Advisory Opinion 09-016

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 June 4, 2009, the Information Policy Analysis Division (IPAD) received a letter dated June 3, 2009, from Isaac Kaufman, General Counsel for Law Enforcement Labor Services, Inc. (LELS). In his letter, Mr. Kaufman asked the Commissioner to issue an advisory opinion regarding the union's right to gain access to certain data from the City of Big Lake. IPAD requested additional information, which Mr. Kaufman provided in a letter dated June 16, 2009.

IPAD, on behalf of the Commissioner, wrote to Scott Johnson, City Administrator, in response to Mr. Kaufman's request. The purposes of this letter, dated June 22, 2009, were to inform him of Mr. Kaufman's request and to ask him to provide information or support for the City's position. On July 10, 2009, IPAD received a response, dated same, from Soren Mattick, an attorney representing the City.

A summary of the facts as Mr. Kaufman provided them is as follows. In a letter dated May 28, 2009, Mr. Kaufman requested certain data from the City:

> I am writing to request a copy of the report completed by Midwest Government Advisors, following that company's investigation in or about 2006 into the Big Lake Police Department's compliance with [certain laws]….

In a letter dated June 1, 2009, Mr. Johnson responded:

> …The City Council reviewed [the report prepared by Mr. Shellum and Midwest Government Advisors] in a closed session at the regularly scheduled meeting on April 11, 2007. Upon reviewing the report, the City Council re-opened the meeting and voted unanimously to close the investigation regarding Chief Rifenberick and concluded that no disciplinary action was necessary. Based on the Council's vote that no disciplinary action was necessary and the legal opinion of the [City's attorney], the report is private data pursuant to [Minnesota Statutes, section 13.43].

In his opinion request, Mr. Kaufman described some of the allegations and wrote, "On information and belief, the Midwest Government Advisors report includes the collection and analysis of data pertaining to these allegations, which are not private personnel data as to Chief Rifenberick."

Issue:

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

> Did the City of Big Lake comply with Minnesota Statutes, Chapter 13, in responding to a request for a copy of the report prepared by Midwest Government Advisors?

Discussion:

Before proceeding, the Commissioner notes she writes this opinion based on the assumption that when Mr. Kaufman requested the report, he was acting as a member of the public as opposed to a representative of the union. This distinction is important because pursuant to Minnesota Statutes, section 13.43, subdivision 6, labor unions are entitled to certain not public personnel data. By requesting data as a member of the public, Mr. Kaufman is entitled to all public data but not any private data about union employees.

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

Section 13.43 classifies data on individuals who are current or former employees of a government entity. Section 13.43, subdivision 2, lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private.

In a situation where someone has complained about an employee, the fact that a complaint exists and the status of the complaint are public. (Section 13.43, subdivision 2(a)(4).) If the government entity does not take disciplinary action against the employee, no additional data become public.

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

> LELS argues that non-personnel data regarding the Police Department as a whole can be parsed out from the report. However, the City of Big Lake commissioned the report in response to specific allegations about Chief Rifenberick….The report responds directly to these allegations about the Police Chief. As such, the report consists entirely of information from the investigation into the Police Chief's conduct.
>
> …Since the Big Lake City Council voted that no disciplinary action was necessary, the report constitutes private data pursuant to [Minnesota Statutes, section 13.43].

The City and Mr. Kaufman disagree about the subject matter of the report. Mr. Kaufman's position is that the report contains data that are not about the Police Chief and are public. The City's position is that all the data in the report are private data about the Police Chief. Because the Commissioner has not seen a copy of the report, she is unable to comment specifically upon its contents. If the Police Chief is the subject of all the data in the report and all the data relate to the complaints made against him or are otherwise private data about him, then the City cannot release the data to the public (Mr. Kaufman). However, if the report contains public data about the Police Chief or other public data, the City should release those data.

Opinion:

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

> The Commissioner is unable to determine whether the City of Big Lake complied with Minnesota Statutes, Chapter 13, in denying a request for a copy of the report prepared by Midwest Government Advisors.

Signed: Sheila M. Reger

Sheila M. Reger
Commissioner

Dated: July 16, 2009