



Advisory Opinion 08-023

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.

Facts and Procedural History:

On July 14, 2008, IPAD received an e-mailed letter, dated July 13, 2008, from Timothy S. Burke. In his letter, Mr. Burke asked the Commissioner to issue an advisory opinion regarding his right to have access to certain data Independent School District 192, Farmington, maintains.

IPAD, on behalf of the Commissioner, wrote to Rosalyn Pautzke, Director of Administrative Services for the District, in response to Mr. Burke's request. The purposes of this letter, dated July 15, 2008, were to inform her of Mr. Burke's request and to ask her to provide information or support for the District's position. Mr. Jeffrey D. Carpenter, attorney for the District, responded in a letter dated July 30, 2008.

Because the outcome of this opinion may affect the rights of the data subject, Superintendent Bradley L. Meeks, the Commissioner offered him an opportunity to submit comments; he did not. A summary of the facts follows.

Mr. Burke asked the District for access to a copy of Dr. Meeks' contract in 2007. The District initially denied Mr. Burke's request on the basis that the data were private personnel data. Subsequently the District provided Mr. Burke with a redacted copy of the contract.

Mr. Burke continued unsuccessfully to ask the District for access to an unredacted copy of the contract. In July 2008, Dr. Meeks, acting personally, and not on behalf of the District, provided Mr. Burke with an unredacted copy of his contract. The District itself continued to deny Mr. Burke access to an unredacted copy.

Issue:

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

Did Independent School District 192, Farmington, comply with Minnesota Statutes, Chapter 13, in its response to a request for a copy of its Superintendent's employment contract?

Discussion:

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

Minnesota Statutes, section 13.43 classifies data on individuals who are current or former employees of a government entity. Section 13.43, subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private. Section 13.02, subdivision 5, defines “data on individuals” as “all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.”

The Commissioner, in this instance, has had the opportunity to compare the unredacted copy of the superintendent’s contract with the redacted copy the District provided Mr. Burke; she has the following comments. The District redacted approximately half of the data in the contract. Examples of redacted data include statements about state statutes that are applicable to the contract; the duration of the contract and terms of expiration and termination; basic work year; calculation of a per diem salary; statute governing any medical leave; allowable outside activities; time allowed to pursue professional development; severance pay; process for annual evaluation.

The Commissioner opined in Advisory Opinion 03-008:

Section 13.43, subdivision 2(a)(1), states that the following data are public: “actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursements, in addition to salary.”

It is the Commissioner’s opinion that the Legislature intended to make public all of the various types of compensation afforded to public employees and to make public the basis for that compensation. A practical application suggests that each component of an employee’s compensation fits into one of the categories the Legislature included in subdivision 2(a)(1). For purposes of this opinion, the commissioner will limit his remarks to a discussion of two categories: actual gross salary and added remuneration.

It appears to the Commissioner that actual gross salary describes that portion of an employee’s compensation which is fixed and paid on a regular basis. It follows that the basis for a change in an employee’s actual gross salary also is public because the underlying reasons for any such change are public, e.g., a change in the contract of the employee’s bargaining unit, a change in the employee’s length of service, a change in the employee’s job title.

Data about any remuneration an employee receives in addition to his/her actual gross salary also are public. Added remunerations, as opposed to actual gross salary, are not necessarily fixed or regular, e.g., merit increases, overtime pay. In addition to the dollar amount of any added remuneration, a description of the type of remuneration also is public.

Pursuant to 03-008, each component of an employee’s total compensation fits into one of the categories the Legislature included in subdivision 2(a)(1), namely, “actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursements, in addition to salary.”

In 03-008, the Commissioner opined that the terms and conditions of employment that apply to a bargaining unit are public. Here, the data are comparable even though they apply to a class of one, i.e., the District’s superintendent. However, the District redacted the contract so that it is not possible for the public to determine the basis for the superintendent’s total compensation, including gross salary, value and nature of fringe benefits, and any added remuneration.

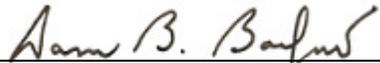
There is one section of the contract that does not relate in some way to the basis for the District superintendent’s compensation. Section IX (F) states that the District School Board shall evaluate the superintendent at least annually, and describes generally the process the Board will follow. Clearly, as part of a collective bargaining agreement this kind of data is public, but it doesn’t fit the language that describes public data on individuals under section 13.43. However, as noted, the data in Section IX (F) of the contract are data that describe the general process the District uses to evaluate its superintendent, not specific performance evaluation data about Dr. Meeks. The data are not data on individuals as defined under section 13.02, subdivision 5, and are therefore public.

The District erred when it denied Mr. Burke access to the full contents of the contract; it should not have redacted any data.

Opinion:

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

Independent School District 192, Farmington, did not comply with Minnesota Statutes, Chapter 13, in its response to a request for a copy of its Superintendent’s employment contract.

Signed: 
Dana B. Badgerow
Commissioner

Dated: August 26, 2008