



Advisory Opinion 09-005

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 January 7, 2009, the Information Policy Analysis Division (IPAD) received a letter dated same, from Brandon Stahl, of the *Duluth News Tribune*. In his letter, Mr. Stahl asked the Commissioner to issue an advisory opinion regarding the newspaper's right to gain access to certain data from the City of Duluth.

On behalf of the Commissioner, IPAD wrote to Lisa Potswald, Chief Administrative Officer for the City, in response to Mr. Stahl's request. The purposes of this letter, dated January 16, 2009, were to inform her of Mr. Stahl's request and to ask her to provide information or support for the City's position. On February 5, 2009, IPAD received a response, dated same, from Alison Lutterman, Deputy City Attorney.

A summary of the facts as provided by Mr. Stahl is as follows. In an October 23, 2008 email, Mr. Stahl asked for all public data the City maintains related to dog license registrations. In a previous email, Ms. Lutterman stated that some of the data are public and some are not public. Ms. Lutterman stated that owner name, address, and phone number are not public pursuant to Minnesota Statutes, section 13.37, security data. She stated that dog or cat name, breed, color, sex, rabies expiration date/clinic, and alteration date/clinic are public.

Mr. Stahl disagreed with the City's basis for withholding the owner name and address.

In addition, in a November 20, 2008 email, Ms. Lutterman advised Mr. Stahl that the charge for a copy of the public data in the database would be \$210.

In a December 11, 2008, email, Ms. Lutterman wrote:

Your request is not a query that has been received in the past. Therefore, it requires programming hours, as well as operations hours to process and create the output. The cost covers the cost of programming and operations time to create the custom request.

Issues:

Based on Mr. Stahl's opinion request, the Commissioner agreed to address the following issues:

1. Did the City of Duluth comply with Minnesota Statutes, Chapter 13, in denying access to certain dog licensing data?
2. Is the City of Duluth's charge of \$210 for a copy of certain dog licensing data in compliance with Minnesota Statutes, Chapter 13?

Discussion:

Issue 1: Did the City of Duluth comply with Minnesota Statutes, Chapter 13, in denying access to certain dog licensing data?

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

In her comments to the Commissioner, Ms. Lutterman argues that the data in question are protected under Minnesota Statutes, section 13.37, security information. Section 13.37, subdivision 1 (a), defines security information as "government data the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury." Section 13.37, subdivision 2, classifies security information as not public.

Ms. Lutterman wrote:

It is reasonable and not arbitrary to assume that some people who seek data do so for improper reasons and disclosure of those persons would be likely to put a person or property in substantial jeopardy. For example, classifying the data at issue in this dispute public could expose a person and their property to harm when they are involved in a contentious personal dispute...Protecting the location and phone number of a victim of an abusive relationship is an important public interest....

...some breeds are highly prized and are more likely to be stolen while others are targeted for hate crimes. Disclosing the location of such animals would expose their owners to theft or the destruction of their property....

Based on Ms. Lutterman's comments, it appears the City is applying a blanket approach in using the security information provision to protect otherwise public data. In previous advisory opinions, the Commissioner has opined that this is not how the Legislature intended entities to employ section 13.37. For example, in Advisory Opinion 98-046, the Commissioner wrote:

Accordingly, a government entity's discretion to withhold data as not public is limited to those situations in which there is a likelihood of substantial jeopardy to security. In his comments, Mr. Clark stated that in certain situations, the MMCD has reason to believe that dissemination of some of the data in question might place some individuals or their property at risk of harm. In those limited situations, the MMCD may properly treat the data as

security information under Section 13.37. However, the protection provided by that Section does not apply to all data collected by the MMCD that relate to its services....

Further, in Advisory Opinion 01-029, the Commissioner wrote:

For example, in conversation with IPA staff, County staff mentioned a situation involving domestic abuse, in which a woman asked that the data not be made available to her former partner, whom she had reason to fear. In such a case, a classification as not public under section 13.37 might be appropriate. However, the County may not withhold from the public all addresses and telephone numbers because it is concerned about the possibility, in general, of a security risk. In order for section 13.37, subdivision 1 (a), to be applicable, the County must make a determination on a case-by-case basis.

In addition, the City's argument that it is necessary to withhold all licensee names and addresses because some of the licensees may be victims of domestic violence is made moot by the Safe at Home Program, which is sponsored by the Minnesota Secretary of State. Pursuant to Minnesota Statutes, Chapter 5B, a victim of domestic violence, sexual assault, or stalking who applies and is accepted into the program, is assigned a new address. All private and public entities must accept the newly assigned address as the participant's actual address of residence and employment. The stated purpose of Chapter 5B is to "enable state and local agencies to respond to requests for data without disclosing the location of a victim of domestic violence, sexual assault, or stalking." (Minnesota Statutes, section 5B.01.)

For the reasons stated above, the Commissioner does not agree that the City can withhold the names and addresses of all dog licensees because the data are security information. While there may be specific, individual cases in which there are legitimate security reasons for withholding the information, they are not at issue here. If the City believes names and addresses of dog licensees should be private data, it needs to seek a specific classification from the Minnesota Legislature.

Issue 2: Is the City of Duluth's charge of \$210 for a copy of certain dog licensing data in compliance with Minnesota Statutes, Chapter 13?

Pursuant to Minnesota Statutes, Chapter 13, people have the right to get copies of government data. Pursuant to Minnesota Statutes, section 13.03, subdivision 3(c), when a person asks for electronic copies, the government entity may require the person to pay the actual cost of searching for and retrieving the data, including the cost of employee time, and for making and electronically transmitting the data.

Here, the City charged Mr. Stahl \$210 for a copy of the dog license data.

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

The City's fee for a custom query is a minimum fee of \$210 as published in the City's 2008 fee schedule...This fee is based on the average time it takes for programming and operational costs on the average customer query request. The system that this information resides in is within an application which resides on the City's legacy mainframe system. Therefore, it is not a simple query to extract this data at this time....

She also wrote:

...the request was not a query that had been previously requested. Therefore, retrieving the data required programming hours as well as operations hours to process and create the output....

MIS was recently asked to provide a detail of actual costs to produce this specific request. The actual cost is calculated to be \$224.50 which exceeds the 2008 published fee schedule.

Ms. Lutterman included a breakdown of the charge: \$98 (“programming costs for creating the report”: 2 hours @ \$49/hour) plus \$18 (“operations staff costs for running the job”: .5 hours @ \$36/hour) plus \$108.50 (“transfer programming costs for creating the mechanism for extracting the report from the legacy file structure into an acceptable format for transmission to the requestor”: programming for 1 hour @ \$49/hour and .5 hours @ \$23.5/hour, and operations staff costs for 1 hour @ \$36/hour).

Mr. Stahl asked for a copy of the dog license data the City maintains. As discussed in Issue 1, the City’s position is that some of the data are public and some are not public.

As part of the actual cost for making Mr. Stahl a copy of the data, the City can include what it costs for staff to search for and retrieve the data, and what it costs to print the copy and mail it or attach the copy to an email. The City cannot charge what it costs to separate the public from the not public data. The Commissioner is aware that many government entities continue to operate legacy mainframe systems that were not designed to allow easy access to public data. In fact, many of these systems pre-date Minnesota Statutes, Chapter 13, and the requirement that entities keep their records “in such an arrangement and condition as to make them easily accessible for convenient use.” (Minnesota Statutes, section 13.03, subdivision 1.) The City has indicated it will be replacing its current system in the near future. The Commissioner encourages the City to design their new system in a manner to allow more efficient access to public data.

Because Ms. Lutterman did not clearly explain how the specific costs she describes represent the actual cost of making a copy of the data, the Commissioner cannot determine with certainty whether the City’s charge is appropriate. While the total fee seems high, the Commissioner acknowledges that it often takes more time to retrieve data from antiquated computer systems than newer systems and that government entities can charge to search for and retrieve data. It is reasonable that the City may need to spend time tagging the categories of data elements (searching for and retrieving) that are responsive to Mr. Stahl’s request. However, the Commissioner does not know whether two hours is a reasonable time for the City to spend searching for and retrieving the data.

In addition, while the Commissioner does not understand the meaning of “transfer programming costs for creating the mechanism for extracting the report from the legacy file structure into an acceptable format for transmission to the requestor,” it is not appropriate for Mr. Stahl to bear the cost if the City does not maintain its data in such a format that is understandable to the public. Or, if the issue is the City believes it must format the data for particular software, e.g., Excel or Word, this is not the case. If Mr. Stahl had asked for the data in a format that is different from the way the City maintains the data, the City could ask Mr. Stahl to pay extra for any conversion. However, it does not appear Mr. Stahl asked for the data in a particular format.

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, in denying access to certain dog licensing data.
2. The Commissioner cannot determine with certainty whether the City of Duluth's charge of \$210 for a copy of certain dog licensing data is in compliance with Minnesota Statutes, Chapter 13.

Signed:



Dana B. Badgerow
Commissioner

Dated:

February 26, 2009