

Government information practices— issues are universal



Many of our customers regularly grapple with data practices, records management, and public meeting matters that are not unique to Minnesota such as government data on portable computing devices, serial meetings, third party contractors, social media, email retention, the storage of vast amounts of electronic data, and data in the cloud.

For that reason, we hope you will visit the [external links page of IPAD's website](#) to learn more about what people outside of Minnesota are talking about. You can link to the state government offices in the United States and Canada that are similar to IPAD and also to organizations that focus on privacy and public access. For example:

- [Connecticut Freedom of Information Commission](#) – works to administer and enforce the provisions of the Connecticut Freedom of Information Act
- [Office of the Information Commissioner of Canada](#) – assists individuals and organizations who believe that federal institutions have not respected their rights under Canada's freedom of information legislation
- [National Freedom of Information Coalition](#) – a nonpartisan alliance of citizen-driven nonprofit freedom of information organizations, academic and First Amendment centers, journalistic societies and attorneys
- [Electronic Privacy Information Center](#) – a public interest research center that focuses public attention on emerging civil liberties issues and strives to protect privacy, the First Amendment, and constitutional values

In addition, the federal government has resources related to open government such as the White House's [Open Government Initiative](#) and a compilation of various federal government datasets at [Data.gov](#).



INSIDE THIS ISSUE:

Case update	2
Opinion update	3
Community presentation	4
OAH orders	4
IT consolidation	4
Follow IPAD on twitter!	4





MN Supreme Court issues two data practices related decisions

The first case, *Bearder, et al. v. State of Minnesota, et al.*, A10-101 (Minn. Nov. 16, 2011), discusses Minnesota Statutes, section 13.386 (“Genetic Privacy Act”). The second case, *KSTP-TV, et al. v. Ramsey County*, A10-395 (Minn. Nov. 16, 2011), discusses Minnesota Statutes, section 13.37, subdivision 2, and the classification of sealed absentee ballots. Both decisions were issued on November 16, 2011.

In *Bearder*, the Court held that biological blood samples collected by the Minnesota Department of Health (MDH) as part of its Newborn Screening Program are “genetic information” under Minnesota Statutes, section 13.386, and, unless otherwise expressly provided by law, MDH must have written informed consent to collect, use, store, or disseminate the biological samples.

The Court also held that the newborn screening statutes (Minnesota Statutes, sections 144.125 – 144.128) provide an express exception to section 13.386, only to the extent that MDH is authorized to administer newborn screening by testing the samples, recording and reporting the results, maintaining a registry, and storing results as required by federal law. Other use, storage, or dissemination of the biological samples is not expressly authorized in the newborn screening statutes.

In *KSTP-TV*, the Court held that the plain language of Minnesota Statutes, section 13.37, subdivision 2, unambiguously classifies sealed absentee ballots, that were rejected and never counted during an election and prior to opening by an election judge, as not public government data. Specifically, section 13.37, subdivision 2, is not ambiguous simply because it classifies sealed absentee ballots prior to opening as both private and nonpublic data.

Federal court discusses data practices issue

In *Johnson v. Carroll, et al.*, a case out of the 8th Circuit Federal Court of Appeals, the plaintiff filed suit against four police officers and the City of Minneapolis. Her claim against the City was an alleged violation of the Minnesota Government Data Practices Act. The City argued that the plaintiff’s claim failed to assert damages and moved for summary judgment, which the district court granted.

The Court of Appeals held that even though the plaintiff failed to state a claim for damages under Minnesota Statutes, section 13.08, subdivision 1, the district court should have considered recovery of costs and disbursements under Minnesota Statutes, section 13.08, subdivision 4.

Johnson v. Carroll, et al., 658 F.3d 819 (8th Cir. 2011).

Court of Appeals decides copy charge case

The Minnesota Court of Appeals, in an unpublished case, decided a dispute between the Minnesota Department of Agriculture and a government data requestor as to payment for copies of the requested data.

Based on the particular facts of this case, the Court held that Minnesota Statutes, section 13.03, subdivision 3, creates an obligation to pay for copies of government data when the request is made, rather than when the copies are actually received by the requestor. The Court also determined that the district court improperly entered judgment requiring payment of the \$1.67 per-document copy fee when the parties did not consent to litigate the payment issue.

Wotzka v. Minn. Dept. of Agric., A11-860 (Minn. Ct. App. Nov. 21, 2011).

Advisory opinion highlights

County agricultural societies and Open Meeting Law

[Opinion 11-012](#): An individual asked whether a county agricultural society is subject to Minnesota Statutes, Chapter 13D, the Open Meeting Law. Chapter 13D lists the types of public bodies that are subject to its requirements. (See section 13D.01, subdivision 1.) The Commissioner concluded that the society is the governing body of an “other public body” and therefore must comply with Chapter 13D.

Data about softball players

[Opinion 11-014](#): A newspaper asked about the names and game-related data of individuals playing in softball games. The softball program is run by the City. The Commissioner discussed that although the names of the individuals appear to be private pursuant to Minnesota Statutes, section 13.548, by agreeing to participate in games that are held in a public place, the players have, in effect, given implied consent for their names to be released. Statistical information tied to each player, therefore, also would be public.

Releasing not public law enforcement data to victims

[Opinion 11-015](#): A county attorney’s office asked about Minnesota Statutes, section 13.82, subdivision 13, which provides that prosecuting authorities can release certain confidential/protected nonpublic data to victims and their legal representatives. The Commissioner discussed that because this statutory authority exists, prosecutors can release data to both the victim and his/her legal representative – consent from the victim is not required. The Commissioner also noted that under the definition of “victim” in Minnesota Statutes, Chapter 611A, other individuals can take the place of the victim if s/he is incompetent, incapacitated, or deceased. Finally, the Commissioner discussed that when releasing not

public data, an entity must take reasonable measures to ensure that individuals are who they say they are, and that an attorney does, indeed, represent the client she says she does.

Official records and providing financial assistance to businesses

[Opinion 11-016](#): A newspaper asked whether a city responded appropriately to a request for public financial information about a company to which the city awarded \$500,000 of financial assistance. The City’s response was that it had no data – the company was concerned about the release of data and refused to physically provide data to the city so the city’s contractor performed its evaluation at the company’s offices and did not retain copies of data or take detailed notes. The Commissioner discussed that pursuant to Minnesota Statutes, section 15.17, the city was required to create and maintain data related to its official activities and that verifying the company’s financial viability was an official activity. Therefore, the city did not comply with Minnesota Statutes, Chapter 13, and section 15.17. The Commissioner also wrote that Minnesota Statutes, section 13.591, classifies as not public, the data a business seeking financial assistance or a benefit submits to a government entity; some of the data submitted as part of a request become public once an entity provides the assistance or benefit.



IPAD presents on data practices, open meetings at League of Women Voters meeting



The White Bear Lake Area League of Women voters invited Laurie Beyer-Kropuenske, Admin’s Director of Community Services, to present “For Your Eyes Only: Government Records and Open Meetings in Minnesota” at the White Bear Lake City Hall on October 27, 2011.

The presentation covered data classifications, making data requests, types of meetings, meeting notices and penalties for violations of the laws. The audience, made up of members of the public and government, asked questions about the types of sub-body meetings (meetings of committees, advisory groups, commissions, etc.) that are covered by the Open Meeting Law, as well as often-held misconceptions about the taking minutes and items required to be on the agenda (the Open Meeting Law is silent on both).

OAH issues three data practices orders

Since April 7, 2011, the Office of Administrative Hearings (OAH) has issued three orders under the expedited data practices complaint process in Minnesota Statutes, section 13.85. All three orders are related to the topic of government contracting with the private sector (Minnesota Statutes, section 13.05, subdivision 11).

The first is an order ([dated September 14, 2011](#)) dismissing a complaint for lack of probable cause.

The second order ([dated October 4, 2011](#)) grants reconsideration of the complaint dismissed on September 14, 2011, issued by the Chief Administrative Law

Judge.

The third order ([dated October 14, 2011](#)) is a denial of a “renewed request for dismissal” related to the October 4, 2011, order.

More information about the OAH process is available on [OAH’s website](#).



State IT consolidation update

The Minnesota Office of Enterprise Technology (OET) has entered into Phases Two and Three of the IT consolidation. The focus of Phase Two is the “planning for centralization and standardization of IT services within each agency, under the direction of OET.” Phase Three focuses on the establishment of governance and strategic planning. For more information, visit [OET’s website](#).

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