

FYi

From the Information Policy Analysis Division

Legislative Update: 2010 Session



The 2010 legislative session ended with a bang as members in the final week dusted off the held-over 2009 Omnibus Data Practices bill and passed some of its provisions. This summary highlights many of these changes as well as others affecting 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 effective date for all provisions is August 1, 2010, unless otherwise noted.

Changes to Chapter 13

Section 13.03, subdivision 10: Allows a responsible authority in a state agency to create a separate account in the state treasury when a significant amount of money is collected to cover the cost of providing copies of data. (Special Session Law 2010, chapter 1, article 14, section 3)

Section 13.05, subdivisions 4 and 4a (new): Moves informed consent requirements for insurers into its own subdivision. (Chapter 365, article 1, sections 1 and 2)

Section 13.06: Revises the temporary classification process to require government entities to make a stronger argument in requesting a classification. The revisions also incorporate requirements located in Minnesota Rules, part 1205.1800 into section 13.06, add

requirements for withdrawal of an application, add authority for new uses/disseminations and update the month of expiration from June to August. (Chapter 365, article 2, sections 1-7 and article 1, section 12)

Section 13.085 (new): Establishes an administrative remedy at the Office of Administrative Hearings for certain types of complaints related to violations of Chapter 13. Requires a \$1,000 filing fee. Sections 13.072 and 13.08 are amended to reflect this remedy. **Effective July 1, 2010.** (Chapter 297, sections 1-3)

Section 13.15, subdivision 5 (new): Exempts a government entity from providing notice to a computer user before installing a temporary cookie on the user's computer. (Chapter 222, section 1)

Section 13.32, subdivision 3: Allows private education data to be disclosed in a mental health emergency pursuant to 20 U.S.C. 1232g(b)(1)(I) and 34 C.F.R. 99.36. (Chapter 230, section 1)

Section 13.43, subdivision 1: Clarifies that personnel data are all government data maintained, not just collected, by a government entity because an individual is or was a government employee. (Chapter 365, article 1, section 3)

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Section 13.43, subdivision 2: Expands the list of public personnel data to include terms and conditions of an employment relationship and work-related continuing education. Also clarifies that when an arbitrator reverses discipline imposed on a collectively bargained employee, data related to the discipline are not public. (Chapter 365, article 1, section 4)

Section 13.64, subdivision 2 (new): Classifies as nonpublic, security features of building plans and specifications for state-owned and leased facilities maintained by the Department of Administration and allows certain sharing of those data. (Chapter 365, article 1, section 5)

Section 13.792: Classifies as private or nonpublic certain donor gift data maintained by the Regional Parks Foundation of the Twin Cities and the State Services for the Blind. *Effective May 19, 2010.* (Chapter 365, article 1, section 6)



Section 13.823 (new): Exempts from Chapter 13, a program that provides shelter or support services to victims of domestic abuse or a sexual attack and whose employees or volunteers are not under the direct supervision of a government entity, except the program must comply with certain other data practices related statute sections. (Chapter 299, section 1)

Section 13.87, subdivision 5 (new): Allows parole and county probation authorities to access certain private firearms permit data. (Chapter 365, article 1, section 7)

New Chapter 13 Cross-References

Section 13.319, subdivision 8 (new): Cross-reference to section 122A.18, subdivision 1, which governs data sharing between the Department of Education and the Boards of Teaching and School Administrators for education program approval and improvement. (Chapter 297, section 4)

Section 13.3806, subdivision 13 (new): Cross-reference to section 144.6071, which classifies trauma registry data collected by the Commissioner of Health as private or nonpublic. (Special Session Law 2010, chapter 1, article 20, section 1)

Section 13.4967, subdivision 8 (new): Cross-reference to section 116J.8737, which classifies certain data related to small business investment tax credit certifications as private or nonpublic. *Effective April 2, 2010.* (Chapter 216, section 1)

Section 13.607, subdivision 5a (new): Cross-reference to section 10A.20, which classifies data contained in certain reports filed with the Campaign Finance and Public Disclosure Board as nonpublic data until 8 a.m. on the day following the day the report was due. (Chapter 327, Section 24)

Section 13.607, subdivision 8 (new): Cross-reference to section 204B.06, subdivision 1b, which classifies the address of residence of certain candidates for office as private if a police report or an order for protection has been issued in regard to the safety of the candidate. *Effective May 18, 2010.* (Chapter 314, section 1)

Section 13.635, subdivision 5 (new): Cross-reference to sections 336.9-531 and 336A.14, which classify Social Security Numbers and tax identification numbers maintained by the secretary of state in filing systems as private or nonpublic. (Chapter 333, article 1, section 3)

Section 13.681, subdivision 8 (new): Cross-reference to section 216B.16, subdivision 17, which classifies as private certain employee expense data submitted in a rate case petition. (Chapter 328, section 1)

Section 13.871, subdivision 13 (new): Cross-reference to section 299C.46, subdivision 6, which classifies data contained in orders for protection and no contact orders as private. (Chapter 299, section 2)

Changes to Chapter 13D

Section 13D.01, subdivision 1: Deletes requirement that a local public pension plan under Chapter 422A (governs retirement allowances in Minneapolis) be subject to Chapter 13D. (Chapter 359, article 12, section 3)

Other Data Practices and Open Meeting Changes

Campaign Data

Section 10A.20, subdivision 1c (new): Classifies campaign reports filed pursuant to section 10A.20 by one of the two party units that received the highest level of contributions in the last election year as nonpublic until reports of each of the two parties have been filed. (Chapter 327, section 16)

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Section 10A.35: Exempts reports and statements filed by lobbyists and lobbyist principals from the ban on using information copied from reports and statements filed with the board for a commercial purpose. (Chapter 327, section 23)

Office of Grants Management Data

Section 16B.97, subdivision 5 (new): Classifies data that identify a person filing a complaint with the Department of Administration's Office of Grants Management as private or nonpublic and permits sharing with the agency that is the subject of the complaint. (Chapter 365, article 1, section 9)

Electronic Data Access Standards

Sections 16E.04 and 16E.05: Requires the state chief information officer, in consultation with the Information Policy Analysis Division, to develop standards to enhance public access to electronic data maintained by state government, consistent with the requirements of Chapter 13. (Chapter 392, article 1, sections 8-9)

Mortgage Licensing Data

Section 58A.14 (new): Governs the privacy of certain records pursuant to the Minnesota S.A.F.E. Mortgage Licensing Act of 2010. (Chapter 347, article 4, section 15)

Financial Assistance Data

Section 116W.04, subd. 10 (new): Classifies as private or nonpublic certain financial information received or prepared pursuant to Chapter 116W by the Minnesota Science and Technology Authority regarding financial assistance. (Chapter 347, article 1, section 14)

Arbitration Decision Data

Section 179A.04: Clarifies that public dissemination of grievance arbitration decisions must be limited to those portions of the decisions that are not protected under section 13.43, subdivision 2(b). *Effective August 1, 2010.* (Chapter 365, article 1, section 11)

Business Screening Services Data

Section 332.70: Requires a business screening service to only disseminate a criminal record that reflects the complete and accurate record provided by the data source. *Effective July 1, 2010.* (Chapter 240, sections 1-5)

Accessibility of Public Records

Section 363A.42 (new): Requires all government entities to have policies and procedures to make records available within a reasonable time to persons with disabilities in a manner consistent with state and federal laws prohibiting discrimination against persons with disabilities. *Effective January 1, 2013.* (Chapter 271, section 2 and Chapter 347, article 1, section 22)



Lessard-Sams Outdoor Heritage Council

Minnesota Session Law 2010, Chapter 361: Allows acquisition data provided to the Lessard-Sams Outdoor Heritage Council such as appraisals to remain private during negotiations but "must ultimately be made public." (Chapter 361, article 1, section 2, subdivision 9)

Section 97A.056, subdivision 5: Exempts the Lessard-Sams Outdoor Heritage Council from the requirements of Chapter 13D when traveling to and from scheduled and publicly noticed visits by council members. The council may not make a decision or agree to make a decision during travel. (Chapter 361, article 1, section 5)

Criminal Intelligence Data Work Group

Minnesota Session Law 2010, Chapter 383: Establishes a work group to discuss issues related to criminal intelligence databases, make recommendations for guidelines governing usage and collection and recommend proposed legislative changes for the use of criminal investigative data. (Chapter 383, section 6)

Health and Human Services Data

Minnesota Special Session Law 2010, Chapter 1: Directs the Commissioners of Health and Human Services to conduct an inventory on health-related data collected by each respective department and submit a report to the legislature, including a consideration of national and state standardized data classification systems. (Special Session Law 2010, Chapter 1, article 19, section 23)

Case Law Update

Communities United Against Police Brutality v. City of Minneapolis and Minneapolis Civilian Police Review Authority, A09-1972 (Minn. Ct. App., May 25, 2010, unpublished).

The Court of Appeals issued an unpublished opinion around the classification of certain personnel status data maintained by the Minneapolis Civilian Police Review Authority (CRA). The CRA maintains certain data on complaints about Minneapolis police officers. The Communities United Against Police Brutality were denied access to certain data and questioned the CRA's determination.

The Court determined that the following CRA data are public under Minnesota Statutes, section 13.43: (1) the fact that a complaint was referred by the CRA to the Minneapolis Police Chief, (2) the Minneapolis Police Chief's decision to impose discipline after all appeal rights have expired, and (3) the Minneapolis Police Chief's decision not to impose discipline. The Court determined that the following are private data under section 13.43: (1) the fact that a request for reconsideration to CRA is pending, (2) prior to final disposition of discipline, the fact that a complaint was sustained by CRA, and (3) prior to final disposition of discipline, the fact that a complaint was not sustained by CRA.

Ontario v. Quon, 560 U.S. ___, 177 L. Ed. 2d 216 (2010).

The United States Supreme Court held that a public employer's search of an employee's text messages sent from an employer-paid pager was not unreasonable under the Fourth Amendment, given the employer had a legitimate work-related purpose for the search and the search was not excessive in scope. The Court issued a narrow ruling given

"rapid changes in the dynamics of communication and information transmission ... not just in the technology itself but in what society accepts as proper behavior. ... At present, it is uncertain how workplace norms, and the law's treatment of them, will evolve."



Doe v. Reed, 561 U.S. ___, 38 Media L. Rep. 1833 (2010).

The United States Supreme Court held that the disclosure of names, addresses and signatures on a referendum petition under a state's Public Records Act does not, as a general matter, violate the First Amendment.

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.

Tentative Settlement Agreements

[Opinion 10-015](#) A newspaper asked about the right to access a tentative settlement agreement between a school district and its teachers' union that was reached in a closed mediation session. The school district denied access to the report prior to presenting it to the school board based on Minnesota Statutes, section 179A.14, subdivision 3. The Commissioner rejected that argument, concluding that section 179A.14 does not classify data and, therefore, did not provide a proper basis to deny access to the agreement. Also, the Commissioner discussed that, assuming data responsive to the request existed at the time of the request, the data could possibly have been classified pursuant to Minnesota Statutes, section 13.7908, which classifies data received or created by the Bureau of Mediation Services as protected nonpublic or confidential.

Data in Law Enforcement Databases

[Opinion 10-016](#) A newspaper asked whether a city had complied with Chapter 13 when the newspaper requested access to certain incident data from the city police department's Computer Aided Dispatch system. One data element requested was the incident address. The police department agreed to provide the addresses with the last two digits removed due to the possibility that a full address might identify an individual's identity, as protected by Minnesota Statutes, section 13.82, subdivision 17. The Commissioner opined that providing the full address would not necessarily identify an individual protected by that section and that the police department would need to make that determination on a case-by-case basis. The Commissioner also rejected the argument that the requested data could be withheld based on Minnesota Statutes, section 13.82, subdivision 16, which allows law enforcement to deny physical access to data where it is not administratively feasible to separate public and not public data, but provide access to the public data in some other reasonable manner.

Data on a Superintendent's Outside Employment

[Opinion 10-017](#) An individual asked about the right to access certain data documenting a school superintendent's outside employment. The superintendent's contract contained a provision requiring school board approval for outside employment or consulting. The school district responded that data responsive to the request did not exist; any determinations made under that provision had been verbal. The Commissioner opined that the school district was required to maintain data documenting any approval or denial of the superintendent's outside employment because they constitute official records under Minnesota Statutes, section 15.17.

The Commissioner further opined that records of approval or denial must also be retained according to the retention schedule required by Minnesota Statutes, section 138.17. Because data that should exist did not, the school district was not able to respond properly to the data request.



Next Open Meeting Law Workshop is Sept. 17

IPAD will present its next Open Meeting Law workshop on Friday, Sept. 17 in St. Paul. The workshop focuses on practical advice in implementing the law, including discussion about the impact of technology on the law's requirements.

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



'Gang Database Work Group' Set to Meet

Meetings of the 'Gang Database Work Group' have been scheduled beginning in late August at the Minnesota Bureau of Criminal Apprehension (1430 Maryland Avenue East, St. Paul) Multi-Purpose Classroom, W-277. The first meeting is slated for 1-3:30 p.m. Wednesday, Aug. 25, 2010.

The Spring 2010 FYi highlighted the new work group, created by the Legislature, to look at the privacy implications concerning criminal intelligence data and gang databases (see [Minnesota Session Law 2010, Chapter 383](#)).

Questions about the work group can be sent to David Johnson, Executive Director, Minnesota Justice Information Services (MNJIS) via email at David.M.Johnson@state.mn.us. You may also call Mr. Johnson at 651.793.1015.



Ideas About Future Legislation?

The Legislature will continually amend the Data Practices Act and Open Meeting Law to make policy changes, clarify the laws or update requirements in light of technology. IPAD would like to hear your ideas—big or small—about changes you'd like to see made to either law.

Please send your legislative ideas to info.ipad@state.mn.us.

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