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### **Advisory Opinion 08-019**

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 12, 2008, IPAD received a letter dated June 11, 2008, from X. In his/her letter, X asked the Commissioner to issue an advisory opinion regarding his/her data practices rights relating to certain data that School District 544, Fergus Falls, maintains.

IPAD, on behalf of the Commissioner, wrote to Jerry Ness, Superintendent of the District, in response to X's request. The purposes of this letter, dated June 16, 2008, were to inform him of X's request and to ask him to provide information or support for the District's position. On July 3, 2008, IPAD received comments, dated July 1, 2008, from Mr. Ness.

A summary of the facts as provided by X is as follows. In his/her opinion request, X wrote:

The Fergus Falls School District has in its possession two anonymous letters submitted to the School Board alleging complaints against [X, a former employee of the District]....No disciplinary action resulted as a result of the complaints.

It is my understanding that the [District] has received a request from a third party for the release of the letters. I have been informed via legal counsel that the [District] has made an initial determination to release the letters to the third party requestor. As the employee in question and the subject of the data, I disagree with the [District's] determination and believe that this data is private personnel data in accordance with Minn. Stat. § 13.43.

#### **Issue:**

Based on X's opinion request, the Commissioner agreed to address the following issue:

If School District 544 (Fergus Falls) releases data in two anonymous letters that set forth complaints about X, would X's rights as a data subject be violated?

**Discussion:**

Pursuant to Minnesota Statutes, section 13.03, subdivision 1, government data are public unless otherwise classified.

Pursuant to Minnesota Statutes, section 13.601, subdivision 2, correspondence between individuals and elected officials is private data on individuals but may be made public by either the sender or the recipient.

Here, according to X, the two letters in question were sent to “the School Board” and the authors did not identify themselves. The Commissioner assumes the District obtained the letters from the school board members. In his comments to the Commissioner, Mr. Ness wrote, “Our [District] has reviewed the issue, but we have nothing further to add to the inquiry. We welcome the decision of the Department of Administration.”

Pursuant to section 13.601, the correspondence data in the hands of the school board members either are private or public. Pursuant to Minnesota Rules 1205.0400, private data may be disclosed to individuals within a government entity whose work assignments reasonably require they have access to the data. It is reasonable that an elected official might need to seek assistance from the government entity with which the elected official is associated to deal with an issue raised by a member of the public. In this way, the school board members would have had authority to share private data with the District.

If the board members considered the data to be public, the members did not need authority to disclose the data to the District.

The issue then becomes how the data are classified in the possession of the District. Depending upon the type of data in the letters, it is possible there is a more specific classification(s) for the data than the general classification in section 13.601. Minnesota Statutes, section 645.26, subdivision 1, provides that when a general provision is in conflict with a special provision, the “two shall be construed, if possible, so that effect may be given to both.”

Although the Commissioner has not seen the correspondence data, X (a former District employee) stated the data contain complaints made against X. It is likely, therefore, that at least some of the data in the correspondence are classified pursuant to section 13.43. Given the language in section 645.26, subdivision 1, it is reasonable that the data in the District’s hands are classified by specific applicable statutory provisions (such as section 13.43) while the data in the hands of the board members are private unless the board members have made the data public.

Because the Commissioner has not seen the data in question, she cannot make a specific determination of the classification of the correspondence data in the District’s hands. However, given the language in section 645.26, subdivision 1, any data about X in the District’s hands are classified pursuant to section 13.43.

**Opinion:**

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

The Commissioner is unable to determine with certainty whether School District 544 (Fergus Falls) will violate X's rights as a data subject if it releases data in two anonymous letters that set forth complaints about X. However, based on Minnesota Statutes, section 645.26, subdivision 1, data about X in the District's possession are classified pursuant to Minnesota Statutes, section 13.43.

Signed:

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Dana B. Badgerow  
Commissioner

Dated:

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July 31, 2008