



Advisory Opinion 09-003

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 December 12, 2008, the Information Policy Analysis Division (IPAD) received a letter dated same, from Thomas Deans and Jennifer Earley, on behalf of the Knutson, Flynn & Deans law firm. In their letter, Mr. Deans and Ms. Earley asked the Commissioner to issue an advisory opinion regarding their obligation to provide certain data to Kristi Piehl of KSTP-TV.

In a letter dated December 17, 2008, IPAD invited James Barnum, Deputy General Counsel for Hubbard Broadcasting, Inc., to submit comments. On January 6, 2009, IPAD received comments from Mark Anfinson, on behalf of Mr. Barnum.

A summary of the facts as Mr. Deans and Ms. Earley provided them is as follows. In a letter dated September 5, 2008, Ms. Piehl asked for the following data:

1. Documentation showing the identity of all public schools and public school districts for which Knutson, Flynn and Deans, P.A. has performed professional services between 2003 and 2008.
2. Contracts between Knutson, Flynn & Deans, P.A. and any public school or school district, regardless of the location, between 2003 and 2008.
3. Any and all faxed, mailed or emailed bills delivered or sent to any public school or public school district, regardless of the location, between 2003 and 2008.

In a letter dated September 17, 2008, Mr. Deans denied Ms. Piehl access to the data: “In summary, the data you have requested is not government data, does not exist, is not maintained by our firm on behalf of any government entity and/or is not maintained solely by our firm.”

Issues:

Based on the opinion request from Mr. Deans and Ms. Earley, the Commissioner agreed to address the following issue:

1. Does Minnesota Statutes, Chapter 13, require Knutson, Flynn & Deans to provide to KSTP-TV any list Knutson, Flynn & Deans created setting forth the public schools or school districts it has represented from 2003 to 2008?
2. Does Minnesota Statutes, Chapter 13, require Knutson, Flynn & Deans to provide to KSTP-TV copies of contracts between Knutson, Flynn & Deans and any public school or school district between 2003 and 2008?
3. Does Minnesota Statutes, Chapter 13, require Knutson, Flynn & Deans to provide any bills Knutson, Flynn & Deans provided to any and all public school clients for services rendered to these clients between 2003 and 2008?

Discussion:

Issue 1: Does Minnesota Statutes, Chapter 13, require Knutson, Flynn & Deans to provide to KSTP-TV any list Knutson, Flynn & Deans created setting forth the public schools or school districts it has represented from 2003 to 2008?

Government entities (subject to Minnesota Statutes, Chapter 13) often contract with non-government organizations (not subject to Chapter 13) to perform functions on their behalf. Chapter 13 discusses these contractual relationships in several provisions, the most recently-enacted of which is section 13.05, subdivision 11. Clause (a) states:

If a government entity enters into a contract with a private person to perform any of its functions, the government entity shall include in the contract terms that make it clear that all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and that the private person must comply with those requirements as if it were a government entity. The remedies in section 13.08 apply to the private person under this subdivision.

Clause (b) states:

This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.

In his opinion request, Mr. Deans wrote:

...any client list our law firm may have created or maintains is not government data...Clearly, Knutson, Flynn & Deans is not a government entity. While we represent government entities, we are a private, for profit law firm. As such, data we create and maintain in the course of operating our law firm is not subject to [Chapter 13].

In his comments to the Commissioner, Mr. Anfinson wrote:

...It is our position that because no government entity has the unique data set that has been requested from Knutson, Flynn, the exception found in paragraph (b) does not apply.

...Though Knutson, Flynn unquestionably maintains this information, it is difficult to believe that any individual government entity also does.

In theory, it might be possible for a requester seeking this information to contact every school district in the state and ask if it has ever received legal services from Knutson, Flynn. But we cannot imagine that §13.05, subd. 11 actually requires this. Most important, it would impose an enormously burdensome and time-consuming task, since there are 341 public school districts in the state of Minnesota...

The importance of this conclusion is further reinforced if one considers other possible situations also covered by §13.05, subd. 11. For example, where a large private vendor dealt over time with hundreds or thousands of government entities, it would be nearly impossible for citizen requesters to contact every one of them in order to determine if they had ever been engaged in a contact or business relationship with the vendor....

When Knutson, Flynn enters into an agreement/arrangement/contract to perform work on behalf of a public school/school district, data it creates, collects, maintains, *related to performing the agreed-upon work*, are subject to the requirements of Chapter 13. Thus, if a person makes such a data request, and those data are not available from the school district, Knutson, Flynn must provide the data. (The length of time the data must be maintained is governed by records management statutes, primarily Minnesota Statutes, sections 15.17 and 138.17.)

In this case, however, Ms. Piehl did not make a request for data relating to Knutson, Flynn performing work on behalf of a specific school district. Rather, she asked for data that list or document the names of all the school districts Knutson, Flynn represented from 2003 – 2008. Although Knutson, Flynn most likely maintains these data, it is the Commissioner's belief that section 13.05, subdivision 11, does not require private person contractors, such as Knutson, Flynn, to provide data in response to this type of request.

An interpretation such as Mr. Anfinson suggests seems beyond what the Minnesota Legislature contemplated when it enacted section 13.05, subdivision 11, especially given the requirement that data requestors can seek data from a private person contractor only if the data are not available from the government entity.

That said, the issue Mr. Anfinson raises deserves further consideration. As Mr. Anfinson described, the structure established to implement the provisions of the Chapter 13 frustrates the ability of the public to gain access to data that document the extent of contracting being performed by a single outside firm, such as Knutson, Flynn. Since current statutory language does not allow this, the Commissioner encourages the Legislature to consider the issue.

Issue 2: *Does Minnesota Statutes, Chapter 13, require Knutson, Flynn & Deans to provide to KSTP-TV copies of contracts between Knutson, Flynn & Deans and any public school or school district between 2003 and 2008?*

See Issue 1.

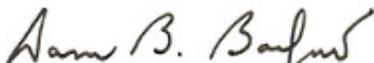
Issue 3: Does Minnesota Statutes, Chapter 13, require Knutson, Flynn & Deans to provide any bills Knutson, Flynn & Deans provided to any and all public school clients for services rendered to these clients between 2003 and 2008?

See Issue 1.

Opinion:

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

1. Minnesota Statutes, Chapter 13, does not require Knutson, Flynn & Deans to provide to KSTP-TV data documenting the public schools or school districts it has represented from 2003 to 2008. However, if KSTP-TV has requested data from a school district related to Knutson, Flynn's representation of the district, and Knutson, Flynn, not the district, maintains the data, Knutson, Flynn must provide the data to KSTP-TV.
2. See Issue 1.
3. See Issue 1.

Signed: 
Dana B. Badgerow
Commissioner

Dated: January 27, 2009