



Advisory Opinion 08-031

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 September 3, 2008, the Information Policy Analysis Division (IPAD) received a letter dated August 26, 2008, from Thomas Johnson, Chief Judge of the State of Minnesota Workers' Compensation Court of Appeals (WCCA). In his letter, Chief Judge Johnson asked the Commissioner to issue an advisory opinion regarding the classification of certain data the WCCA maintains.

A summary of the facts as Chief Judge Johnson provided is as follows. In his opinion request, Chief Judge Johnson wrote:

The [WCCA] is seeking an advisory opinion...regarding classification of the written decisions of the WCCA.

The WCCA was contacted by an individual who is the subject of a WCCA decision...The decision is posted on the WCCA web site...[The data subject] requested that all files and documentation relating to her workers' compensation claim be removed from the internet because the contents include private identifiers and medical information....

The WCCA is not a judicial court. It is an executive branch court created by the legislature....

Issue:

Based on Chief Judge Johnson's opinion request, the Commissioner agreed to address the following issue:

Pursuant to Minnesota Statutes, Chapters 13 and 175A, what is the classification of the following data: the written decisions of the State of Minnesota Workers' Compensation Court of Appeals?

Discussion:

The WCCA is a state agency for purposes of Minnesota Statutes, Chapter 13. Therefore, the data WCCA collects and maintains are subject to the provisions of Chapter 13.

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

Minnesota Statutes, section 175A.06, states, “The hearings of the [WCCA] shall be open to the public and may be adjourned from time to time. All the proceedings of the court shall be shown on its records, which shall be public records.”

In his opinion request, Chief Judge Johnson wrote:

Adjudication of workers’ compensation claims follows the judicial model of decision-making. Contested claims are tried in administrative proceedings in a manner similar to civil actions in a judicial court. Each disputed claim is a case...Typical issues include whether the employee’s claimed injury arose out of and in the course of employment, whether there is, in fact, a work-related injury or disease, the nature and/or extent of the work injury or occupational disease, the reasonableness and necessity of medical treatment...Thus the vast majority of the evidence submitted at trial are records, reports, and other information pertaining to the employee’s employment and earnings, vocational rehabilitation, and medical history and treatment.

Any party has the right to appeal a compensation judge’s decision (Findings and Order) to the WCCA. On appeal, the WCCA’s review is limited to the trial record...The record consists of a transcript of the testimony taken at the hearing before a compensation judge and the documentary and other records submitted into evidence. The parties submit written briefs to the WCCA presenting argument about how the appeal should be decided, citing case law precedent, and in a limited number of cases the WCCA hears oral argument. The WCCA issues a written decision describing the facts relevant to the case, analyzing the law applicable to the claim, and stating the court’s holding in the case. Based on the evidentiary record, the decision includes information about the claimant’s medical condition, history and treatment, employment, and vocational rehabilitation, and medical history and treatment.

The Minnesota legislature delegated to the WCCA exclusive authority to act as the appellate court in workers’ compensation cases. As an appellate court, the WCCA’s decisions are legal precedent for subsequent cases. That is, compensation judges and others involved in resolving and determining workers’ compensation claims are bound by the legal analysis and reasoning of the court in previously issued decisions, as is the WCCA in making subsequent decisions on appeal....

In recent years, following the lead of the Court of Appeals and Supreme Court...the WCCA has made its decisions remotely accessible via the WCCA web site...The only data the WCCA makes available to the public on the web is the court’s written decisions.

[Minnesota Statutes, Chapter 13] states that government data are public unless otherwise classified. Minnesota Statutes section 175A.06 states that the hearings and proceedings of the WCAA are “public records.” The fundamental, physical embodiment of the court’s “proceedings” are the written decisions issued by the WCCA....

With respect to personal information, the employee's full name is listed in the caption of the case and all or part of the name may be repeated in the decision. However, the WCCA does not disclose Social Security numbers and is careful not to include security information such as employer identification numbers, a party's street address, telephone numbers, financial account or credit card numbers, and the like....

Given the language in section 175A.06, it is the Commissioner's opinion that the written decisions of the WCCA are public data. In addition, as Chief Judge Johnson points out, the WCCA acts as the appellate court in workers' compensation cases and its decisions are legal precedent for subsequent cases. Significant disruption in the legal process could occur if the WCCA decisions were not public.

It is important to note that public data located on a website are more easily accessible to more people than public data located in a file cabinet in the office of a government entity. When most government data were maintained in paper form, the number of people getting access to public data was much smaller than it is today. WCCA's decision to post its decisions on a website means that detailed medical information about individuals is easily accessible to more people.

For most government entities, there is a legitimate business need to post data on websites. That said, WCCA has the option of removing the names of the data subjects in the decisions it posts on the internet. The names remain public data pursuant to Chapter 13 so if anyone were to make a data request, the WCCA would need to provide the names to the requestor. Clearly, given the continued push for greater privacy protection of medical records, the issues raised in this opinion are ones the Minnesota Legislature may want to address.

The Commissioner notes she did consider that some of the data subjects in the WCCA's decisions are government employees whose data are classified under Minnesota Statutes, section 13.43. Generally, medical data about government employees are private data. However, in this case, given that section 175A.06 is more specific than section 13.43, and that section 175A.06 was enacted after the relevant provisions in section 13.43, the Commissioner concludes that data about government employees in the WCCA decisions are public. (Minnesota Statutes, section 645.26, subdivision 1, irreconcilable provisions – particular controls general.) In addition, it does not seem reasonable the Legislature intended data in certain written decisions to be protected (data relating to an employee of a government entity) and data in other written decisions to be public (data relating to an employee of a non-government entity). (Minnesota Statutes, section 645.16, legislative intent controls.)

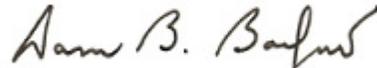
Finally, as Chief Judge Johnson noted, Social Security numbers are private pursuant to Minnesota Statutes, section 13.355, and should be redacted from public documents. In addition, data such as financial account or credit card numbers are not public pursuant to Minnesota Statutes, section 13.37 (security information).

Opinion:

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

Pursuant to Minnesota Statutes, Chapters 13 and 175A, the written decisions of the State of Minnesota Workers' Compensation Court of Appeals are public.

Signed:



Dana B. Badgerow
Commissioner

Dated:

October 23, 2008