

Legislative Update: 2011

This summary highlights many changes 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, 2011, unless otherwise noted.

Changes to Chapter 13

Section 13.04, subdivision 4a: Clarifies a term defining a person who is admitted into the Minnesota sex offender program. (Special Session Law 2010, chapter 1, article 14, section 3)

Changes to Chapter 13 Cross-References

Public Health Data—Section 13.3806, subdivision 21 (new): Cross-reference to section 144.605, subdivision 9, which classifies data on patients in information and reports related to the designation and redesignation of trauma hospitals. (Chapter 76, article 2, section 2)

Admin and MMB Data—Section 13.6401, subdivision 7 (new): Cross-reference to section 16B.97, subdivision 5, which governs personal identification data maintained by the Commissioner of Administration related to comments about executive agencies violating grant governance policies. (Chapter 76, article 2, section 8)

Public Safety Data—Section 13.6905, subdivision 33 (new): Cross-reference to section 201.158, which governs the use of citizenship data reported to the Secretary of State. (Chapter 76, article 2, section 10)

Insurance Data—Section 13.7191, subdivision 19 (new): Cross-reference to section 58A.14, which governs information and materials provided to the Nationwide Mortgage Licensing System and Registry or shared with state and regulatory officials with mortgage industry oversight authority. (Chapter 76, article 2, section 12)

Court Services Data—Section 13.841, subdivision 3 (new): Cross-reference to section 201.155 which governs felony conviction data reported to the Secretary of State. (Chapter 76, article 2, section 16)

Corrections and Detention Data—Section 13.851, subdivision 10 (new): Cross-reference to section 201.157, which governs the use of felony sentence data made available to the Secretary of State. (Chapter 76, article 2, section 18)

INSIDE THIS ISSUE:

IT consolidation	2
Opinion highlights	3
OAH orders	4
Next IPAD workshop	4
Contracting with government	4

Continued on page 2



Legislation, cont.

Human Services Data—Section 13.461, subdivision 24a: Technical correction to a cross-reference to section 256B.69 which classifies data provided to the Commissioner of Human Services by managed care plans relating to contracts and provider payment rates. (1st Special Session, chapter 9, article 6, section 1)

Changes to Chapter 13D

Section 13D.01, subdivision 1: Makes a technical change to reflect the repeal of Minnesota Statutes, Chapter 423B, as a result of the consolidation of the Minneapolis Police Relief Association with the public employees police and fire retirement plan. (Chapter 8, article 8, section 2)

Section 13D.02, subdivision 5 (new): Provides that a school board may use interactive technology with an audio and visual link to conduct the meeting if the board complies with all other requirements in section 13D.02. (Chapter 11, article 2, section 1)

Other

Ownership of Tobacco Securitization—Section 16A.95, subdivision 5 (l) (new): Classifies as nonpublic or private, information in any register of ownership of tobacco securitization bonds or certificates. Effective July 21, 2011. (1st Special Session, Chapter 7, article 11, section 3)

Higher Education Student Records and Data Usage Liability—Section 136A.051 (new): Exempts non-public institutions of higher education from liability when there is a breach of confidentiality, disclosure, use, retention or destruction of student data resulting from the actions or omissions of the Office of Higher Education. (Chapter 93, section 1)

Managed Care Plans—Section 256B.69, subdivision 9c (b)(iv) (new): Classifies certain data provided to the Commissioner of Human Services on managed care plans relating to contracts and provider payment rates as nonpublic. (Chapter 9, article 6, section 63)

Disclosure for Tax Reciprocity Study—Section 270B.12 subdivision 14 (new): Allows the Commissioner of Revenue to disclose return information to the Wisconsin Secretary of Revenue for the purpose of conducting a joint individual income tax reciprocity study. Effective July 21, 2011. (1st Special Session, Chapter 7, article 1, section 1)

Required Fingerprinting—Section 299C.10, subdivision 1: Requires an individual who is arrested for, appearing in court on a charge of, or convicted of violating a misdemeanor domestic abuse no contact order to be fingerprinted. Effective August 1, 2011. (Chapter 79, section 1)

State IT Consolidation Underway

A law enacted during the 2011 Legislative Session calls for the consolidation of Minnesota executive branch information technology under the State Chief Information Officer. [See Article 4 of the law.](#) Beginning October 1, the Office of Enterprise Technology (OET) will be responsible for IT systems and services to state agencies – including, but not limited to, data centers, mainframes, servers, desktops and laptops, networks, e-mail and other office systems, business application software, and help desk and maintenance for all of these systems and services.

OET has set up an IT Consolidation Steering Team that, with input from agency CIOs and consultation with the Governor's Office and Minnesota Management and Budget, has developed a [Phase One Tactical Plan](#). The plan provides a high-level strategy for the overall two-year milestones as outlined in the law, but will focus on the immediate tasks in Phase One.





Advisory Opinion Highlights

Obtaining government data held by a contractor

[Opinion 11-005](#): An individual asked whether a private business under contract to a school district complied with Minnesota Statutes, Chapter 13, in responding to a request for a copy of the contract and copies of other data. The Commissioner discussed that the contractor, because of its contractual relationship with a government entity, is subject to requirements of Chapter 13. The Commissioner opined, therefore, that the contractor's fee of \$3,900 for 135 pages was not in compliance with law and also that the contract between the contractor and the school district was public and should be provided to the requestor.

Correspondence between an individual and an elected official

[Opinion 11-006](#): A school district asked about the classification of correspondence from an individual to a member of the school board (elected official). The Commissioner discussed that the email in question is government data because it was sent to the board member in his official work capacity. The Commissioner further discussed that both the board member and the individual who sent the email are the subjects of the email. Thus, based on Minnesota Statutes, section 13.601, subdivision 2, the correspondence is private data about both individuals, unless one of them makes it public, which did not happen in this case. The Commissioner also noted that if the correspondence were to end up in the district's hands, the classification under section 13.601, subdivision 2, no longer would apply.

Complaints about real property

[Opinion 11-008](#): An individual who made a complaint concerning a violation of a state law/local ordinance related to real property asked if a township had complied with Minnesota Statutes, Chapter 13, when it released his/her identity at a township board meeting. Pursuant to Minnesota Statutes, section 13.44, subdivision 1, government entities are required to protect the identities of individuals who make such complaints. The township

argued that because the individual also registered his/her complaint in correspondence to an elected official, the data could be made public pursuant to Minnesota Statutes, section 13.601, subdivision 2. The Commissioner, based on Minnesota Statutes, section 645.26, disagreed and opined that the township could not have released the individual's identity unless it was permitted by language in the Open Meeting Law (Minnesota Statutes, section 13D.05, subdivision 1(b)).

Security information

[Opinion 11-011](#): A city asked whether certain architectural plans and other documents related to the construction of a particular building were classified as not public pursuant to Minnesota Statutes, section 13.37, subdivision 1(a). The Commissioner opined that the city presented "sufficient detailed information and reasoned analysis for the City to determine that, given the particular circumstances of the [building project] the data in question are properly classified as not public security information ..." In reaching his conclusion, the Commissioner cited previous advisory opinions emphasizing that government entities cannot protect data from disclosure under section 13.37 simply on an arbitrary basis, but "must base the determination on a reasoned analysis."

OAH issues two data practices orders

Since March 2011, the Office of Administrative Hearings (OAH) has issued two orders under the expedited data practices complaint process in Minnesota Statutes, section 13.085.

One is an order (dated March 3, 2011) denying the complain-

ant's petition for reconsideration. The other is a dismissal order (dated April 7, 2011) determining that the government entity did not violate Chapter 13.

OAH also recently submitted its [2011 Report to the Legislature](#)

[on Receipts and Expenditures](#) related to the expedited process.

The OAH orders and additional information about the process are on [OAH's website](#).



Next IPAD workshop on Sept. 26—Law Enforcement Data



IPAD is again offering its Law Enforcement Data Workshop on Monday, September 26 in St. Paul.

The workshop provides background information on relevant law enforcement data laws

as well as more advanced practical advice on real-world scenarios.

For more information, visit www.ipad.state.mn.us.

Contracts between government and the private sector



Based on frequent customer questions, IPAD recently developed a new resource to clarify the data practices implications of government con-

tracting with the private sector. It highlights the relevant sections in the Data Practices Act (Minnesota Statutes, Chapter 13) and its rules (Minnesota Rules, Chapter 1205) and provides information about the applicable Minnesota case law and advisory opinions.

The new resource is on [IPAD's website](#) under the *How Do I...?* section and under the *Access to Information* drop-down menu on the home page.