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## Advisory Opinion 08-009

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 April 15, 2008, IPAD received a letter dated April 14, 2008, from Ann Walther, an attorney representing the Minneapolis Park and Recreation Board. In her letter, Ms. Walther asked the Commissioner to issue an advisory opinion regarding the classification of certain data.

Upon receiving Ms. Walther's opinion request, IPAD, on behalf of the Commissioner, wrote to the Foundation for Minneapolis Parks (Foundation), the organization that submitted the data in question to Park Board Commissioners. This letter was dated April 29, 2008. IPAD did not receive any response.

A summary of the facts as provided by Ms. Walther is as follows. In her opinion request, Ms. Walther wrote:

The [Foundation] is a Minnesota Nonprofit Corporation. It is a 501(c)(3) (charitable) organization...

In accordance with its purpose, the Foundation contracted with an author to write a book on the history of the Minneapolis park system.... The Foundation would hold the copyright to the [book] and would sell the [book] to the public...

In mid-March, 2008, the [book] was sent to print. As a courtesy to the Park Board, the Foundation mailed a copy of the final [manuscript]... to each of the Park Board Commissioners on March 29 for their review prior to the...scheduled release of media kits announcing the book's scheduled release to the public...

At the Park Board's April 2, 2008 regular meeting, several Commissioners mentioned that they had received the [manuscript] and some expressed issues about the [manuscript]. One Commissioner also provided their copy of the [manuscript] to the Mayor of the City of Minneapolis. On April 7, 2008, a citizen requested a copy of the [manuscript].

Since the April 2, 2008 meeting, the printing of the [book] has been temporarily postponed. The [book] has been, and may still be, edited, and therefore, the [manuscript] is not representative of the final [book].

**Issues:**

Based on Ms. Walther's opinion request, the Commissioner agreed to address the following issues:

1. Is the unpublished manuscript written by an individual under contract to the Foundation for Minneapolis Parks government data, as that term is defined in Minnesota Statutes, section 13.02, subdivision 7?
2. If the manuscript is government data, what is its classification?
3. If the manuscript is government data and its classification is public data, can the Minneapolis Park and Recreation Board refuse to provide copies of the data because it is copyrighted by a third party, private entity?

**Discussion:**

*Issue 1: Is the unpublished manuscript written by an individual under contract to the Foundation for Minneapolis Parks government data, as that term is defined in Minnesota Statutes, section 13.02, subdivision 7?*

Minnesota Statutes, section 13.02, subdivision 7, defines government data as "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use."

As described by Ms. Walther, the Foundation is a private, nonprofit corporation. Typically, data collected and maintained by private nonprofit corporations are not subject to Chapter 13, unless there is contract between a government entity and the nonprofit. Here, the Commissioner was not provided with any information to suggest that there is a contract between the Foundation and the Park Board relating to the manuscript or the book. Thus, in the possession of the Foundation, it does not appear that the manuscript or any related data are subject to Chapter 13.

However, at the point in time when the Foundation provided copies of the manuscript to the Park Board Commissioners, the manuscript became government data. The Park Board is a government entity and its Commissioners clearly were acting in their official capacities when they reviewed and provided comments, at their meeting, on the manuscripts they had received. Thus, the manuscript in the hands of the Park Board and/or its Commissioners is government data.

*Issue 2: If the manuscript is government data, what is its classification?*

Pursuant to Chapter 13, government data are public unless otherwise classified. (See section 13.03, subdivision 1.) The Commissioner is not aware of any provision that classifies the data in the manuscript as anything other than public. The fact that the manuscript still is in draft form does not affect the classification. As the Commissioner wrote in Advisory Opinion 02-026, "...draft versions of public data are public data."

**Issue 3:** *If the manuscript is government data and its classification is public data, can the Minneapolis Park and Recreation Board refuse to provide copies of the data because it is copyrighted by a third party, private entity?*

In Advisory Opinion 02-012, the Commissioner addressed the issue of public access to copyrighted business plans that a third party had submitted to a city. The Commissioner, basing her conclusion on Minnesota Attorney General Opinion 852 (December 4, 1995), wrote that the city complied with Minnesota Statutes, Chapter 13, by allowing inspection of the plans, but providing copies of the plans only with permission of the copyright holder.

Here, Ms. Walther wrote that the Foundation holds the copyright to the manuscript and (later) to the book. Thus, based on Attorney General Opinion 852 and Advisory Opinion 02-012, the Park Board must allow the public to inspect the manuscript but must have permission from the Foundation before providing a copy to the public.

**Opinion:**

Based on the facts and information provided, my opinion on the issues Ms. Walther raised is as follows:

1. The data in the unpublished manuscript in the hands of the Minneapolis Park and Recreation Board and its Commissioners is government data.
2. Pursuant to Minnesota Statutes, section 13.03, subdivision 1, the manuscript is public data.
3. Based on Minnesota Attorney General Opinion 852 (December 4, 1995), and Advisory Opinion 02-012, the Minneapolis Park and Recreation Board must have permission from the Foundation before providing the public with a copy of the manuscript.

Signed:

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Dana B. Badgerow  
Commissioner

Dated:

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May 16, 2008