



Advisory Opinion 09-019

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 26, 2009, the Information Policy Analysis Division (IPAD) received a letter, dated same, from X. In the letter, X asked the Commissioner to issue an advisory opinion regarding whether or not Hennepin County inappropriately disseminated data about X. IPAD requested additional information which X provided on July 10, 2009.

IPAD, on behalf of the Commissioner, wrote to Kathy Washenberger, responsible authority for Hennepin County. The purposes of this letter, dated July 13, 2009, were to inform her of X's request and to ask her to provide information or support for the County's position. On July 31, 2009, IPAD received a response, dated July 30, 2009, from Ms. Washenberger.

A summary of the facts as provided by X is as follows. In his/her opinion request, X wrote that in early 2009, s/he was entering the Hennepin County Justice Center, where people are subject to weapons screening. X was denied admittance and the security staff then created an incident report. X wrote:

The existence of this...[incident report] did not become known to me, the data subject, until...when, during the course of a meeting, [my employer] produced a copy for my review....

It is unknown to me how many other individuals at [my employer's] office are served by the same fax machine where the confidential report was directed, and who, among them, saw the [confidential] report.

X wrote that according to the current version of the document the County creates pursuant to Minnesota Statutes, section 13.05, subdivision 1 (the County refers to this document as an annual report), "...all **accident and incident reports** produced by the **Security Division** of Hennepin County's **Property Services Department** are [confidential data]." [Emphasis provided.]

Issue:

Based on X's opinion request, the Commissioner agreed to address the following issue:

Did Hennepin County comply with Minnesota Statutes, Chapter 13, when it released certain data to a third party?

Discussion:

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

Minnesota Statutes, section 13.861, subdivision 1(a), defines “security service” as an “organization that provides security services to a government entity as part of that entity or under contract to it.”

Section 13.861, subdivision 1(b), states that security service data are “all data collected, created, or maintained by a security service for the purpose of providing security services.”

In relevant part, subdivision 2 of section 13.861 states, “Security service data that are similar to the data described as request for service data and response or incident [law enforcement] data in [Minnesota Statutes] section 13.82, subdivisions 3 and [6], are public.”

In her comments to the Commissioner, Ms. Washenberger wrote, “The [incident report] was prepared by a Hennepin County security officer following an incident involving X...At the time the [incident report] was prepared, it was classified as security service data under Minn. Stat. § 13.861, subd. 1(b).” Ms. Washenberger stated that because data in the [incident report] are similar to the data described as response or incident data in section 13.82, subdivision 6, the [incident report] initially was public (and was public when it was disclosed to X’s employer).

The Commissioner agrees with Ms. Washenberger that when the incident report was disseminated to X’s employer, the County appropriately determined that the data in the incident report were classified as public pursuant to section 13.861. Therefore, the County was in compliance with Chapter 13 when it disseminated the report.

(Although Ms. Washenberger did not state that the County’s security officers are part of a “security service” as that term is defined in section 13.861, the Commissioner assumes this to be the case and bases her analysis on that assumption.)

The Commissioner has the following additional comments. Minnesota Statutes, section 13.05, subdivision 1, requires each government entity to create, and annually update, a document that describes the types of private or confidential data the entity maintains. While this document is meant to be a resource tool for the public (and the entity), it is not legally binding.

In her comments, Ms. Washenberger wrote,

X’s assertion that the [incident report] in question must be classified as confidential based on...entries in the [data practices annual report] is erroneous...Hennepin County has attempted to identify in the [annual report] data, including security files, which may be classified as private or confidential on individuals. Hennepin County’s inclusion of security files in the [annual report]...did not have the effect of making all incident reports confidential. The classification of any particular incident report as public or as private or confidential must be determined on a case by case basis. In this matter, none of the statutes cited in the [annual report] as the basis for classifying incident reports as confidential were applicable at the time the [incident report] was prepared or at the time it was shared with

[X's employer]. There are some incident reports that are confidential prior to a claim being filed; however, the [incident report] at issue in this matter is not one of them....

As noted above, a government entity's annual report document is not legally binding but should be updated on a regular basis so that it is current and complete. For example, because some of the security data the County maintains are public and some are not (see section 13.861, subdivision 2), it would be helpful and appropriate for the County to include that additional information in its annual report. Although a government entity is not required to list public data in its annual report, doing so can help members of the public and entity staff better understand how certain data are classified.

Finally, in her letter to the Commissioner, Ms. Washenberger noted that X filed a Notice of Claim with the County in July 2009. Ms. Washenberger further noted that because the Hennepin County Attorney has determined that a civil legal action involving X is pending, the County now considers the incident report to be confidential pursuant to Minnesota Statutes, section 13.39. The Commissioner does not agree. Because the data in the incident report are similar to law enforcement response or incident data (see section 13.82, subdivision 6), the data always are public and cannot be withheld pursuant to section 13.39 or any other statutory provision.

Opinion:

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

Hennepin County complied with Minnesota Statutes, Chapter 13, when it released certain data to a third party.

Signed:

Sheila M. Reger

Sheila M. Reger
Commissioner

Dated:

August 28, 2009