

# Digging Digital Docs

A recent Wall Street Journal investigation of Medicare billings discovered that one doctor in the New York City area received more than \$2 million in payments in one year from the federal healthcare program.

The reporters found records of the payments in the Medicare claims database that, the newspaper says, is widely considered the single best source of information on the U.S. healthcare system. Consider it a further sign of the growing significance of electronic government data not only for the media, but for a public ever-more interested in how government is spending tax dollars.

Government data have led to significant stories regarding toxic drinking water, dam and highway safety and more, says David Cuillier, the nation's leading expert on computer-assisted reporting. Speaking on "Strategies for Acquiring Public Data" at a recent gathering of the Minnesota Coalition on Government Information (MNCOGI), Cuillier stressed the importance of government information as critical for an informed public.

Cuillier, assistant professor of journalism at the University of Arizona and chair of the Society of Professional Journalists' Freedom of Information (FOI) Committee, also shared with the group some tips and strategies - helpful not only to reporters and citizens but to government information managers as well - for requesting electronic information from government entities. Among these:

- Know your freedom of information laws
- Learn about government entities and the types of data they maintain
- Make requests as specific as possible
- Advocate for open government

For more information, visit the following:

- <http://www.mncogi.org/Cuillierhandout.pdf> (handout from MNCOGI presentation)
- <http://www.mncogi.org/cuillierppt.ppt> (PowerPoint from MNCOGI presentation)
- <http://blogs.spjnetwork.org/aaa/> (blog from FOI training tour)
- <https://www.spj.org/> (Society of Professional Journalists)

MNCOGI sponsors events related to government information and transparency and has a number of resources related to open access to government information on its website, [www.mncogi.org](http://www.mncogi.org) (MNCOGI is a member of the National Freedom of Information Coalition - [www.nfoic.org/index.cfm](http://www.nfoic.org/index.cfm)).



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## Case Law Update

### ***Bearder v. State*, 788 N.W.2d 144 (Minn. Ct. App. 2010).**

Parents of children whose blood was collected and tested under the Minnesota Department of Health's (MDH) Newborn Screening Program (Minnesota Statutes, sections 144.125 -144.128) claimed MDH violated Minnesota Statutes, section 13.386 (genetic information), by collecting 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.

Section 13.386 also includes a provision that exempts government entities with "express" legal authority from complying with its requirements. The Court concluded that the newborn screening statutes granting the Commissioner of Health broad authority to manage the program amount to an "express" provision of law; thus, the written informed consent requirements in section 13.386 are not applicable to the collection of newborn blood. However, any uses of the biological specimens for purposes unrelated to the newborn screening program are subject to the consent requirements in section 13.386.

### ***KSTP-TV v. Ramsey County*, 787 N.W.2d 198 (Minn. Ct. App. 2010).**

Television stations KSTP-TV, KSTC-TV, WDIO-TV, KAAL-TV, and KSAX-TV requested access to rejected absentee ballots from the 2008 United States Senate election (Coleman/Franken) from Ramsey County. The county denied access, determining that the data are not public under Minnesota Statutes, section 13.37, subdivision 2, which states in part, "The following government data is classified as nonpublic...and as private...sealed absentee ballots prior to opening by an election judge...." The stations argued the rejected ballots, opened and removed from their return envelopes, are public.

The Court concluded that the rejected absentee ballots are not public under section 13.37 because subdivision 2, unambiguously classifies sealed absentee ballots as nonpublic or private until opened by an election judge. The rejected absentee ballots are indisputably sealed and have not been opened by an election judge; thus, the rejected absentee ballots are not public.

### ***Vik v. Wild Rice Watershed Dist.*, A09-1841 (Minn. Ct. App., Aug. 10, 2010, unpublished).**

An individual alleged that the Wild Rice Watershed District violated the Open Meeting Law, Minnesota Statutes, Chapter 13D, by improperly closing part of a meeting to discuss potential property acquisitions, and that the District violated the Data Practices Act, Minnesota Statutes, Chapter 13, for failure to disclose a recording of the closed meeting and financial documents related to the property transactions.

The Court concluded that Minnesota Statutes, section 13D.05, subdivision 3(c)(3), which states that a meeting may be closed "...to develop or consider offers or counteroffers for the purchase or sale of real or personal property" allows discussion of the development or consideration of a property transaction, but does not require discussion of the specific purchase terms. In addition, the Court concluded that because the closed meeting was valid, the recording of the meeting was not public\* and the District did not violate Chapter 13 by failing to disclose the recording.

\*The Commissioner of Administration came to a slightly different result in [Advisory Opinion 10-001](#) and opined that a recording of a closed meeting may contain a combination of both public and not public data, depending on what is discussed at the meeting.

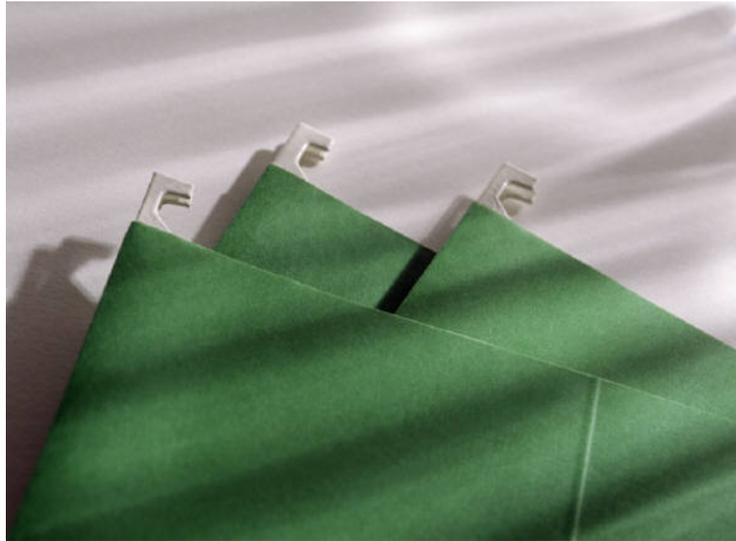
# Opinion Highlights

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).

## Donation Data

**Opinion 10-018:** A newspaper asked if a city complied with Minnesota Statutes, Chapter 13, in refusing access to certain data about donations for the city's new ice arena.

The city contracted with a private foundation for fundraising for the project. (See Minnesota Statutes, section 13.05, subdivision 11.) In responding to the data request, the city asserted it was not in possession of the data. The Commissioner opined that because the data are official records (Minnesota Statutes, section 15.17), they should be maintained by the city or the foundation (on behalf of the city) and should be accessible to the requestor. The Commissioner also noted that the contract for fundraising included language stating the foundation would provide the city with the data.



## Closed Meeting Recording

**Opinion 10-019:** A newspaper asked if a school district complied with Minnesota Statutes, Chapter 13, in responding to a request to listen to the tape of a closed meeting (the meeting was closed to evaluate the superintendent and the newspaper had obtained the informed consent of the superintendent). The district's response was that the newspaper would not be able to listen to the tape unless it obtained a court order. The Commissioner opined that the district did not comply with Chapter 13 because (1) with the data subject's consent, the newspaper should have received access to the tape and (2) the district did not provide the statutory basis upon which access was denied.

## Meeting Notices

**Opinion 10-020:** An individual asked whether a city council complied with Minnesota Statutes, Chapter 13D (the Open Meeting Law), regarding the notices it provided for

four meetings - three council workshops and one council work session. The Commissioner determined that each meeting was a special meeting and, therefore, each meeting notice needed to include the meeting's purpose. (Minnesota Statutes, section 13D.04.) The city council did not comply with Chapter 13D because none of the notices stated the purpose of the meeting.

## Contract Negotiation Data

**Opinion 10-021:** A school district asked about the classification of certain data related to contract negotiations between the district and its teachers' union. The Commissioner opined that the data are protected nonpublic data pursuant to Minnesota Statutes, section 13.7908.

## Public Official Complaint Data

**Opinion 10-022:** A state agency asked about the classification of certain data related to a complaint made against a former deputy commissioner. The Commissioner concluded that Minnesota Statutes, section 13.43, subdivision 2(e), applies to "allegations made about public officials' actions while employed in public service, even if the complaint or charge was made after a public official left public employment." The Commissioner opined, therefore, that the data in question are presumptively public.

## Update: ‘Gang Database Workgroup’

The ‘Gang Database Workgroup’ (or ‘SF2725 Workgroup’) continues to meet bi-monthly to discuss issues and laws pertaining to criminal intelligence databases and to develop recommendations on proposed legislative changes regarding criminal investigative data and databases. Highlights of the group’s meetings since convening initially on August 25 include:

- **August 25** – A discussion about the history of the workgroup’s enabling legislation and law enforcement and intelligence data issues in Minnesota.
- **September 8** – Presentation about the federal NDex system, which provides member states with nationwide access to individual state law enforcement incident data (Minnesota is not a participant); and a presentation on data practices issues related to law enforcement data.
- **September 23** – Presentations from the workgroup’s law enforcement representatives on the background and practices regarding current gang-related data and databases.
- **October 13** – Presentations from non-law enforcement workgroup representatives detailing the history, objectives and operation of the current databases; and identification of concerns about the collection and use of the data.



At future meetings, the workgroup will present possible legislative initiatives and gather viewpoints from the public. More information – including agendas, meeting minutes and meeting recordings – is available on the Bureau of Criminal Apprehension website, [www.bca.state.mn.us/SF2725.htm](http://www.bca.state.mn.us/SF2725.htm).

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