



Advisory Opinion 09-025

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 29, 2009, the Information Policy Analysis Division (IPAD) received a letter dated same, from Connie Howard, an attorney representing the Inter Faculty Organization (IFO). In her letter, Ms. Howard asked the Commissioner to issue an advisory opinion regarding the IFO's right to gain access to certain data from the Minnesota State Colleges and Universities (MnSCU).

IPAD, on behalf of the Commissioner, wrote to James McCormick, Chancellor of MnSCU, in response to Ms. Howard's request. The purposes of this letter, dated November 5, 2009, were to inform him of Ms. Howard's request and to ask him to provide information or support for MnSCU's position. On November 25, 2009, IPAD received a response, dated same, from Kristine Kaplan, Deputy General Counsel for MnSCU.

A summary of the facts as Ms. Howard presented them is as follows. She wrote in her opinion request:

The IFO has a dispute with [MnSCU] regarding [certain personnel data] that arises out of the union's request for not only the amount of performance bonuses paid to the presidents of the seven four-year universities within the MnSCU system, but also the basis for the payment of the bonuses. It is the union's position that [Minnesota Statutes, section 13.43, subdivision 2(a)(1)] requires MnSCU to disclose the specific criteria upon which it based its decision to pay substantial performance bonuses to university presidents and other top level management in the MnSCU system.

Ms. Howard noted that MnSCU provided "a list of examples of goals that could be considered in the awarding of performance bonuses, but [failed] to identify the specific basis for the performance bonuses awarded to each of the university presidents."

Ms. Howard also noted that MnSCU provided an excerpt from a former Vice Chancellor's employment agreement:

The Chancellor, in consultation with the Vice Chancellor, annually shall establish specific performance goals for the Vice Chancellor. Upon a determination by the Chancellor that the Vice Chancellor's annual performance review is satisfactory and that the Vice Chancellor has attained some or all of the specific performance goals established pursuant to this section, the Chancellor shall award to the Vice Chancellor a merit bonus of not less than \$3,000 and not more than \$15,000 for the prior year....

In an October 27, 2009, letter, to Ms. Howard, Ms. Kaplan wrote:

...To the extent that your request may have included specific descriptions of individual employees' performance that resulted in a performance incentive or merit pay, we are unable to provide it because personnel evaluation information is private personnel data under [section 13.43, subdivision 4].

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, does the public have a right to access government data regarding the specific standards and accomplishments that provide the basis for performance bonuses paid to individual public university presidents and other managers in the MnSCU system?

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.

Of relevance here, the following data about an employee's compensation are public: actual gross salary and the basis for and the amount of any added remuneration...in addition to salary. (Section 13.43, subdivision 2(a)(1).)

The question before the Commissioner is whether MnSCU must release more detailed information related to the performance bonuses it paid certain MnSCU employees.

In Advisory Opinion 03-008, the Commissioner wrote:

It is the Commissioner's opinion that the Legislature intended to make public all of the various types of compensation afforded to public employees and to make public the basis for that compensation. A practical application suggests that each component of an employee's compensation fits into one of the categories the Legislature included in subdivision 2(a)(1). For purposes of this opinion, the commissioner will limit his remarks to a discussion of two categories: actual gross salary and added remuneration.

It appears to the Commissioner that actual gross salary describes that portion of an employee's compensation which is fixed and paid on a regular basis. It follows that the basis for a change in an employee's actual gross salary also is public because the underlying reasons for any such change are public, e.g., a change in the contract of the employee's bargaining unit, a change in the employee's length of service, a change in the employee's job title.

Data about any remuneration an employee receives in addition to his/her actual gross salary also are public. Added remunerations, as opposed to actual gross salary, are not necessarily fixed or regular, e.g., merit increases, overtime pay. In addition to the dollar amount of any added remuneration, a description of the type of remuneration also is public.

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

...MnSCU provided the IFO with the requested salary and salary range information, and the amounts paid to each individual for performance or bonus pay....However, it was MnSCU's determination that the specific factors used to measure a particular administrator's performance evaluation constitute private personnel data under Minn. Stat. §13.43, subd. 4 and thus could not be provided. Instead, the IFO was provided a list of the types of factors used in determining eligibility for the incentive pay and the explanation that "[a] determination of whether and how much of that incentive is paid is based on the Chancellor's assessment of each individual's overall satisfactory performance and the specific goals identified for each performance review process."...

Pursuant to section 13.43, subdivision 2(a)(1), the *basis for* and the amount of any added remuneration in addition to salary are public. Section 13.43 does not define "basis for." *Merriam Webster's Collegiate Dictionary, Tenth Edition*, Merriam-Webster, Incorporated, 1996, defines "basis" as "something on which something else is established or based."

As the Commissioner opined in 03-008, the Legislature intended to make public all of the various types of compensation afforded to public employees and to make public the basis for that compensation. In responding to the IFO's data request, MnSCU provided to IFO a list of examples of goals that MnSCU could consider in awarding performance bonuses, including:

improvement in the second fall persistence and completion rate for underrepresented students; increasing the number of adult continuing education students; expansion of cost management or efficiency activities; expansion of private and/or alumni giving; increasing enrollments in specific programs or courses.

Ms. Kaplan argues that a more detailed description of this category of added remuneration would require releasing "performance evaluation data." She also correctly highlights that "appellate courts have carefully guarded the privacy of employee evaluation information regardless of its form." The Commissioner agrees with Ms. Kaplan.

