

2015 Legislative Session Summary

The busy 2015 legislative session came to an end in the early hours of June 13, following the conclusion of a special session. While the extended legislative season did not see the passage of a data practices omnibus bill or a law relating directly to the classification of police body camera recordings, many laws were enacted that impacted Chapter 13 as well as other related statutes. The following is a summary of the salient changes to laws on data practices and open meetings. All chapter references are to the 2015 Session Laws and are effective August 1, 2015, unless otherwise noted.

AUTOMATED LICENSE PLATE READER LEGISLATION

The most notable change to Chapter 13 came with the enactment of [Chapter 67](#), which impacts the classification of data relating to the use of automatic license plate readers (“ALPR”) by law enforcement. With the Commissioner of Administration’s 2013 temporary classification of images collected from ALPR as private/nonpublic set to expire on August 1, the images would have become presumptively public data under Chapter 13 if the legislature did not agree on how to otherwise classify them before the close of the 2015 session.

Most groups involved agreed that the limited data collected by ALPR should be classified as private/nonpublic data. Discussion focused primarily, as it had in the 2013 and 2014 sessions, on the retention period for data that did not become part of an active criminal investigation; the so-called “non-hit” data. A bill passed by the Senate in 2014 advocated a 180-day retention period, while the bill passed by the House had a 0-day retention period. Ultimately, the bodies compromised on a 60-day “non-hit” data retention period in the bill passed and signed into law on May 23, 2015.

Some key provisions of Chapter 67 include:

Arrest Data – Use of Automated License Plate Reader (ALPR) — 13.82, subd. 2(k): Classifies the use of an ALPR during an arrest as always public arrest data. ([Ch. 67, sec. 1](#)).

Maintenance of Surveillance Technology — 13.82, subd. 31 (new): Classifies the existence of all surveillance technology maintained by a law enforcement agency as public data. ([Ch. 67, sec. 2](#))



Inside this issue:

Legislative Review 1-3

Court Rules Update 3

Case Law Update 4

Opinion Update 4



Legislation, cont.

Automatic License Plate Readers (ALPRs) — 13.824 (new):

Classifies all data collected by ALPRs as private data on individuals or nonpublic data unless the data are otherwise classified under 13.82. Data collected by ALPRs that are not related to an active criminal investigation must be destroyed no later than 60 days from the date of collection. Law enforcement agencies that use ALPRs must maintain a public log of its use which must be audited biennially. The results of the audit are public data and are subject to review by the Commissioner of Administration. *Effective August 1, 2015. Data collected before the effective date must be destroyed, if required per 13.824, no later than August 16, 2015.* ([Ch. 67, sec. 3](#))

OTHER CHANGES TO CHAPTER 13

Directory Information — 13.32, subd. 5: Allows the classification of information designated as public directory information to what is necessary for conformity with the federal education privacy act (FERPA). *Effective June 14, 2015.* ([1st Special Session, Ch. 3, art. 2, sec. 1](#))

Admissions Data — 13.32, subd. 6: Removes language permitting postsecondary education institutions to collect and disseminate data collected as part of the 1986 – 1987 admissions form. *Effective 2016 – 2017 school year and later.* ([Ch. 69, art. 2, sec. 1](#))

Campus Sexual Assault Data and Audit Trails — 13.322, subd. 6 (new): Requires that data relating to allegations of sexual assault at a postsecondary educational institution be collected and disseminated per section 135A.15:

- Section 135A.15, subd. 2(8) limits access and sharing of the data
- Section 135A.15, subd. 6 requires covered entities to prepare annual reports and submit them to the Office of Higher Education
- Section 135A.15, subd. 7(a) classifies data on incidents of sexual assault shared with campus security or campus administrators as private data
- Section 135A.15, subd. 7(b) requires the institution to create an audit trail for any sexual assault data shared with any party outside of the institution

Effective August 1, 2016. ([Ch. 69, art. 4, sec. 1-2](#))

Sharing of Mental Health Data — 13.46, subd. 7(a)(4)-(5) (new): Permits sharing of private mental health data with:

- Personnel of the welfare system working in the same program or providing services to the same individual or family and in accordance with section 144.293
- Health care providers per sections 144.291-144.298 (the Health Records Act) to the extent necessary to coordinate services. ([Ch. 71, art. 2, sec. 2](#))

ABLE Accounts — 13.461, subd. 32 (new): Classifies data on ABLE accounts (“Minnesota Achieving a Better Life Experience Act” or “Minnesota ABLE Act”) and designated beneficiaries of ABLE accounts as private or nonpublic data, per section 256Q.05, subd. 7. ([Ch. 71, art. 7, sec. 1](#))

Campaign Finance and Public Disclosure Board Data — 13.607, subd. 3a (new): Classifies certain records pertaining to audits as “confidential,” as defined under 10A.09, subd. 10. ([Ch. 73, sec. 20](#))

Sex Trafficking Victim Identity Data — 13.82, subd. 17(b): Requires law enforcement agencies to withhold public access to data that would reveal the identity of a victim or alleged victim of sex trafficking. ([Ch. 65, art. 6, sec. 2](#))

Expungement Petition Data — 13.871, subd. 14 (new): Classifies data collected and shared as part of a petition for expungement of a criminal record per section 609A.03. ([Ch. 21, art. 2, sec. 8](#))

Dept. of Public Safety Disability Parking Enforcement Data — 13.69, subd. 1: Permits the release to parking enforcement employees of data necessary to enforce laws regarding parking privileges for individuals with a physical disability. *Effective May 23, 2015.* ([Ch. 75, art. 2, sec. 1](#))

OTHER DATA PRACTICES AND OPEN MEETING-RELATED CHANGES

Appropriations:

- **Legislative Commission on Data Practices:** provides \$35,000 in fiscal year 2016 and \$35,000 in fiscal year 2017 to provide support for the Legislative Commission on Data Practices. ([Ch. 77, sec. 2](#))
- **Office of Administrative Hearings:** provides \$6,000 in fiscal year 2016 and \$6,000 in fiscal year 2017 to the Office of Administrative Hearings for the cost of considering data practices complaints filed under section 13.085. ([Ch. 77, sec. 9](#))

Legislation, cont.

Broadband Provider Data: Classifies broadband deployment data provided by a broadband provider to the Broadband Development Office as nonpublic data. Classifies Broadband availability maps produced by the Broadband Development Office as public data. ([1st Special Session, Ch. 1, sec. 2](#))

Disclosure of Safe at Home Participant Address — 5B.11: Prevents the compelled disclosure of a Safe at Home participant's home address during discovery or before a tribunal unless specific need-based criteria are met. ([Ch. 65, art. 3, sec. 1](#))

Long Distance Telephone Bills — 10.43: Classifies long distance telephone bills paid for by the state as public data, regardless of the amount of the bills. *Effective for bills for usage on or after July 1, 2015.* ([Ch. 77, art. 2, sec. 4](#))



Training for State Ethnic Councils — 15.0145 (new): Requires that the Department of Administration provide training, on topics including government data practices and the open meeting law, to appointed members of Minnesota's three ethnic councils. ([Ch. 77, art. 2, sec. 5](#))

All Payer Claims Data — 62U.04, subd. 11(a)(5) (new): Permits the Commissioner of Health to use all-payer claims data to compile a public use file of summary data or tables that must be available to the public by March 1, 2016, and must not identify individual patients, payers, or providers. ([Ch. 71, art. 8, sec. 8](#))

MNsure Open Meeting Law Requirements — 62V.03, subd. 2: Makes all meetings of board members of MNsure subject to Chapter 13D. ([Ch. 71, art. 12, sec. 2](#))

Provider Release of Deceased Patient Records — 144.293, subd. 5(b) (new): Permits a provider to release a deceased patient's health care records to another provider for the purposes of diagnosing or treating the decedent's adult child. *Effective May 23, 2015.* ([Ch. 71, art. 8, sec. 19](#))

Opioid Prescribing Improvement Program Data — 256B.0638 (new): Classifies data that identify an opioid prescriber as private data on individuals until the prescriber is subject to termination as a medical assistance provider. ([Ch. 71, art. 11, sec. 30](#))

Managed Care Contracts/Subcontracts — 256B.69, subd. 5a(m) (new): Requires managed care plans and county-based purchasing plans to maintain current subcontractor agreements that are expensed to the state's public health care program, and to make them available upon request to the Commissioner of Human Services. Prohibits the release of nonpublic data. ([Ch. 71, art. 11, sec. 33](#))

Release of Data to Mandated Reporters — 626.556, subd. 10j: Requires that a local social services or child protection agency share private child maltreatment data with a mandated reporter who made the report and who has an ongoing responsibility for the health, education, or welfare of the child, unless the agency determines that providing the data would not be in the best interests of the child. A reporter who receives private data must treat the data according to that classification, regardless of whether the reporter is an employee of a government entity. The remedies and penalties under sections 13.08 and 13.09 apply to releases in violation of this section or other law. ([Ch. 71, art. 1, sec. 96](#))

Court Rules Update

In April, the Minnesota Supreme Court successfully amended the Rules of Public Access to Records of the Judicial Branch, effective July 1 of this year ([ADM10-8050](#)). Aimed at "[accommodating] the transition by the judicial branch to a more universal electronic environment", the amendments distinguish between public and non-public case types, and identify whether public documents are available only at a courthouse, or via remote access (i.e. the internet) as well. In making its determinations, the court considered a variety of competing factors, including the privacy interests of certain parties, including juveniles, the need for transparency and accountability in the state's courts, and the cost, complexity, and burden on court staff to provide public access to court documents.

Case Law Update

In *Minnesota Joint Underwriting Ass'n v. Star Tribune Media Co., LLC*, 862 N.W.2d 62 (Minn. 2015), the Minnesota Supreme Court affirmed the Court of Appeals' decision holding that the Minnesota Joint Underwriting Association (MJUA) is not a state agency. Central to the court's decision was the MJUA's label as an "association," which is not found in the definition of "State Agency" under the Data Practices Act (Minn. Stat. §. 13.02, subd. 17 (2014)) and because the MJUA does not function like a state agency, as: it consists of private insurers; is financed entirely by its members and policyholders; its employees are not employed by the state; and nothing gives MJUA power to bind the state.

In *Harlow v. State Dep't of Human Servs.*, 862 N.W.2d 704 (Minn. Ct. App. 2015), a psychiatrist at a Minnesota security hospital was engaged in an incident involving alleged maltreatment of a patient in November 2011. In February 2012, a story aired on Minnesota Public Radio (MPR) describing the incident and that the psychiatrist had been fired, referencing an employment report by the Department of Human Services (DHS). In June, 2012, MPR reported that an investigation by DHS found that both the psychiatrist and the hospital were responsible for the maltreatment. The psychiatrist sued DHS and two administrators interviewed in the MPR stories, alleging violations of the Data Practices Act and defamation. The Court of Appeals granted summary judgment and dismissed the case. The court held that the employment report documented the basis for the psychiatrist's termination, and therefore became public at the time he was fired. Pursuant to Minn. Stat. § 13.43, subd. 2(a)(5), the final disposition of any disciplinary action and the reasons for it are public.

Advisory Opinion Update

MEDICAL CANNABIS APPLICATION DATA

[Opinion 15-001](#): A state agency asked the Commissioner about the classification of data in an application submitted by a non-registered medical cannabis manufacturer applicant that are not otherwise specifically classified as not public data under Minnesota Statutes, section 152.25, subdivision 1. The Commissioner opined that after a medical cannabis manufacturer is registered, data in the application submitted by that applicant are presumptively public (except for trade secret or security information under section 13.37).

CLOSING MEETING FOR EMPLOYEE EVALUATION

[Opinion 15-002](#): A member of the public asked if a City Council had complied with the Open Meeting Law (Minnesota Statutes, Chapter 13D) when closing two meetings to evaluate the performance of an individual subject to its authority (under Minnesota Statutes, section 13D.05, subdivision 3(a)). The Commissioner concluded that when a public body requires more than one closed session to do a performance evaluation, the proper procedure is to recess and continue a meeting, rather than holding two separate meetings. The Commissioner also opined that the Council's summary of the evaluation was not timely and not sufficient.

GOVERNMENT CONTRACTOR RESPONSE TO DATA REQUEST

[Opinion 15-003](#): A member of the public asked about a government contractor's obligation to respond to a request for data the contractor maintained in connection with its work for a City. The contractor did not respond to the request. The Commissioner opined that pursuant to Minnesota Statutes, section 13.05, subdivision 11, and the clause in the contract, the contractor was subject to Minnesota Statutes, Chapter 13, for purposes of data created and maintained under the contract. Because Chapter 13 required the contractor to respond to a data request in a prompt and reasonable amount of time, the contractor did not comply.