



Advisory Opinion 09-010

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 April 16, 2009, the Information Policy Analysis Division received an email from Tim Scannell, the data practices compliance official for Cook County. In his email, Mr. Scannell asked the Commissioner to issue an advisory opinion regarding the classification of certain data.

A summary of the facts Mr. Scannell provided is as follows. He wrote in his opinion request:

Cook County is issuing a Request for Qualifications (not a bid or [request for proposal]) for installation of External Wildfire Sprinkler Systems to protect homes and businesses from wildfire under a pre-disaster mitigation grant from [the Federal Emergency Management Agency]. The county will evaluate the responses and provide a list of qualified installers for homeowners to choose from and to contract with.

We want to ask for financial statements or tax returns from the potential installers as part of the [request for qualifications] to demonstrate their ability to complete the projects.

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, what is the classification of the following data: financial information (including tax returns) submitted to Cook County by responders to a request for qualifications?

Discussion:

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

Information contained in the *Vendor's Agreement* document provides some additional details regarding the issue Mr. Scannell raised. The County has received grant monies from the Federal

Emergency Management Agency (FEMA) to assist property owners in defraying the cost of the sprinkler systems. A provision on page 1 of the *Vendor's Agreement* states, "...in order to achieve the goals of the project, the County will qualify Vendors to install sprinkler systems to certain standards on behalf of Property Owners in these forested areas and will supplement the cost of these systems using the Grant monies."

Provisions on pages 2 and 3 of the *Vendor's Agreement* discuss the relationship between the vendor and the property owner, and provide more information about reimbursements to vendors:

- i. Property Owners will work directly with a Vendor for the design and installation of a Sprinkler System on their property.

- iii. Property Owner will enter into a contract directly with Vendor for installation of the Sprinkler System. Upon completion of the installation, Property Owner will be responsible for payment to Vendor for all costs less the amount to be reimbursed by the County pursuant to the Grant.

- iv. The Vendor will be reimbursed up [sic] 75% of the cost [sic] each installed Sprinkler System, not to exceed \$5,250 for each new system or \$3,250 for each system upgrade. Property Owner is responsible for the balance of the contractors invoice.

Based on additional information contained in the *Vendor's Agreement*, it appears that property owners wishing to receive grant monies have made application through the county and that their contact information is available to the vendors. Text at the beginning of the *Agreement* states, "Once vendors have been notified that they are qualified, the vendor may begin to contract with homeowners who are on the application list."

As stated above, government data are public unless otherwise classified. In his opinion request, Mr. Scannell mentioned Minnesota Statutes, section 13.591, as a possible provision under which the County could withhold financial information submitted by the vendors. The Commissioner does not agree. Subdivisions 1 and 2 of section 13.591 protect certain data submitted to government entities by businesses requesting financial assistance or a benefit financed by public funds. In the current situation, it is the property owners who are receiving financial assistance/a benefit financed by public funds, not the vendors. The County, via the FEMA grant, is paying up to 75 percent of the cost of the new or upgraded sprinkler system. Although the vendors receive money from the County, the payment is reimbursement for the portion provided to the property owners via the FEMA grant.

The Commissioner has not seen the data in question. Aside from the possibility that some of the data may be security information under Minnesota Statutes, section 13.37, the Commissioner is not aware of a provision in state law that would protect the data. In addition, the regional FEMA office has indicated there is no federal law affecting the classification of the data. Therefore, they are public under section 13.03, subdivision 1.

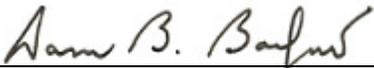
Finally, Minnesota Statutes, section 13.35, states, "To the extent that a federal agency requires it as a condition for contracting with a government entity, all government data collected and maintained by the government entity because that agency contracts with the federal agency are

classified as [not public].” The Commissioner has not seen the FEMA contract regarding the grant but given that neither the regional office nor the County indicated there is any provision in the contract protecting the data, the Commissioner assumes no such provision exists.

Opinion:

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

Pursuant to Minnesota Statutes, Chapter 13, financial information (including tax returns) submitted to Cook County by vendors responding to a request for qualifications are public pursuant to the general presumption in Minnesota Statutes, section 13.03, subdivision 1. It is possible that some of the data may be security information under Minnesota Statutes, section 13.37.

Signed: 
Dana B. Badgerow
Commissioner

Dated: May 6, 2009 