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### Advisory Opinion 08-033

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2008). It is based on the facts and information available to the Commissioner as described below.

#### **Facts and Procedural History:**

On, September 12, 2008, the Information Policy Analysis Division (IPAD) received a letter from Brandon Stahl, a reporter for the *Duluth News Tribune*. In his letter, Mr. Stahl asked the Commissioner to issue an advisory opinion regarding his right to gain access to certain data from the City of Duluth. IPAD requested clarification, which Mr. Stahl provided on October 30, 2008.

IPAD, on behalf of the Commissioner, wrote to Lisa Potswald, Chief Administrative Officer for the City of Duluth, in response to Mr. Stahl's request. The purposes of this letter, dated October 30, 2008, were to inform her of Mr. Stahl's request and to ask her to provide information or support for the City's position. M. Alison Lutterman, Deputy City Attorney, responded, in a letter dated November 21, 2008. Mr. Stahl and Ms. Lutterman enclosed copies of related correspondence.

A summary of the written record follows. According to Ms. Lutterman, the City of Duluth publically announced its intention "to lay off seasonal, temporary and permanent employees. Those layoffs occurred in August and September of 2008." Ms. Lutterman described a subsequent telephone call, in which she and Mr. Stahl discussed "whether the City, if requested, would release the names of employees who had been laid off." According to Ms. Lutterman, she "advised [Mr.] Stahl that if the City received such a request that it would most likely not disclose the names because the reasons for the termination of employment is not public data unless the termination was the result of final disciplinary action."

In an email dated September 19, 2008, Mr. Stahl asked Ms. Lutterman for "a written message declining my data request seeking information on employees whose last date of employment was in August and September."

That day Ms. Lutterman responded by email: "[w]hen do [sic] you make such a request? We talked about you making such a request and I advised you how I would respond if you made such a request; however, I don't recall that you ever officially made such a request."

Mr. Stahl responded in a September 24 email, in which he asked for the following: names, job titles and description, first and last date of employment, salary, pension and fringe benefit information for "all employees whose last date with the City was in August and September."

Ms. Lutterman and Mr. Stahl continued to exchange emails. Of relevance here are the following:

- September 24, 2008: Ms. Lutterman wrote, “[w]e will also be evaluating whether any of the data requested is classified as other than public and will respond further with a response related to that issue.”
- October 6, 2008, Ms. Lutterman wrote, “[t]his updates you on the status of your data request ...[b]ecause the context of your question would reveal the identity of employees who have been laid off, the names of employees is not public. This is so because the reason why employment ends is not public data pursuant to Minn. Stat. 13.43 ....”
- October 8, 2008: Mr. Stahl wrote, “[a]lso, in regards to my previous data request and wanting to get a written denial about not providing names of employees, will you be able to do that soon?”
- October 29, 2008: Ms. Lutterman wrote, “[p]lease be further advised that because the context of your question would disclose the reason for departure by those employees who were laid off, and because the reason for the termination is not public, unless the termination was the result of final discipline, the names of laid off employees are not public data and will not be released. Minn. Stat §13.42 [sic], see also, Commissioner’s Opinion 08-004.

### **Issues:**

Based on Mr. Stahl’s request, the Commissioner will address the following issues:

1. Did the City of Duluth comply with Minnesota Statutes, Chapter 13, when it denied access to the following data: names, job titles and description, first and last date of employment, salary, pension and fringe benefit information for “employees whose last date of employment with the City was in August and September?”
2. Did the City comply with Chapter 13 when it was asked to provide a written denial regarding the data described above?

### **Discussion:**

*Issue 1. Did the City of Duluth comply with Minnesota Statutes, Chapter 13, when it denied access to the following data: names, job titles and description, first and last date of employment, salary, pension and fringe benefit information for “employees whose last date of employment with the City was in August and September?”*

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. Subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private.

Among the data on current and former employees that are classified as public under section 13.43, subdivision 2(a), are name, job title and description, date of first and last employment, actual gross salary, actual gross pension and value and nature of employer paid fringe benefits. Under section 13.43, the reason a former employee left government employment (absent final disciplinary action) is not public.

In her comments to the Commissioner, Ms. Lutterman wrote:

The City does not dispute that normally the names of former employees are public data [citation omitted.] However, the names of the employees in the context of the request is [sic] not public. This is so because by identifying the names of these employees, the City is providing more data than just a name. The City is also providing the reason for the employee's termination ... [which] is not public unless the termination is a result of final disciplinary action, in which case the data would be public. [Citation omitted.]

Ms. Lutterman states that in a telephone conversation, she and Mr. Stahl discussed "whether the City, if requested, would release the names of employees who had been laid off." From the record, it appears that Mr. Stahl thought he had asked for access to data in that conversation; Ms. Lutterman did not think so. However, Mr. Stahl did make a written request, in a September 24 email, for the names and certain other public data about former employees whose last date of employment with the City was in August or September, 2008. He did not ask for data specifically about former employees who had been laid off during that time. The City's response to that request is what is at issue here.

As Ms. Lutterman noted, the Commissioner has addressed the importance context can play with respect to the proper classification of data. If Mr. Stahl had asked for data on employees whom the City had laid-off, the City would properly have denied him access. However, that is not what he asked for.

In Advisory Opinion 08-004, which also involved a data request Mr. Stahl made to the City, the Commissioner opined:

The reason a former employee left City employment (absent final disciplinary action) is not public. Mr. Stahl did not ask for otherwise public data on former employees; he asked for identifying data about retirees and their dependents. The City would have improperly released private data had it complied with his request as stated. However, if Mr. Stahl, or anyone, were to ask for the names, value and nature of fringe benefits, and any other public data on former employees, the City could provide access to those data. [Emphasis omitted.]

The City should provide Mr. Stahl with access to the data he requested in his September 24, 2008, email.

*Issue 2. Did the City comply with Chapter 13 when it was asked to provide a written denial regarding the data described above?*

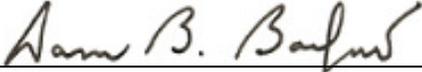
Pursuant to section 13.03, subdivision 3(f), when the responsible authority or designee determines that the requested data are not accessible to the requestor, s/he shall inform the requestor of that determination either orally at the time of the request, or in writing as soon after that time as possible, and shall cite the specific legal basis for the denial. Further, if asked, the responsible authority/designee shall certify the denial in writing.

Ms. Lutterman wrote to Mr. Stahl on October 6 and 29, 2008, both times citing section 13.43 as the basis for the City's denying him access to the employees' names. Thus, the City satisfied its obligation to set forth the basis for its denial in writing.

**Opinion:**

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

1. The City of Duluth did not comply with Minnesota Statutes, Chapter 13, when it denied access to the following data: names, job titles and description, first and last date of employment, salary, pension and fringe benefit information for "employees whose last date of employment with the City was in August and September."
2. The City did comply with Chapter 13 when it was asked to provide a written denial regarding the data described above.

Signed:   
Dana B. Badgerow  
Commissioner

Dated: December 3, 2008