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## Advisory Opinion 08-010

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 14, 2008, IPAD received a letter dated April 9, 2008, from Anna Mackin, on behalf of Pic-A-Prof. In her letter, Ms. Mackin asked the Commissioner to issue an advisory opinion regarding Pic-A-Prof's access to certain data from Normandale Community College (NCC), which is part of Minnesota State Colleges and Universities (MnSCU).

IPAD, on behalf of the Commissioner, wrote to James McCormick, Chancellor of MnSCU, in response to Ms. Mackin's request. The purposes of this letter, dated April 22, 2008, were to inform him of Ms. Mackin's request and to ask him to provide information or support for NCC's position. On May 2, 2008, IPAD received a response, dated same, from Kristine Kaplan, Deputy General Counsel for MnSCU.

A summary of the facts as Ms. Mackin provided them is as follows. In a letter dated March 12, 2008, Pic-A-Prof staff wrote to NCC and asked for the following data:

...the grade distributions for all formal courses at [NCC] for the fall 2007 academic semester under [Minnesota Statutes, Chapter 13]....The report would include the following data points:

- Course Abbreviation...
- Course Number...
- Section Number...
- Number of A's given by professor
- Number of B's given by professor
- Number of C's given by professor
- Number of D's given by professor
- Number of F's given by professor
- Number of Students that Dropped

In an email dated March 17, 2008, NCC responded, “Faculty grading information is, in part, used to evaluate the performance of instructors. Therefore, this information is private personnel data and cannot be released...”

**Issue:**

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

Did Normandale Community College (part of Minnesota State Colleges and Universities) comply with Minnesota Statutes, Chapter 13, in responding to a March 12, 2008, request for access to data?

**Discussion:**

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (See section 13.03, subdivision 1.)

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.

Data on individuals is defined in section 13.02, subdivision 5, as government data in which any individual is or can be identified as the subject of the data.

(The Commissioner notes that Pic-A-Prof did not include the names of faculty in its data request. However, the data it asked for were from the fall 2007 academic semester, and the names of faculty and the courses they teach are public data at NCC and presumably published in paper and online directories. Thus, by asking for and obtaining the numbers of specific grades given in specific course and section numbers during the fall 2007 semester, Pic-A-Prof would be able to connect the names of the faculty members to the requested data.)

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

Course grade information not only demonstrates individual student achievement, but is also data that is collected by colleges and universities from faculty because it reflects performance of assigned work....

Grade distributions are sometimes used by [NCC] administrators for faculty performance evaluations, and may assist in identifying competency concerns if, for example, the distributions appear to be grossly skewed – or show all one grade. The timeliness, completeness and accuracy of grades are not unimportant administrative matters that may also be indicative of a faculty member’s performance and factors in review proceedings, including tenure decisions. Thus, grade distribution information on an individual faculty member fits neatly into the statutory definition of personnel data that is collected on an individual because of his/her employment status.

To underscore the point that grade distribution information is “about” the faculty member, it is important to understand how that compilation reflects the individual’s personal and professional philosophy; grading is not simply a scrivener’s record about student performance. Higher education instructional literature identifies two basic grading systems: 1) “criterion-referenced,” where grades are based on objective, pre-determined standards of performance; and 2) “norm-referenced,” where grades are based on a preset distribution of scores (e.g., the “bell curve” distribution), and there are numerous recognized variations for each....

Individual faculty members at [NCC] have significant discretion to select a grading system and variation that he/she believes is appropriate for the discipline subject matter and relevant teaching and learning styles. An instructor’s selection of grading methodology reveals that individual’s considered balancing of all the relevant factors. Grade distribution patterns reflect that instructor’s judgment and determination of an appropriate grading system – exactly the kind of...information that the Commissioner has previously declared may constitute private personnel data under Minn. Stat. § 13.43, Subd. 4...

The issue here is the classification of data listing the distribution of grades a faculty member gives for a specific course. Section 13.43 applies and classifies the data only if the faculty member is the subject of the data. If not, the data are presumptively public.

In her comments, Ms. Kaplan asserts that NCC collects, creates, and maintains the requested data, at least in part, to evaluate the performance of its faculty members. She stated, “...grade distributions are sometimes used...for faculty performance evaluations...” In addition, in NCC’s response to Pic-A-Prof’s data request, staff wrote, “Faculty grading information is, in part, used to evaluate the performance of instructors.” The Commissioner agrees that when the data in question are collected, created, and maintained to evaluate faculty performance, the faculty members are the subjects of the data and the data appropriately are classified pursuant to section 13.43. Because performance data are not listed as public in subdivision 2 of section 13.43, the data are private.

This conclusion is buttressed by a Minnesota Court of Appeals decision involving the classification of certain data St. Paul police officers collected during traffic stops in eight months of the year 2000. (See *Star Tribune v. City of St. Paul*, 660 N.W. 2d 821.) The Court held, “We conclude the police officers are the subjects of the data in question and that the data [were] collected because the police officers were employees of a government entity. As such, the data [are] classified as personnel data and [are] not publicly accessible under [Chapter 13].” *Id.* at 828. The Commissioner notes that the Court’s reasoning in the *Star Tribune* case appears based on a view that the police officers collected the traffic stop data so the City could evaluate their performance.

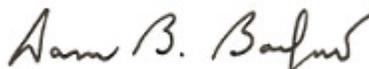
Thus, the Commissioner opines that to the extent the data in question are collected, created, and maintained as tools for evaluating faculty performance, the data may be protected as private personnel data.

**Opinion:**

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

To the extent Normandale Community College (NCC), which is part of Minnesota State Colleges and Universities, is collecting, creating, and maintaining the grade distribution data for purposes of evaluating faculty members, NCC complied with Minnesota Statutes, Chapter 13, in denying access to the data requested on March 12, 2008.

Signed:



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Dana B. Badgerow  
Commissioner

Dated:

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May 16, 2008