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### Advisory Opinion 08-016

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 June 3, 2008, IPAD received a letter dated June 5, 2008, from Charles Tyler. In his letter, Mr. Tyler asked the Commissioner to issue an advisory opinion regarding his right to gain access to certain data from the Minnesota Department of Agriculture.

IPAD, on behalf of the Commissioner (of Administration), wrote to Gene Hugoson, Commissioner of the Department of Agriculture, in response to Mr. Tyler's request. The purposes of this letter, dated June 12, 2008, were to inform him of Mr. Tyler's request and to ask him to provide information or support for the Department's position. On June 26, 2008, IPAD received a response, dated June 25, 2008, from Commissioner Hugoson.

A summary of the facts as Mr. Tyler provided them is as follows. In a letter dated May 6, 2008, Mr. Tyler (using a pseudonym) wrote to Commissioner Hugoson:

Our firm has been contracted to evaluate the report prepared by the University of Minnesota...concerning the feasibility of using E20 as a motor fuel....

In the May 6 letter, Mr. Tyler referred to a data request he had made on April 28, 2008, to someone at the Department who is not the responsible authority. Mr. Tyler reiterated his request for "a copy of the Request for Proposal...associated with the contract entered between your agency and the U of M regarding the feasibility study." The request also included, "copies of all correspondence between your agency, the U of M, and any other entity related to the project."

In his opinion request, Mr. Tyler wrote that on May 9, 2008, he received a voice mail message from Doug Spanier, of the Department, informing him that the data had been compiled and that Mr. Tyler should contact Mr. Spanier to arrange for payment and shipping.

In a May 12, 2008, email, Mr. Spanier wrote to Mr. Tyler:

...Our search has found approximately 800 emails dealing with the correspondence between us and any outside entity regarding the E20 driveability [sic] study. My understanding from our I.T. department is that we should be able to put them all on a disk for you; thus, there would be no cost to you on printing, just the cost of the disk, which is .50 and staff time for searching and compiling the data. The total cost is \$20. Please remit payment to the address...Once we have received payment, we will send you the disk.

In an email dated May 13, 2008, Mr. Tyler wrote to Mr. Spanier advising that he had mailed the check.

In an email dated May 21, 2008, Mr. Tyler wrote to Mr. Spanier: "What is the status of my data request? The check was mailed on May 15...."

In an email dated May 23, 2008, Mr. Spanier responded: "We are currently working through the emails checking to see if there is any protected information. We should be able to get the information to you next week some time..."

Mr. Tyler wrote in his opinion request that on June 2, 2008, he contacted the Department's Data Practices Compliance Official and did not receive any response. Mr. Tyler also wrote, "As of this date, I have not received the data requested."

**Issue:**

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

Did the Minnesota Department of Agriculture (MDA) comply with Minnesota Statutes, Chapter 13, in regards to a May 6, 2008, request for a copy of an RFP associated with the contract between MDA and the University of Minnesota; and all correspondence between MDA, the University, and any other entity related to the project?

**Discussion:**

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, part 1205.0300.)

In his comments, Commissioner Hugoson wrote:

...On May 9, Doug Spanier contacted [Mr. Tyler] and informed him that the Department was in the process of determining the extent of the request and to contact him to discuss how he would like the data sent to him....

On Monday May 12<sup>th</sup>...you will note in the attached email...that Mr. Spanier notified [Mr. Tyler] that the Department had approximately 800 emails, and that if he would like to narrow his search to reduce the amount in the request, he could let him know....

The Department received [Mr. Tyler's] check on the 15<sup>th</sup>, and division personnel were notified on May 16<sup>th</sup> to start assembling the request. During the course of the next two weeks, Department personnel had to go through over 800 emails and correspondence to determine if there were any nonpublic data. This information was also on three separate staff computers, so the Department had to also coordinate between 3 divisions and determine how to compile the emails in one place to create one document so that the information could be copied electronically to a disk....

...On June 5, 2008, which was 30 days after the official request was received; the Department mailed him the information and emailed him to let him know the Department had sent the information (see attachment #7 email)...On June 10<sup>th</sup>...the Department sent [Mr. Tyler] [supplemental information that was inadvertently missed]....

In sum, the Department took 30 days from the date of the official request to search and compile the data requested by [Mr. Tyler]. The information included over 800 emails from three separate individuals and involved personnel from three separate divisions. During these 30 days, the individuals involved also had their regular duties to perform... The Department not only responded in a timely fashion, but went out of its way to accommodate [Mr. Tyler's] questions and concerns about the data...

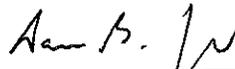
Mr. Tyler made his request to the Department's responsible authority on May 6, 2008. On June 5, 2008, the Department apparently mailed to Mr. Tyler some of the data he requested. Also on that same day, Mr. Spanier sent Mr. Tyler an email stating that the data were en route. (The Department sent a copy of this email to the Commissioner of Administration.) Apparently, the Department sent some additional data to Mr. Tyler on June 10, 2008. Assuming Mr. Tyler has received the data from the Department, the Commissioner concludes, given the volume of the data requested, that the Department's response was appropriate and timely.

**Opinion:**

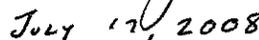
Based on the facts and information provided, my opinion on the issues raised by Mr. Tyler is as follows:

The Minnesota Department of Agriculture (MDA) complied with Minnesota Statutes, Chapter 13, in regards to a May 6, 2008, request for a copy of an RFP associated with the contract between MDA and the University of Minnesota; and all correspondence between MDA, the University, and any other entity related to the project.

Signed:

  
 Dana B. Badgerow  
 Commissioner

Dated:

  
 July 17, 2008

