subdivision 11.) County agricultural societies are created and vested with powers and responsibilities by Minnesota Statutes, Chapter 38. The Commissioner concluded that because county agricultural societies are created pursuant to law, they are political subdivisions and are therefore subject to Chapter 13.

Permit to carry data

Opinion 10-005 An individual asked whether a county sheriff's office complied with Minnesota Statutes, Chapter 13, when the office sent a letter to "Permit to Carry" holders inviting them to a fundraising event. Minnesota Statutes, section 13.87, subdivision 2, classifies as private "all data pertaining to the purchase or transfer of firearms and applications for permits to carry firearms." Minnesota Statutes, section 13.05, subdivision 4, states that private data shall not be used by a government entity for any purposes other than those stated to the individual at the time of collection. The Commissioner concluded that the sheriff's department did not comply with Chapter 13 when sending out the letter because the stated purpose - raising funds for charity - was not one of the uses stated to permit applicants at the time of collection.



Names of employee finalists

Opinion 10-006 An individual asked whether a city hospital had responded appropriately to a request for the names of finalists for president of the hospital. Based on Minnesota Statutes 13.43, subdivision 3, names of applicants become public when the individuals become finalists; individuals become finalists when they are selected to be interviewed. The Commissioner opined that though the response was timely, it was not fully responsive to the individual's request; the Hospital Board had invited more than two candidates to interview but ultimately only the two whose names were forwarded to the requestor accepted. The Commissioner stated that as soon as the candidates were selected to be interviewed, they became finalists and their names became public, not when they had accepted to be interviewed.

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Opinion highlights

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Process of employee review

Opinion 10-009 An individual asked whether a school district had responded appropriately to a request for “all e-mails or other written forms of correspondence regarding how the superintendent evaluation is being conducted.” The school district responded that the data were private personnel data under Minnesota Statutes, section 13.43. The district eventually provided a list of evaluators and a description of the process but did not provide access to the actual emails or written correspondence. The Commissioner reiterated that data requestors have the right to access data as it exists in the entity. The Commissioner further opined that data detailing the evaluation process are public; the data are not about the superintendent and therefore, cannot be classified as private pursuant to section 13.43.

Compliance with Open Meeting Law: Serial meetings

Opinion 10-011 An individual asked whether a public body complied with Minnesota Statutes, Chapter 13D (the Open Meeting Law), regarding (1) actions of certain board members during a recess of a board meeting and (2) a straw poll vote taken at the same meeting. The individual asserted that during the recess, several board members went into a room in which the Board Chair was present, and, at times, more than one board member was in the room. The Board Chair disputed the individual’s assertions. The Commissioner, unable to resolve the factual dispute, did discuss the issue of serial meetings, which are not allowed under Chapter 13D. Regarding the anonymous straw poll vote, the Commissioner opined that because the Board revealed the results of the straw poll during the meeting, the Board complied with Chapter 13D.

Records management resources

Do you have questions about how long to keep records or whether your entity’s retention schedule is current? The Minnesota Historical Society’s [State Archives](#) division has a number of resources on their website, including general records retention schedules and the updated reference piece *Preserving and Disposing Government Records*. The State Archive’s website is www.mnhs.org/preserve/records/gov_services.htm. You can also contact State Archives staff with records related questions.



In addition, the Minnesota Government Records and Information Network ([MN GRIN](#)) is a group of individuals, primarily from state and local government, formed to discuss issues around government records. MN GRIN’s membership and meetings are free. You can find more information about MN GRIN at www.mnhs.org/preserve/records/mngrin.html.

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