



Advisory Opinion 10-001

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 December 14, 2009, the Information Policy Analysis Division (IPAD) received a letter, dated December 10, 2009, from Miriam Collom-Winters, City Clerk/Treasurer for the City of Hewitt. In her letter, Ms. Collom-Winters asked the Commissioner to issue an advisory opinion regarding the classification of certain data the City maintains.

A summary of the facts as Ms. Collom-Winters provided them is as follows. Ms. Collom-Winters stated, verbatim:

1. City Council held several closed sessions, discussing preliminary allegations of a person subject to council authority.
2. Resulting from those sessions, a City employee was ultimately terminated.
3. No person, other than the City Council Members and, at times, the City Attorney, was present for the closed sessions.
4. The sessions were audio recorded, as required by law.
5. There may or may not be litigation arising from the ultimate termination.

Based on these facts, at what point, if ever, [do] the audio recordings of closed sessions become a matter of public record?

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, what is the classification of the following data maintained by the City of Hewitt: audio recordings of closed public meetings?

Discussion:

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

Minnesota Statutes, Chapter 13D, the Open Meeting Law, requires that public bodies close meetings when discussing certain types of not public data but also prohibits public bodies from closing meetings when discussing all other types of not public data: “Except as provided in this chapter, meetings may not be closed to discuss data that are not public data.” (Section 13D.05, subdivision 1(a).)

Minnesota Statutes, Chapter 13D, also requires that public bodies electronically record most closed meetings and maintain the recordings:

All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

(Minnesota Statutes, section 13D.05, subdivision 1(d).)

Ms. Collom-Winters asked about the classification of data in audio recordings of closed meetings of public bodies and if they become public at some point in time. The provisions of Chapter 13 set forth how the data are classified.

In many situations when a public body is required to close a meeting to discuss not public data, the data become public only after 30 plus years. (Section 13.10, data on decedents.) An example is a school board closing a meeting to discuss student educational data that are private pursuant to Minnesota Statutes, section 13.32. The data in the recording are accessible only to the data subject but will become public at a particular time after the individual’s death.

There are other situations when the classification of not public data in a recording of a closed meeting likely will change in a relatively short period of time. For example, if a city closes a meeting to discuss active criminal investigative data (Minnesota Statutes, section 13.82, subdivision 7), the data in the recording are confidential/protected nonpublic. However if, during the time the City retains a copy of the recording, the investigation’s status changes to inactive, some or all of the data become public.

Another example is when a city closes a meeting to discuss allegations or charges against an employee pursuant to section 13D.05, subdivision 2(b). Generally, the data in the recording are private personnel data under section 13.43, subdivision 4, and accessible to the data subject, but not to the public. (See also section 13D.01, subdivision 6, and Advisory Opinion 06-020.) However, at some point in time, some or all of the data may become public pursuant to section 13.43, subdivision 2. For instance, if the employee is disciplined and there is a final disposition (section 13.43, subdivision 2(b)), certain data become public (section 13.43, subdivision 2(a)(5)). If the data in the recording are the type classified as public pursuant to section 13.43, the public can gain access to those data.

Ms. Collom-Winter described a situation in which an employee was terminated. Prior to there being a final disposition pursuant to section 13.43, subdivision 2(b), only the fact that a complaint/charge exists and its status are public. Once a final disposition occurs, additional data become public (section 13.43, subdivision 2(a)(5)). Generally, final disposition occurs in a shorter amount of time if the employee is not covered by a collective bargaining agreement

(section 13.43, subdivision 2(b)). Here, Ms. Collom-Winters did not state whether the employee is or is not covered by a collective bargaining agreement and whether a final disposition has occurred.

Finally, government entities need to keep in mind it is possible that some recordings may contain both public and not public data, and must be redacted appropriately upon a data request.

Opinion:

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

Data in audio recordings of public meetings closed to discuss preliminary allegations against an employee are classified pursuant to Minnesota Statutes, section 13.43. The fact that a complaint/charge exists and its status are public. Regarding the remainder of the recording, the Commissioner cannot determine with certainty the classification because she does not know if a final disposition has occurred.

Signed:

Sheila M. Reger

Sheila M. Reger
Commissioner

Dated:

January 26, 2010