



Advisory Opinion 09-027

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 November 18, 2009, the Information Policy Analysis Division (IPAD) received a letter, dated same, from Carol Morris. In her letter, Ms. Morris asked the Commissioner to issue an advisory opinion regarding her right to access certain data from the City of Palisade.

IPAD, on behalf of the Commissioner, wrote to Gaylene Spolarich, City Clerk, in response to Ms. Morris's request. The purposes of this letter, dated November 23, 2009, were to inform her of Ms. Morris's request and to ask her to provide information or support for the City's position. IPAD did not receive a response from the City.

A summary of the facts as Ms. Morris provided them is as follows. In a letter dated September 15, 2009, Ms. Morris wrote to the City and requested certain data:

1. The data that documents the cashing of the \$25,000 CD, such as but not limited to the deposit slip.
2. The data that documents the purchase of the fire rescue truck from the Watertown Fire Department, such as but not limited to the cancelled check.
3. The data that documents the income from the Palisade fire protection, such as but not limited to the deposit slip(s).
4. The data that documents reinvestment of the \$25,000 CD that was cashed in, such as but not limited to the cancelled check.

Ms. Morris again requested the data in a letter dated October 15, 2009.

In her opinion request, Ms. Morris wrote, "I have not received any data from the City of Palisade."

Issue:

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

Did the City of Palisade comply with Minnesota Statutes, Chapter 13, in regard to a request for data made on September 15 and October 15, 2009?

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. (Section 13.03, subdivision 2(a), and Minnesota Rules, section 1205.0300.) In responding, the entity must provide the data, advise that the data are classified such that the requestor cannot have access, or inform the requestor that the data do not exist.

Here, the City provided no response to Ms. Morris and therefore is not in compliance with Chapter 13.

In addition, given the nature of the data Ms. Morris requested, it is likely some of them are official records. Minnesota Statutes, section 15.17, requires government entities to create official records and maintain them for time periods prescribed in an entity's record retention schedule (Minnesota Statutes, section 138.17). Section 15.17, read in concert with section 13.03, imposes an obligation upon government entities to make and preserve a record of their actions so that the data in those records will be accessible pursuant to Chapter 13.

In 2008, the Commissioner issued an advisory opinion involving the same parties involving a similar issue. In that opinion, 08-026, the Commissioner also concluded that the City had not complied with Chapter 13, and likely was not in compliance with section 15.17. The Commissioner encourages the City to work to improve its handling of data practices matters.

Opinion:

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

The City of Palisade did not comply with Minnesota Statutes, Chapter 13, in regard to a request for data made on September 15 and October 15, 2009.

Signed:

Sheila M. Reger

Sheila M. Reger
Commissioner

Dated:

December 21, 2009