



Advisory Opinion 09-018

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2009). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On June 23, 2009, the Information Policy Analysis Division (IPAD) received a letter dated June, 22, 2009, from Elizabeth Nixon. In her letter, Ms. Nixon asked the Commissioner to issue an advisory opinion regarding copy charges assessed her by the City of White Bear Lake.

IPAD, on behalf of the Commissioner, wrote to Mark Sather, White Bear Lake City Manager, in response to Ms. Nixon's request. The purposes of this letter, dated July 2, 2009, were to inform him of Ms. Nixon's request and to ask him to provide information or support for the City's position. On July 20, 2009, IPAD received a response, dated July 17, 2009, from Cory Vadnais, White Bear Lake City Clerk/Responsible Authority.

A summary of the facts as Ms. Nixon provided them is as follows. In an email dated September 25, 2008, Ms. Nixon discussed a previous data request her colleague had made.

In an email dated September 29, 2008, Ms. Vadnais acknowledged receiving the request and discussed what the City charges for copies.

In a September 30, 2008, email, Ms. Nixon wrote:

In my reading of [Minnesota Statutes, Chapter 13], I have been working under the assumption that you would inform me when the information is available for me to review and then I would request photocopying of the relevant data.

Please let me know that the data are available for me to review for relevance. What time might I or a colleague be able to stop by for this purpose?

In an October 2, 2008, email, Ms. Vadnais wrote, "The documents have been ready for your review...for a couple of days now. I will instruct the receptionist to allow you to review them and then charge you for the copies you wish to have."

In an email dated October 24, 2008, Ms. Nixon wrote, “I finally had time to get in to city hall and review the [data] that I requested from you....Sorry that you mistakenly copied so many pages first, because the only relevant information was the written records, not all of those photographs.”

In a subsequent email on October 24, 2008, Ms. Vadnais wrote, “I assume, then, that since only some of the information was pertinent and what you were looking for, that you were only charged for only the information you needed, paid the \$.25 per page standard fee we charge for those copies, and left the other information at the Information Desk.”

In her opinion request, Ms. Nixon wrote:

...I made a request to review documents. In summary, Ms. Vadnais replied to inform me that the documents were ready to review...The information available was 100 photocopied pages from various documents. The full documents were not made available....Of the 100 pages, I found approximately 25 pages to be of relevance, and I took these with me. The first floor desk attendant retained the remaining pages.

The next month I received an invoice from the City to pay page fees, sales tax, and transit tax for “100 copies as requested”. As I continued to dispute the invoice with Ms. Vadnais, I received additional invoices for several more months....

To her opinion request, Ms. Vadnais attached a copy of an invoice dated October 27, 2008. The total is \$26.69. Breakdown of that fee is: \$25 (100 pages at \$.25 per page) + \$1.63 (sales tax) + \$.06 (transit tax).

Issue:

Based on Ms. Nixon’s opinion request, the Commissioner agreed to address the following issue:

Did the City of White Bear Lake comply with Minnesota Statutes, Chapter 13, when it charged a person \$26.69 for copying 100 pages of data when the person wanted only 25 pages of data?

Discussion:

Minnesota Statutes, section 13.03, subdivision 3, provides for situations in which a person who is not the data subject seeks access to public information. If the person wants to inspect the data, the entity cannot charge any fee (section 13.03, subdivision 3(a)).

If the person wants copies of the data, the government entity can charge a fee although charging is not required. Section 13.03, subdivision 3(c), provides that an entity may charge no more than \$.25 per page if the person requests 100 or fewer black and white paper copies.

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

Ms. Nixon requested a great deal of information...The Engineering staff subsequently spent a great deal of staff time electronically retrieving the information requested...Much of this information was also only stored electronically, which required printing of the information...which is equal to making a copy. In her request to the Engineering Department, Ms. Nixon did not state that she wanted to review the information first and *then* determine which information was pertinent to her. She plainly asked for copies of the information to be sent to her.

Once copies of the requested information were gathered, I contacted Ms. Nixon to inform her that she could stop by to pick up the material at the Information Desk...she took the information to a side counter, selected the information she wanted, and left without paying fore [sic] anything. The information totaled 100 pages @ \$.25 per page, plus sales tax....

To her comments, Ms. Vadnais attached copies of several email messages. One of these emails, dated September 10, 2008, is from Ms. Nixon to someone who appears to be engineering department staff. In this email, Ms. Nixon wrote:

...We have been very patient with you since [a person] first requested last spring the public records on stormwater [sic] system annual inspections...It has been months since the first data request and we have seen nothing from you. Perhaps you have it all sitting and just forgot to send.

When you send those data, please also send a chronology of each street reconstruction project since 1980....

Although Ms. Vadnais argues that Ms. Nixon “plainly” asked for copies, the Commissioner does not have a copy of the original request and writes this opinion based on the record that was submitted. Ms. Nixon’s September 30, 2008, email to Ms. Vadnais states clearly that her intention is to inspect the data before requesting any copies. Ms. Vadnais’s October 2, 2008, response - “I will instruct the receptionist to allow you to review [the documents] and then charge you for the copies you wish to have” - suggests that Ms. Vadnais understood that Ms. Nixon first wanted to inspect the data and then decide about copies.

Thus, based on the information provided, and that inspection of government data is free, the City should charge Ms. Nixon only for the 25 pages she took with her. Because the number of pages is 100 or fewer, the City may charge no more than \$.25 per page. The City may not charge a sales or transit tax. (See also Advisory Opinion 95-053 for more discussion about sales tax.)

The following note is in order. In her comments to the Commissioner, Ms. Vadnais wrote that much of the information was stored only electronically “which required printing of the information...which is equal to making a copy.” If a person asks to inspect data that happen to be maintained electronically and the government entity, for security reasons, cannot allow the requestor to inspect the data on a computer, the entity must print the data. Because inspection of data is free, the entity cannot charge the cost of printing the data. (Section 13.03, subdivision subdivision 3(b).) Of course, if the requestor then asks for copies of the inspected data, the entity can then charge as allowed by Chapter 13.

