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### **Advisory Opinion 08-003**

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2007). It is based on the facts and information available to the Commissioner as described below. All public data the Commissioner relied upon to issue this opinion are available for public inspection and copying at the office of the Information Policy Analysis Division (IPAD), unless the data have been disposed of in compliance with the state Records Management Act.

#### **Facts and Procedural History:**

On February 13, 2008, IPAD received a letter dated February 11, 2008, from Paul Grabitske, an attorney on behalf of his client. In his letter, Mr. Grabitske asked the Commissioner to issue an advisory opinion regarding his client's right to gain access to certain data from Blue Earth County.

IPAD, on behalf of the Commissioner, wrote to Dennis McCoy, Blue Earth County Administrator, in response to Mr. Grabitske's request. The purposes of this letter, dated February 21, 2008, were to inform him of Mr. Grabitske's request and to ask him to provide information or support for the County's position. On February 28, 2008, IPAD received a response, dated February 26, 2008, from Ross Arneson, Blue Earth County Attorney.

A summary of the facts as provided by Mr. Grabitske is as follows.

In a letter dated December 17, 2007, County staff wrote to Mr. Grabitske's client. County staff referenced a complaint made against the client regarding alleged inappropriate activity on the client's property and informed the client that the County had determined current activities were not in violation of the County's Code of Ordinances.

In a letter dated December 19, 2007, Mr. Grabitske wrote to the County and asked that his client be allowed to inspect "all data relating to the complaint, including all request for service data and criminal investigative data." (Request for service and criminal investigative data are law enforcement data classified pursuant to section 13.82.)

In a letter dated December 27, 2007, Mr. Arneson responded to Mr. Grabitske by stating, "The information you request is classified as confidential data under Section 13.44 of [Minnesota Statutes, Chapter 13]."

In a letter dated January 7, 2008, Mr. Grabitske wrote to Mr. Arneson, "I do not necessarily agree with your analysis regarding the data concerning the recent complaint. The statute only declares the identity of the complaining party to be confidential. It does not protect all data."

In a February 7, 2008, email, Mr. Arneson wrote to Mr. Grabitske, "In my opinion the county cannot release any information about the complaint absent a court order, as release of any information about the complaint could lead to identification of the complainant."

**Issue:**

Based on Mr. Grabitske's opinion request, the Commissioner agreed to address the following issue:

Did Blue Earth County comply with Minnesota Statutes, Chapter 13, in its response to a data request for all data relating to a complaint?

**Discussion:**

Pursuant to Minnesota Statutes, section 13.03, subdivision 1, government data are public unless otherwise classified.

Section 13.44, subdivision 1, classifies the following data as confidential: the identities of individuals who register complaints with government entities concerning violations of state laws or local ordinances concerning the use of real property.

Section 13.02, subdivision 5, defines data on individuals as government data in which any individual is or can be identified as the subject of the data, unless the appearance of the name or other identifying data clearly can be demonstrated to be only incidental to the data.

In his comments to the Commissioner, Mr. Arneson wrote:

The identity of complainants is classified as confidential under Minnesota Statute 13.44.

Mr. Grabitske is seeking to circumvent that statute by requesting enough detail so that he can ultimately overcome the statute and identify the identity of the complainant. If Mr. Grabitske's argument that such information is public is accepted, it makes the provision providing that complainants can make complaints confidentially absurd.

Mr. Arneson asserts that the County cannot release any data about the complaint because to do so would identify the complainant. It is correct that pursuant to section 13.44 the County cannot release any data that would identify the complainant. This is also the case for any data that are law enforcement data (see Advisory Opinion 00-036). Thus, if all of the data in question are those from which the complainant can be identified, they cannot be released.

The Commissioner adds the following. As section 13.44 is not a blanket-type classification, it is incumbent upon the County to make sure it has reviewed all the data in question and is withholding only those from which the complainant can be identified.

**Opinion:**

Based on the facts and information provided, my opinion on the issue that Mr. Grabitske raised is as follows:

Blue Earth County cannot release any complaint-related data that identify the individual who made a complaint. If all data related to the complaint identify the complainant, Blue Earth County complied with Minnesota Statutes, Chapter 13, in responding to the data request in question.

Signed:

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Dana B. Badgerow  
Commissioner

Dated:

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April 1, 2008