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From the Information Policy Analysis Division

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Concerning Copy Costs

The Minnesota Government Data Practices Act allows government to charge data requesters for copies and those costs must be "reasonable." When a member of the public asks for 100 pages or fewer of paper copies, the costs are simple: $0.25/page. However, entities may charge "actual costs" for paper copies of more than 100 pages and electronic data. Assessing copy costs is further complicated by constant changes in technology and data storage. Keep in mind that government is not required to charge for copies, but should be consistent when providing fee copies.

Here are a few things for government to keep in mind when calculating copy costs.

Electronic data

Minnesota Statutes, section 13.03, subd. 3(f), requires government to provide electronic copies "if the government entity can reasonably make the copy or have a copy made." An entity only needs to provide data in the format in which they are maintained. Electronic data is not charged in "pages;" if a requester has asked for 99 public emails, and the entity is able to provide them in electronic form (pdf, msg, etc.), the appropriate charge is actual costs and not $0.25/page.

If an entity cannot reasonably make an electronic copy, it may give the requester the option of having paper copies. Entities should ask the requester before making paper copies of electronic data to minimize costs. When determining whether it can "reasonably make the copy," an entity should be mindful that it must maintain data in a manner that is easily accessible for convenient use and that it may not charge for time or resources to redact not public data.

Requester copies

Section 13.03, subd. 3(a), says, "a person shall be permitted to inspect and copy public government data." Advisory opinions say that requesters may bring in a scanner/printer, camera or tape recorder to aid in inspection of data or to make their own **paper copies** *without charge*. (Advisory Opinions 01-086, 04-051 and 04-059.) Whether requesters may make their own **electronic copies** without charge is less clear. Taking a picture of a computer screen seems analogous to photographing a paper copy. However, advisory opinions have not addressed charging related to a requester's use of a personal storage device to make copies or transfer data from the government. *(Continued on Page 2)*

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Government also has a responsibility to establish appropriate security safeguards for its data, so consider the appropriateness of allowing the use of non-approved or outside personal storage devices to transfer copies of data.

Charging for time

Government may charge for the time it takes to search for and retrieve public data and the time it takes to make the copies. Depending on the situation, this may be two separate hourly rates. Hourly rates for labor must be billed at the rate of the lowest-paid employee able to do the job. It cannot be an average (Advisory Opinion 01-047). Where a higher paid-employee makes the copies, but a lower-paid employee could have made the copies, entities may only bill at the lower rate (Advisory Opinion 00-027).

Reminders:

- Charging copy costs is optional/permissive.
- Government cannot charge for separating not public data from public data.
- Inspection is always free.
- Government may ask for prepayment if included in its data practices policy.
- Government should clarify whether a request is for copies or inspection.
- Government may not charge *a data subject* for search and retrieval costs.
- Materials costs must reflect the actual costs.
- Government cannot pass on the costs of normal wear and tear/depreciation of office equipment.
- Fee schedules must reflect actual costs (Advisory Opinion 01-033).

As always, please contact us with any copy cost related questions.

Case Law Update

S.F. v. Clay County, et al, No. A14–0494 (Minn. Ct. App., Dec. 8, 2014, unpublished).

S.F.'s prenatal nurse filed a Report of Suspected Abuse or Neglect with Cass County, ND, pursuant to North Dakota law. Cass County forwarded the report to Clay County, MN, which was S.F.'s employer. Several months later, S.F. was fired by Clay County, due in part to information contained within the report. S.F. sued Clay County for violating the Government Data Practices Act and the Minnesota Health Records Act (MHRA).

The district court granted summary judgment in favor of the county, but the Court of Appeals reversed, finding that the district court erred in determining that the report was both personnel and welfare data, and was incorrect in finding it proper for the county to use the report for a personnel matter simply because it was a mandated report. Health record releases are governed by strict and narrow principles; the purpose of the mandated abuse/neglect report is to ensure that an unborn child is not harmed and that a parent is assessed and counseled to protect the child, not to assist an employer in making employment decisions. Nothing in the MHRA indicates that health records can be released to a person's employer without specific consent.

The court of appeals reversed the district court's decision and remanded for further proceedings.

Case Law Update (con't.)

***Eggenberger v. West Albany Township*, 14-cv-4487 (JNE/JSM) (D. Minn., February 9, 2015)**

Plaintiff had his requests for access to various township records denied. The Minnesota Government Data Practices Act does not apply to townships outside of the metropolitan area, so the plaintiff instead sued on the grounds that the township had violated his right to access the information, as guaranteed by the Minnesota and federal constitutions. The plaintiff also alleged that the township's denial of information was in response to his reporting past township conduct to the Minnesota State Auditor's Office, and so violated his First Amendment protection against government retaliation.

The court dismissed all of the plaintiff's claims with prejudice. It held that there is no constitutional right that entitles members of the public with access to government records. Such access is left to "political forces" to determine, typically in the form of laws such as the Freedom of Information Act (FOIA) or the Data Practices Act. The court likewise held that the township's denial of government records did not support the plaintiff's retaliation claim because the city's denials were "at best, de minimus injuries" that were "insufficient to chill a person of ordinary firmness from continuing his protected activities."

Advisory Opinion Update

Settlement Agreements and Complaint Data

Opinion 14-020

A school district asked about the classification of certain complaint data it maintained about a former principal. The principal resigned following an investigation which did not result in discipline. He also signed a Release of Liability releasing the District from all claims. A Release of Liability is a settlement agreement for purposes of Minnesota Statutes, section 13.43, subd. 2(f), and therefore all data about the complaint or charge against the principal are public, except those data that identify confidential sources.

New Website Content!

IPAD added to its growing library of reference materials this month in the form of three new presentations. The new additions provide overviews of the Data Practices Act's provisions on, and classification of, law enforcement data and juvenile data. The third presentation provides an overview of the data challenge appeal process, which occurs when data subjects contest the accuracy and completeness of data related to themselves pursuant to Minnesota Statutes, section 13.04, subd. 4.

Like many of the other presentations already on the IPAD website, the new content provides voice-over commentary to accompany the on-screen slides, so remember to adjust your speakers accordingly. The IPAD website now has audio-visual presentations on the following topics:

- Law Enforcement Data
- Juvenile Data
- Data Challenge Appeals
- Copy Costs
- Personnel Data
- Minnesota's Open Meeting Law
- Remedies and Penalties under the Data Practices Act and Open Meeting Law

We also have a Video Library Archive with presentations on the following topics: Data Practices Laws & Terms; Intro to Data Classification; and Making & Responding to Data Practices Requests. Finally, IPAD offers traditional, non-audio, PowerPoint primers on the Data Practices Act and Open Meeting Law.

Please let us know if you have any questions or comments about materials on the website, or if you have any suggested topics for future presentations.