



Advisory Opinion 08-011

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 10, 2008, IPAD received an e-mail from Paul Bakken. In his letter, Mr. Bakken asked the Commissioner to issue an advisory opinion regarding his right to have access to certain data from the Eagan Charter Commission. IPAD requested additional information and clarification, which Mr. Bakken provided on April 22, 2008.

IPAD, on behalf of the Commissioner, wrote to Dee Richards, Chair of the Commission, in response to Mr. Bakken's request. The purposes of this letter, dated April 23, 2008, were to inform her of Mr. Bakken's request and to ask her to provide information or support for the Commission's position. Ms. Richards did not respond.

A summary of the facts follows. According to Mr. Bakken:

On or about March 19, 2007, the Chair and Secretary of the Commission sent official correspondence to the Chief Judge of Dakota County. . . . On March 20, 2008, I requested access to this letter under the Minnesota Data Practices Act. The Chair and Secretary have refused this request, claiming that the letter is not a record of the Charter Commission.

Mr. Bakken stated that he is a member of the Eagan Charter Commission, but "I specifically made my March 20, 2008 request as a member of the public, pursuant to my rights under the Act."

In a March 21, 2008, e-mail to Mr. Bakken, Ms. Richards wrote:

While Charter Commission files do contain some communication with the court that has occurred [sic] over the years it is by no means a complete record. That complete record of communication is maintained in the official court file.

The Charter Commission is not required to provide copies of documents that are retained in the official file any more than it is required to provide copies of documents that are retained by the City of Eagan. . . .

Since the Charter Commission has not received reimbursement of expenses for the past 2 years or so copies maintained by other parties have not been routinely retained.

As I previously stated, since the letter to Judge Macklin is official correspondence which will be retained in the official file maintained by the court, I did not retain a copy. I stated I did not retain an electronic version because that is the format you requested. I also did not retain a hard copy.

Whether as a member of the Charter Commission or as a member of the public you will need to request a copy of the letter from Judge Macklin.

Issue:

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

Did the Eagan Charter Commission comply with Minnesota Statutes, Chapter 13, in its response to a March 20, 2008, request for a copy of certain correspondence between the Commission and the Dakota County Court?

Discussion:

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

Pursuant to Minnesota Statutes, section 13.03, when a government entity receives a data request from an individual who is not the subject of the data, the entity is required to respond in an appropriate and prompt manner and within a reasonable time. (See section 13.03, subdivision 2(a), and Minnesota Rules, section 1205.0300.)

The Commissioner previously addressed issues related to the Commission, in Advisory Opinion 04-059, which Mr. Bakken also requested:

As stated above, for purposes of Chapter 13, a political subdivision includes a commission created pursuant to law. Minnesota Statutes, Chapter 410, contains the enabling legislation that grants charter commissions their powers and responsibilities. Thus, it is the Commissioner's conclusion that a charter commission, such as the Eagan Charter Commission, is a political subdivision and therefore is subject to the requirements of Chapter 13.

Thus, the Commission is a political subdivision, and as such, it is required to maintain official records and provide access to those data as requested. Here, Mr. Bakken asked for a copy of a letter Ms. Richards described as “official correspondence which will be retained in the official file maintained by the court.” It is not clear from that statement if the letter is an official record of the Commission. However, the Commission does not maintain a copy. Ms. Richards told Mr. Bakken that he must ask the Dakota County Court for access to it.

In 04-059, the Commissioner addressed the issue of whether the Commission should be retaining, and providing access to, such data:

Mr. Felde also advised Mr. Bakken that certain of the data he requested were available at the League of Minnesota Cities, a local library, the District Court in Hastings, and the City of Egan. Thus, it appears the Commission does not maintain some of the types of data Mr. Bakken requested. If so, the Commission may be in violation of Minnesota Statutes, section 15.17, the Official Records Act. Section 15.17, subdivision 1, states, “All officers and agencies of [government entities]... shall make and preserve all records necessary to a full and accurate knowledge of their official activities.” Section 15.17, subdivision 4, states, “Access to records containing government data is governed by sections 13.03 and 138.17.” Accordingly, section 15.17, read in concert with section 13.03, imposes an obligation upon government entities to make and preserve a record of their actions so that the data in those records will be available pursuant to the provisions of Chapter 13.

At least some of the data Mr. Bakken requested, e.g., meeting minutes, bylaws, annual reports, and financial reports, appear to document decisions made by the Commission. Such documentation constitutes an official record, must be maintained pursuant to the provisions of Minnesota Statutes, section 138.17, and is subject to the access provisions of Chapter 13.

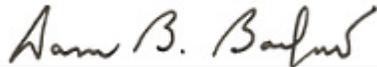
Mr. Bakken submitted a copy of the public access procedures the Commission adopted on January 11, 2006. According to that document, the Commission maintains some of its data, and the Dakota County Court and the City of Egan maintain various other kinds of data that apparently are official records of the Commission. Data requestors are directed to ask for access at one of the three entities, depending on the specific data.

As the Commissioner opined in 04-059, the Commission is obligated to maintain and provide access to its official records, and must establish proper procedures to ensure that it meets its obligations under Chapter 13. Ms. Richards stated that the letter is “official correspondence.” Thus, it is an official record of the Commission, the Commission should maintain a copy of it, and provide a copy to Mr. Bakken.

Opinion:

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

The Eagan Charter Commission did not comply with Minnesota Statutes, Chapter 13, in its response to a March 20, 2008, request for a copy of certain correspondence between the Commission and the Dakota County Court, as the letter is an official record of the Commission, and as such, the Commission should maintain a copy of it.

Signed: 

Dana B. Badgerow
Commissioner

Dated: May 29, 2008