



---

### Advisory Opinion 08-004

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 12, 2008, IPAD received a letter from Mark R. Anfinson, an attorney, on behalf of his client, the *Duluth News Tribune*. In his letter, Mr. Anfinson asked the Commissioner to issue an advisory opinion regarding his client's right to gain access to certain data from the City of Duluth. IPAD requested clarification, which Mr. Anfinson provided on February 22, 2008.

IPAD, on behalf of the Commissioner, wrote to John Hall, Chief Administrative Officer for the City of Duluth, in response to Mr. Anfinson's request. The purposes of this letter, dated February 29, 2008, were to inform him of Mr. Anfinson's request and to ask him to provide information or support for the City's position. M. Alison Lutterman, Deputy City Attorney, responded, in a letter dated March 6, 2008. Mr. Anfinson and Ms. Lutterman enclosed copies of related correspondence.

A summary of the facts follows. In a letter dated November 5, 2007, Brandon Stahl, a *News Tribune* reporter, asked to inspect the following data:

- \* The names of all retirees and dependants [sic] who currently receive "free" retiree health care from their employment with the City of Duluth.
- \* The total value and nature of health care benefits each person has received.

In a letter dated November 20, 2007, the City responded that because the requested data are not included in the data listed as public under Minnesota Statutes, section 13.43, subdivision 2(a)(1), the data are private according to subdivision 4.

In a letter dated December 4, 2007, Mr. Stahl asked the City for an explanation of its denial, and repeated his request for the data described above.

In a letter dated December 28, 2007, Ms. Lutterman wrote to Mr. Stahl:

I reiterate the City's earlier position. While the names of former employees may be public, the fact that they retired is not listed as data that is public [citation omitted.] Therefore, to give you the names of former City employees who receive retiree benefits would disclose whether a former employee retired. The City can provide the types and value of benefits a retiree receives but cannot disclose the name associated with that information. For example, the City can indicate the public data for Employee No. 1, but cannot provide the name of that employee. In addition, the statute does not identify dependent data as public; therefore, the names of dependents who receive retiree benefits cannot be disclosed.

**Issue:**

Based on Mr. Anfinson's request, the Commissioner will address the following issue:

Did the City of Duluth comply with Minnesota Statutes, Chapter 13, when it denied public access to the following data: the names of all retirees and dependents who currently receive "free" retiree health care from their employment with the City; and the total value and nature of health care benefits each person has received?

**Discussion:**

Pursuant to Minnesota Statutes, section 13.03, government data are public unless otherwise classified. Section 13.43 classifies data on individuals who are current or former employees of a government entity. Subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private, and also states "[d]ata pertaining to an employee's dependents are private data on individuals."

Among the data on current and former employees that are classified as public under section 13.43, subdivision 2(a)(1) are: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary.

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

Our position can be simply stated. Minn. Stat. §13.43, subd. 2(a) appears quite clearly to classify as public certain specified personnel data on "current and former employees." Among the data expressly classified as public in paragraph (1) are the employee's name *and* "the value and nature of employer-paid fringe benefits." Given this language, we do not understand how the City Attorney's office can conclude that if the City provides the "types and value" of benefits a retiree receives, it may not identify the retiree.

Correspondingly, it seems to us that since the health benefits paid for dependents of City retirees can be claimed only because the retiree was once an employee of the City, such data are also covered by the portion of paragraph (1) referring to the value and nature of

employer-paid fringe benefits. In other words, health coverage for dependents of retirees is an employer-paid fringe benefit as well. [Emphasis provided.]

In her comments to the Commissioner, Ms. Lutterman wrote:

The City does not dispute that the names of former employees and the nature and value of fringe benefits are public data [citation omitted.] However, the names of the employees in the context of the request is [sic] not public. This is so because by identifying the names of retired employees, the City is providing more data than just a name. The City is also providing the reason for the employee's termination of employment. The reason for an employee's termination of employment is not public unless the termination is a result of final disciplinary action, in which case the data would be public [citation omitted.]

The City's position that the classification of the data needs to be informed by the context of the request is supported by the strict construction given the statute by the [Minnesota] Supreme Court in [*Navarre v South Washington County School District*, 652 N.W.2d 9 (Minn. 2002)], and by Commissioner [of Administration] opinions. . . .

Ms. Lutterman cited Advisory Opinions 07-004 and 07-001 in support of the City's position. In 07-004, the Commissioner opined:

Section 13.43 provides that certain data on individuals are public and some are private. An employee's name is one of the types of data that is listed as public. However, the fact that certain personnel data are private means there are situations in which an employee's name cannot be released because pairing the data with the employee's name would release data about that employee that are classified as private by section 13.43.

Ms. Lutterman wrote, "[h]ere, the City was faced with a similar context problem. . . . By providing a list of the names of former employees who are retired, the City would make public, data that is not public; namely, the non-disciplinary reason for the employment termination." She further stated, "[t]he City does not dispute that the value and nature of health care benefits received by former employees of the City are public personnel data. However, [Mr.] Stahl's request would have required the City to identify each individual retiree and then connect the fringe benefit data to that retiree. As discussed above, the employee's identity as a retiree is not public data. . . ."

As to the data on dependents Mr. Stahl requested, Ms. Lutterman wrote that under section 13.43, subdivision 4, data pertaining to an employee's dependents are private data:

The City assumed in its response to [Mr.] Stahl that health care benefits received by a dependent of a former employee as a result of the former employment relationship are fringe benefits received by the former employee. Therefore, the nature and value of the benefit is public [citation omitted.] However, the context of the request asked the City to connect an identity to the benefit. If the City provided the data as requested, the City would have disclosed private data on individuals. The private data are (1) the fact that a former employee retired, (2) the fact that the retiree has dependents, and (3) the identity of the dependents.

The Commissioner concurs. The reason a former employee left City employment (absent final disciplinary action) is not public. Mr. Stahl did not ask for otherwise public data on former employees; he asked for identifying data about retirees and their dependents. The City would have improperly released private data had it complied with his request as stated. However, if Mr. Stahl, or anyone, were to ask for the names, value and nature of fringe benefits, and any other public data on former employees, the City could provide access to those data.

**Opinion:**

Based on the facts and information provided, my opinion on the issue that Mr. Anfinson follows:

The City of Duluth complied with Minnesota Statutes, Chapter 13, when it denied public access to the following data: the names of all retirees and dependents who currently receive “free” retiree health care from their employment with the City; and the total value and nature of health care benefits each person has received.

Signed:

\_\_\_\_\_  
Dana B. Badgerow  
Commissioner

Dated:

\_\_\_\_\_  
April 11, 2008