



Advisory Opinion 08-006

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 same, from Mark Anfinson, an attorney representing the *St. Cloud Times*. In his letter, Mr. Anfinson asked the Commissioner to issue an advisory opinion regarding the newspaper's access to certain data from the Stearns County Sheriff. Mr. Anfinson subsequently, on February 28, 2008, revised his request so that the involved entity was the Stearns County Attorney. Mr. Anfinson submitted additional clarification on March 5, 2008.

IPAD, on behalf of the Commissioner, wrote to Janelle Kendall, Stearns County Attorney, in response to Mr. Anfinson's request. The purposes of this letter, dated March 11, 2008, were to inform her of Mr. Anfinson's request and to ask her to provide information or support for her position. On March 24, 2008, IPAD received comments from Marcus Miller, Chief of the Civil Division of the Stearns County Attorney's office.

A summary of the facts as Mr. Anfinson presented them is as follows. In his opinion request, Mr. Anfinson wrote:

On January 25, 2008, a young Royalton man was shot to death at a private home. In response to media requests, law enforcement authorities provided some of the information specified in Minn. Stat. § 13.82, subd. 6 (response or incident data), and Stearns County Sheriff John Sanner supplied additional information....

In its early stages of coverage, the *Times* formally requested all response and incident data related to the shooting, as well as a transcript of the 911 call reporting it...However, Stearns County Attorney Janelle Kendall refused to furnish some of the information listed in § 13.82, subd. 6....

After further exchanges, the *Times* received a letter (dated January 8, 2008) from Marcus Miller, chief of the civil division in the County Attorney's office. A copy is enclosed...

In his February 8, 2008, letter, Mr. Miller wrote:

You have requested the following:

- The names, dates of birth and city of residence of witnesses to a fatal shooting.
- The name, date of birth and city of residence of the alleged shooter.
- A brief reconstruction of the events associated with the fatal shooting.
- The address where the fatal shooting took place.
- Transcript of the 911 call reporting the shooting.

I have confirmed that a criminal investigation into these matters is active and ongoing. At this time, your request for the aforementioned active criminal investigative data is denied in whole. Minnesota Statutes § 13.03, subd. 3(f) provides that “upon the request of any person denied access to data, the responsible authority. . . shall certify in writing that the request has been denied and cite the specific statutory section. . . upon which the denial [is] based.” Your request is denied pursuant to Minn. Stat. § 13.82, subds. 2, 7, 14, and 17, as well as Minn. Stat. § 13.83, subd. 4.

In his opinion request, Mr. Anfinson disagreed with Mr. Miller’s response.

Issue:

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

Did the Stearns County Attorney comply with Minnesota Statutes, Chapter 13, in responding to a request for the following data related to a shooting that occurred on January 25, 2008: the names, dates of birth and city of residence of witnesses to the fatal shooting; the name, date of birth and city of residence of the alleged shooter; a brief reconstruction of the events associated with the fatal shooting; the address where the fatal shooting took place; and the transcript of the 911 call reporting the shooting?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified.

Data that law enforcement agencies collect, create, and maintain are classified pursuant to section 13.82. Certain law enforcement data are always public, certain law enforcement data are never public, and certain law enforcement data may become public depending on the occurrence of certain events.

The issue here is the classification of the specific data the newspaper requested. The Commissioner first will address the classification of data related to the witnesses of the shooting. The names and addresses of witnesses are response or incident data pursuant to section 13.82, subdivision 6(g). Response or incident data always are public even if there is an active criminal

investigation relating to the incident. However, a government entity must withhold these data if the identities of the individuals qualify for protection under section 13.82, subdivision 17. Mr. Miller argued that the County Attorney could withhold the response or incident data regarding the witnesses based on section 13.82, subdivision 17. Clause (d) of section 13.82, subdivision 17, states that a law enforcement agency shall withhold identifying data about witnesses when:

access to the data would reveal the identity of a victim or witness to a crime if the victim or witness specifically requests not to be identified publicly, unless the agency reasonably determines that revealing the identity of the victim or witness would not threaten the personal safety of the individual

Section 13.82, subdivision 17 further states, “Law enforcement agencies shall establish procedures to acquire the data and make the decisions described in clauses...(d)...”

Mr. Miller did not provide information to the Commissioner suggesting that any of the witnesses had asked to have their names withheld because they feared for their safety. Nor did Mr. Miller discuss whether the County Attorney has procedures in place to document how they make their decisions when a witness is concerned about his/her personal safety. Without additional factual information, the Commissioner is unable to determine whether it was appropriate for the County Attorney to withhold data based on section 13.82, subdivision 17.

Mr. Miller also cited section 13.82, subdivision 14, as a basis upon which to deny the newspaper access to response or incident data about the witnesses to the shooting. Subdivision 14 states:

A law enforcement agency may temporarily withhold response or incident data from public access if the agency reasonably believes that public access would be likely to endanger the physical safety of an individual or cause a perpetrator to flee, evade detection or destroy evidence. In such instances, the agency shall, upon the request of any person, provide a statement which explains the necessity for its action. Any person may apply to a district court for an order requiring the agency to release the data being withheld....

Generally, a government entity is in the best position to determine whether this provision applies. When the County Attorney initially cited this section, the newspaper had the right to ask the county for an explanation; the Commissioner does not know if the newspaper did this.

Although it may have been appropriate for the County Attorney initially to withhold the names and addresses of witnesses, it does not seem appropriate for the County Attorney to continue to withhold data pursuant to section 13.82, subdivision 14 after an individual was charged in the incident. The County Attorney appears to take the position that her authority to temporarily withhold the data to prevent, among other things, the destruction of evidence, can continue throughout the criminal prosecution of the individual charged with the shooting unless ordered by a court to release it. The Commissioner does not agree with that interpretation of subdivision 14. Once an individual is charged with a crime, there are other mechanisms the County Attorney can use to address the protection of, or tampering with, victims, witnesses, or evidence.

The newspaper also requested the birth dates of the witnesses. These data are not listed in section 13.82, subdivision 6, as response or incident data. However, if the County Attorney maintains these data, they are subject to the general presumption in Chapter 13 and are public unless otherwise classified.

The Commissioner next will address the classification of the name, date of birth, and city of residence of the shooter. The Commissioner discussed a similar issue in Advisory Opinion 00-078;

...It is reasonable to assume that witnesses to possible crimes are frequently also suspects. However, as discussed above, arrest, request for service, and response or incident data, including identities of witnesses, are always public. Subdivision 7 provides: “[e]xcept for the data defined in subdivisions 2, 3, and 6, investigative data . . . is confidential or protected nonpublic while the investigation is active.” Accordingly, the identity of an individual, as a witness, is public under subdivision 6. A law enforcement agency is not obligated to disclose to the public that the individual is also a suspect.

[Emphasis provided.]

Thus, if the individual who eventually was charged initially was identified by law enforcement as a witness, the classification of his name, date of birth, and city of residence is the same as the Commissioner discussed above. However, if this individual immediately was identified as the shooter, the data about him are public pursuant to the general presumption, and could be protected under section 13.82, subdivision 7 (active criminal investigative data). At the point the shooter was arrested and charged, his name, age, and last known address became public pursuant to section 13.82, subdivision 2(j) (arrest data).

The Commissioner next will address the newspaper’s request for access to a brief reconstruction of the events associated with the fatal shooting. These data are response or incident data listed in section 13.82, subdivision 6(f), and are public. It is possible that the County Attorney could exercise her discretion under section 13.82, subdivision 14, and withhold these data, but only *temporarily*. For more information, see the discussion above related to the classification of the witness data.

The Commissioner next will address the newspaper’s request for the address where the fatal shooting took place. Section 13.82, subdivision 6(a), lists as public the date, time, and place of action, whereas the newspaper asked for the address where the shooting occurred. The County Attorney responded by providing the name of the avenue in the township where the shooting took place. (This response was dated February 28, 2008, the same day the County Attorney released its statement naming the person who had been charged in the incident.) Mr. Anfinson argued, “In our view, where an action occurs at a location having a specific address, that address must be provided, unless an exception otherwise found in section 13.82 applies.” The Commissioner agrees; as the County Attorney does not appear to have provided a basis upon which to withhold the address, it should have been provided to the newspaper.

Finally, the Commissioner will address the classification of the transcript of the 911 call reporting the shooting. Section 13.82, subdivision 4, states, "...a written transcript of the audio recording [of a call placed to a 911 system for the purpose of requesting service from a law enforcement agency] is public, unless it reveals the identity of an individual otherwise protected under subdivision 17."

Section 13.82, subdivision 17 (f), states that a law enforcement agency shall withhold public access:

when access to the data would reveal the identity of a person who placed a call to a 911 system or the identity or telephone number of a service subscriber whose phone is used to place a call to the 911 system and: (1) the agency determines that revealing the identity may threaten the personal safety or property of any person; or (2) the object of the call is to receive help in a mental health emergency. For the purposes of this paragraph, a voice recording of a call placed to the 911 system is deemed to reveal the identity of the caller.

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

With respect to the 911 phone call, the [newspaper] has never requested that a transcript be prepared and has made no attempt to arrange payment for the cost of preparing such transcript, as required by Minn. Stat. 13.82, subd. 4. More importantly, even if the [newspaper] has requested preparation of a transcript and arranged payment for the costs, the transcript is expressly subject to the protections of subdivision 17....Likewise, to the extent that it contains [response or incident data], the transcript is subject to the protections afforded in subdivision 14 as well.

Mr. Miller did not provide any information to explain how the personal safety or property of the caller or the service subscriber would be compromised if the County Attorney released the 911 call transcript. Thus, the Commissioner has no basis upon which to agree with the County Attorney's position that the data were appropriately withheld from the newspaper.

Mr. Miller also asserted that the County Attorney can withhold the transcript of the 911 call pursuant to section 13.82, subdivision 14. As discussed above, this provision permits law enforcement agencies to protect "response or incident data from public access." Response or incident data are defined under section 13.82, subdivision 6, as data created or collected by a law enforcement agency which document the agency's response to a request for service or which describe actions taken by the agency on its own initiative. The transcript of a call to a 911 system is request for service data, not response or incident data. The Commissioner disagrees with Mr. Miller; the County Attorney may not withhold the 911 transcript based on section 13.82, subdivision 14.

Following are two additional comments. In his comments to the Commissioner, Mr. Miller cited 13.83, subdivision 4, as a basis upon which the County Attorney can withhold data. (Section 13.83 classifies medical examiner data.) He wrote:

...the Stearns County Sheriff's Department is also the Office of the Medical Examiner...Medical examiner data provided to law enforcement agencies remain medical examiner data. While the scope of the request is unclear in this regard, any accurate "brief reconstruction of the events associated with the incident" would include the cause of death, as well as the findings and essential details of the autopsy.

[Emphasis provided.]

Pursuant to section 13.83, subdivision 1, medical examiner data are data relating to deceased individuals and the manner and circumstances of their death which are created, collected, used or maintained by a county coroner or medical examiner in the fulfillment of official duties pursuant to Chapter 390. Section 13.83, subdivision 4, classifies data collected by a county coroner or medical examiner which are part of an active investigation mandated by Chapter 390. Generally, active investigative data are confidential/protected nonpublic and when the investigation is no longer active, the data revert to private/nonpublic.

Mr. Miller did not explain how the data at issue in this opinion are medical examiner data as opposed to law enforcement data. Even if the two functions are being performed out of the same office, the Medical Examiner's responsibilities are different than those of the Sheriff. For these reasons as well as the Legislature's clear direction that certain response or incident data (as well as arrest and request for service data) always are public regardless of whether there is an active criminal investigation, the Commissioner cannot agree that the data in question are classified pursuant to section 13.83.

Finally, it is important to keep in mind that pursuant to section 13.82, subdivision 7, any data the County Attorney was protecting as part of an active criminal investigation become public once those data are presented in court.

Opinion:

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

Pursuant to section 13.82, subdivision 14, the Stearns County Attorney could have temporarily withheld from public access the names, dates of birth and city of residence of witnesses to the fatal shooting. However, as soon as an individual was charged in the incident, the County Attorney should have released the data to the newspaper, unless the identities of the witnesses qualified for protection under section 13.82, subdivision 17.

Regarding the request for the name, date of birth and city of residence of the alleged shooter, the data are not request for service data, but are public pursuant to the general presumption, and could be protected under section 13.82, subdivision 7 (active criminal investigative data). However, as soon as the County Attorney

charged an individual in the shooting, his name, age, and last known address became public under section 13.82, subdivision 2(j) (arrest data).

Pursuant to section 13.82, subdivision 14, the Stearns County Attorney could have temporarily withheld from public access the brief reconstruction of the events associated with the fatal shooting. However, as soon as an individual was charged in the incident, the County Attorney should have released the data to the newspaper.

Pursuant to section 13.82, subdivision 14, the Stearns County Attorney could have temporarily withheld from public access the address where the fatal shooting took place. However, as soon as an individual was charged in the incident, the County Attorney should have released the data to the newspaper.

Regarding the request for the transcript of the 911 call reporting the shooting, the data are public, unless they reveal the identity of an individual otherwise protected under section 13.82, subdivision 17.

Signed:

Dana B. Badgerow
Commissioner

Dated:

April 24, 2008