



Advisory Opinion 09-024

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 October 7, 2009, the Information Policy Analysis Division (IPAD) received a letter dated same, from Emily Johns, a reporter for the *Star Tribune*. In her letter, Ms. Johns asked the Commissioner to issue an advisory opinion regarding her right to gain access to certain data from School District 625, Saint Paul.

IPAD, on behalf of the Commissioner, wrote to Suzanne Kelly, Interim Superintendent of the District, in response to Ms. Johns's request. The purposes of this letter, dated October 16, 2009, were to inform her of Ms. Johns's request and to ask her to provide information or support for the District's position. On October 30, 2009, IPAD received a response, dated October 29, 2009, from Nancy Cameron, District Deputy General Counsel.

Also in a letter dated October 16, 2009, IPAD invited John Krenik, the data subject, to provide comments. On November 4, 2009, IPAD received a response, dated November 3, 2009, from Anne Krisnik, an attorney representing Mr. Krenik.

A summary of the facts as Ms. Johns provided them is as follows. In her opinion request she wrote:

In response, I received [a settlement agreement for teacher John Krenik]. According to the agreement, the district paid Krenik \$12,000 to quit his job [with the District].

State statute 13.43, however, requires that agencies making such an agreement must include the specific reasons for it if it involves the payment of more than \$10,000 of public money. The settlement with the St. Paul schools did not include specific reasons for Krenik's buyout, and subsequent requests I have made for that information have been denied by the school district.

Issue:

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

Minnesota Statutes, section 13.43, subdivision 2(a)(6), requires a government entity to include in a settlement agreement "specific reasons for the settlement agreement." School District 625, Saint Paul, entered into a settlement agreement and received a

request for the settlement agreement. Has the District provided to the requestor the “specific reasons for the settlement agreement”?

Discussion:

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

Minnesota Statutes, 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 has taken disciplinary action and a final disposition has occurred, the final disposition together with the specific reasons for the action and data documenting the basis for the action are public. (Section 13.43, subdivision 2(a)(5).)

Section 13.43, subdivision 2(b), describes the point in time when a final disposition occurs.

In addition, the following data are public pursuant to section 13.43, subdivision 2(a)(6):

the terms of any agreement settling any dispute arising out of an employment relationship...except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money.

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

What the legislature meant by “specific reasons” is unclear. Neither the courts nor Commissioner have addressed this language.

The District maintains that the phrase-“specific reasons for the agreement”-means explanation sufficient to show that payment was not a gift under the guise of a compromise....

The District also interprets the “specific reasons for the agreement” to mean written (or otherwise recorded) terms of the agreement. The terms show what the parties bargained for, compromised and settled, and what they gained in return. The terms set forth the consideration of the \$12,000. The terms show that payment of public money was not a “gift” but was a proper expenditure of public funds to compromise a claim.

The specific reasons for the settlement (and the payment of the \$12,000) are provided throughout the 17-page Settlement Agreement (which includes the releases).

Ms. Cameron then listed some of the “specific reasons” that are contained in the settlement agreement:

- The Recitals indicate District, Employee, and Union “wish to settle all matters arising out of Employee’s employment with the District”....The parties also agreed that the “Agreement is a compromise of claims.”...If the parties wish to settle all matters [sic] and to compromise claims,

there must be disputes and claims to settle. Furthermore, the Agreement's terms indicate some of the areas of dispute. E.g., "charges"...grievances and arbitration...continued and future employment...handling of employment records...complaint/request for opinion to the Commissioner of Administration.

- The "Consideration from Employee and Union" further details the specific reasons for the agreement.
 - The District obtained Employee's resignation....
 - The District obtained a general release and waiver of all claims by Employee arising out of the employment relationship....
 - The District obtained a full release and waiver of claims by Employee under the Age Discrimination in Employment Act....
 - Employee and Union "withdr[e]w all grievances and potential grievances to date [of the Settlement Agreement]."...
 - Similarly, the District obtained "dismissal of [the Union's and Employee's] arbitration request."...
 - Employee "withdr[e]w his request for opinion to the Commissioner of Administration regarding the District's or its employee's handling of data under the Minnesota Government Data Practices Act."

The settlement agreement also contains language detailing the consideration given from the District to Mr. Krenik, including that the payment of \$12,000 and that a District employee will withdraw charges filed against Mr. Krenik.

In her comments to the Commissioner on behalf of Mr. Krenik, Ms. Krisnik wrote that the specific reasons for the settlement agreement are contained within the document:

...Paragraphs 1 and 3 of the Agreement list the specific reasons the School District entered it. The specific reasons are referred to by the parties by the legal term: "consideration."...

The "consideration" received by the School District from Mr. Krenik and the Union is specified in Paragraph 1 of the Agreement and its sub-paragraphs....

This same consideration received by the School District is further reflected in the introductory sentence to Paragraph 3 of the Agreement which provides, in relevant part:

In consideration for Employee's resignation, execution of this Agreement, General Release and Waiver of Claims, and the ADEA release, and compliance with the promises made therein, district agrees...

The Commissioner agrees with Ms. Cameron and Ms. Krisnik – that what they consider to be the specific reasons for the agreement are what section 13.43, subdivision 2(a)(6), contemplates as such. Section 13.43 does not define "specific reason." *Merriam Webster's Collegiate Dictionary, Tenth Edition*, Merriam-Webster, Incorporated, 1996, defines "specific" as "free from ambiguity: accurate" and defines "reason" as "a statement offered in explanation or justification." Here, the settlement agreement contains the reasons for the agreement.

In her comments to the Commissioner, Ms. Cameron wrote that she had asked Ms. Johns what more [Ms. Johns] thought should have been included in the agreement so that it included, from [Ms. Johns's] perspective, the specific reasons for the agreement:

...Ms. Johns believes that the agreement should contain the substantive basis for the complaint or charge to show, for example, why the employer wanted the employee to resign. The District disagrees with Ms. Johns' conclusion....

Under Minn. Stat. § 13.43, subd. 2, the existence and status of complaints and charges against the employee are public data, but the substance of those charges is not. When employers and employees settle employment disputes before an arbitration decision is reached or before the final disposition of any disciplinary action, only the existence of any complaint or charges and the status of the complaints or charges (i.e., resolved without disciplinary action) are public....

If employers were required to put in settlement agreements details about the substance of the complaint or charge, private personnel data that would normally be available to the public only after the final disposition would be available before such action....

Based on the information provided to the Commissioner, here, a final disposition did not occur. Therefore, pursuant to the language in section 13.43, only the following data are public: the fact that a complaint or charge exists and the status of the complaint or charge, and the terms of the settlement agreement.

The Commissioner notes that the District and Mr. Krenik could have agreed to include in the settlement agreement additional information related to the dispute that otherwise are not public. As terms of the agreement, those data would then be public.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issue that Ms. Johns raised is as follows:

School District 625, Saint Paul has provided to the public the "specific reasons for the settlement agreement."

Signed:

Sheila M. Reger

Sheila M. Reger
Commissioner

Dated:

November 30, 2009