



Advisory Opinion 09-022

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 August 4, 2009, the Information Policy Analysis Division (IPAD) received a letter, dated August 3, 2009, from Evan Tsai, on behalf of the Office of the Public Defender, Second Judicial District. In his letter, Mr. Tsai asked the Commissioner to issue an advisory opinion regarding his right to have access to certain data from the City of Saint Paul. IPAD requested clarification, which Mr. Tsai provided on August 7, 2009.

IPAD, on behalf of the Commissioner, wrote to Shari Moore, City Clerk, in response to Mr. Tsai's request. The purposes of this letter, dated August 11, 2009, were to inform her of Mr. Tsai's request and to ask her to provide information or support for the City's position. Gail L. Langfield, Assistant City Attorney, responded, in a letter dated August 26, 2009.

A summary of the facts follows. The Saint Paul Domestic Abuse Intervention Project ("Project") is a recipient of a grant from the City (among other funding sources.) According to documents provided by Mr. Tsai and Ms. Langfield, the City and the Project entered into a contract, Agreement #02-14801-G ("Agreement"), which states:

The contract period shall be:

- 1) January 1, 2008 through December 31, 2008 for General Fund financing; and
- 2) July 1, 2008 through June 30, 2009 for financing from the Community Development Block Grant funds.

In letters dated March 27, 2009, and July 22, 2009, Mr. Tsai wrote to Ms. Moore and requested access to the following data: "all policies and procedures governing the duties of the [Project], to include all employee manuals and/or handbooks, volunteer manuals, training manuals, daily procedures, mission statements, and employee and volunteer rosters and records." (Mr. Tsai also requested additional data, which the City provided to him.) He stated, "I am not requesting data regarding individual clients served by" the Project.

According to Ms. Langfield, "[a]t some point . . . Ms. Moore told Mr. Tsai that the City has not collected or received any data which is responsive."

Issue:

Based on Mr. Tsai's request, the Commissioner will address the following issue:

Did the City of Saint Paul comply with Chapter 13 in response to a March 27, 2009 (and subsequent), request for access to "all policies and procedures governing the duties of the St. Paul Intervention Project, Inc., to include all employee manuals and/or handbooks, volunteer manuals, training manuals, daily procedures, mission statements, and employee and volunteer rosters and records?"

Discussion:

Pursuant to Minnesota Statutes, section 13.03, when a government entity receives a data request from an individual who is not the subject of the data, the entity is required to respond in an appropriate and prompt manner, and within a reasonable time. (See section 13.03, subdivision 2(a), and Minnesota Rules, part 1205.0300.)

Further, previously issued advisory opinions have discussed that when responding to data requests, government entities should provide the data, advise that the data are classified such as to deny the requesting person access, or inform the requestor that the data do not exist.

Pursuant to Minnesota Statutes, section 13.05, subdivision 11:

(a) If a government entity enters into a contract with a private person to perform any of its functions, the government entity shall include in the contract terms that make it clear that all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and that the private person must comply with those requirements as if it were a government entity. The remedies in section 13.08 apply to the private person under this subdivision.

(b) This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.

In their comments to the Commissioner, Mr. Tsai asserted that (for various reasons) the City must provide him with access to the requested data; Ms. Langfield wrote, "[t]he only obligation the City has is to provide access to the data in its own possession."

In support of the City's position, Ms. Langfield cited a Minnesota appellate court case, *WDSI, Inc. v. The County of Steele*, 672 N.W.2d 617 (Minn. App. 2003). The Court's analysis relied upon the fact that the contract between Steele County and the private contractor did not contain the language required by Minnesota Statutes, section 13.05, subdivision 11, which is not the case here. Accordingly, *WDSI* is not applicable.

Specifically, Section 6 of the Agreement between the City of St. Paul and the Project contains the following provisions of relevance here:

A. "Work product" shall mean any report, recommendation, paper, presentation, drawing, demonstration, or other materials, whether in written, electronic or other format, that results from [the Project's] services under this Agreement.

“Supporting documentation” shall mean any surveys, questionnaires, notes, research papers, and analyses, whether in written, electronic or in other format, and other evidences used to generate any and all work performed and work products generated under this Agreement.

B. All deliverable work products and supporting documentation that result from [the Project’s] services under this Agreement shall be delivered to the City and shall become the property of the City after final reimbursement is made to the [Project] with no right, title, or interest in said work products or supporting documentation vesting in [the Project.]

C. The [Project] agrees not to release, transmit, or disseminate information associated with, or generated as a result of, the work performed under this Agreement without the City’s prior knowledge and written consent.

F. [The Project] agrees to abide strictly by Chapter 13, Minnesota Government Data Practices Act, and in particular, Minnesota Statute §13.05, subd. 6 and 11; and 13.37, subd. 1(b) and Minnesota Statute §138.17 and 15.17. All of the data created, collected, received, stored, used maintained, or disseminated by the [Project] in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and [the Project] must comply with those requirements as if it were a governmental entity. The remedies in Minnesota Statutes apply to the [Project.] If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law will control.

According to the timeframe in the contract, the final term expired on June 30, 2009. According to Section 6 (B) of the agreement, all “deliverable work products and supporting documentation . . . shall be delivered to the City and shall become the property of the City after final reimbursement”

Thus, it appears that under the terms of the Agreement, the Project was obligated to provide the City with all deliverable work products and supporting documentation that resulted from the Project’s services. It is reasonable to assume that under the terms of the Agreement, the Project would create, maintain, etc., at least some of the kinds of data Mr. Tsai requested, in order to meet its obligations under Minnesota Statutes, sections 15.17 and 138.17, as set forth in Section 6 (F.) of the Agreement.

Per clause C of the Agreement, the Project may not release any data “without the City’s prior knowledge and written consent.” Accordingly, under the process the City created through the Agreement, the City is ultimately responsible for providing or authorizing appropriate access to any data resulting from its contract with the Project.

It appears the City ought to be in possession of the data described under Section 6 as “work product or supporting documentation.” Therefore, if any of those data are responsive to Mr. Tsai’s request, then the City must gain possession of the data, determine how the data are classified, and make them available to Mr. Tsai. In the alternative, the City could give its written consent to the Project to provide Mr. Tsai with access. If the Project did not create any government data responsive to Mr. Tsai’s request under the terms of the Agreement, the City should so inform him.

Opinion:

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

The City of Saint Paul did not comply with Chapter 13 in response to a March 27, 2009 (and subsequent), request for access to “all policies and procedures governing the duties of the St. Paul Intervention Project, Inc., to include all employee manuals and/or handbooks, volunteer manuals, training manuals, daily procedures, mission statements, and employee and volunteer rosters and records.”

Signed: *Sheila M. Reger*
Sheila M. Reger
Commissioner

Dated: September 22, 2009