



Advisory Opinion 10-003

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 January 20, 2010, IPAD received a letter dated January 19, 2010, from Julie Fleming-Wolfe, attorney for the City of Winnebago. In her letter, Ms. Fleming-Wolfe, asked the Commissioner to issue an advisory opinion regarding the classification of certain data the City maintains.

A summary of the facts as Ms. Fleming-Wolfe provided them is as follows. She wrote in her opinion request:

...The City hired an independent investigator to investigate [certain allegations made by a City employee]. The investigator issued a report, essentially finding that there was no substantiation for the allegations of wrongdoing.

I reviewed the investigator's report...I determined that the report could not be released to the public because it contained allegations that had not been substantiated so there was no discipline, and because it includes a substantial amount of private data under Minn. Stat. § 13.43, and the private data was too intertwined with any public data so as to be incapable of reasonable redaction.

The local media and some City employees referenced in the report have objected to non-disclosure of the report...

Ms. Fleming-Wolfe provided the Commissioner with a copy of the report, in which a few of the pages have been redacted. The report contains data about employees, elected officials, and witnesses, and the investigator's analyses.

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, what is the classification of data in a City of Winnebago report related to an investigation into complaints made by a city employee?

Discussion:

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

Here, Ms. Fleming-Wolfe asked about the classification of the data in the report. In situations such as these, the Commissioner can offer only general guidance because government entity staff, with their knowledge of the relevant facts, circumstances, and involved data subjects, are in the best position to make decisions about classification.

The report contains data about several categories of individuals. One category is individuals who are City employees. Data about current or former employees are classified pursuant to Minnesota Statutes, section 13.43. Certain data about employees are public (section 13.43, subdivision 2), and certain data are private (section 13.43, subdivision 4). Private data are accessible to the data subject but not to the public (section 13.02, subdivision 12).

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.

Ms. Fleming-Wolfe stated that the allegations made by a City employee were not substantiated; the City did not take disciplinary action and there was no final disposition. Thus, regarding data about employees who were the subjects of the complaint(s), the fact that a complaint exists and its status are public. Other data related to the complaint are not public. Any other data about those employees are classified pursuant to section 13.43; some may be public and some may be private.

Regarding data in the report about employees who were not the subjects of the complaint(s), the data are classified pursuant to section 13.43; some may be public and some may be private.

The report also contains data about individuals who are elected officials. Chapter 13 does not contain a specific classification for data about elected officials. However, in previously-issued advisory opinions, the Commissioner consistently has opined that the classification of data about elected officials depends upon whether the entity considers the elected official to be an employee. If so, the data are classified pursuant to section 13.43. If not, the data are presumed public pursuant to the general presumption in section 13.03, subdivision 1. (Advisory Opinion 03-011, for example.) Here, the Commissioner does not know whether the City considers its elected officials to be employees for the purposes of Chapter 13.

The report also contains data about individuals who are witnesses. It appears that some of the witnesses are employees of other Minnesota government entities; if the investigator collected data about these individuals because they are employees or volunteers or independent contractors, the data classified pursuant to section 13.43. (Advisory Opinion 97-030.) However, if the data were not collected for this reason, the data are public pursuant to the general presumption in section 13.03, subdivision 1. Regarding non-employee witnesses, the data are public pursuant to the general presumption in section 13.03, subdivision 1.

Finally, Ms. Fleming-Wolfe stated that the private data were “too intertwined with any public data so as to be incapable of reasonable redaction.” On this point, the City needs to consider the Commissioner’s discussion in a previous opinion, Advisory Opinion 04-014, about data that are inextricably intertwined. The Commissioner wrote:

In Northwest Publications, Inc. v. City of Bloomington, 499 N.W.2d 509 (Minn.App. 1993), the Minnesota Court of Appeals held that entire documents may be withheld under Chapter 13 only when public and nonpublic information is so inextricably intertwined that segregation of the material would impose a significant financial burden and leave the remaining part of the document with little informational value....

The Commissioner further wrote in 04-011:

Therefore, if it is not possible for the [School District] to appropriately redact the document, it may withhold the entire document. However, it is important to note that the Commissioner, as well as the court in *Northwest Publications, Inc.*, maintains that denial of access of data should occur only in situations where it is impossible to separate or redact the data appropriately. Given the clear presumption of openness in Chapter 13, the District should make every effort to avoid a situation where it must withhold an entire document from the public. The Commissioner adds that the [School District] must disclose any public data in the document, including, pursuant to section 13.43, subdivision 2(a)(4), that a complaint was made...the status of the complaint, and the name of the employee about whom the complaint was made.

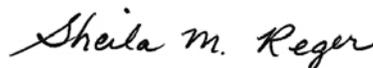
In the matter currently before the Commissioner, the City, not the Commissioner, is in the best position to determine whether the data are inextricably intertwined. The City should review the Commissioner’s guidance in making its decision.

Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issue that Ms. Fleming-Wolfe raised is as follows:

The City, not the Commissioner, is in the best position to determine the classification of the data in the investigative report; the Commissioner can offer only general guidance. In making its determination, the City should consider the following: data about individuals collected because they are employees are classified pursuant to Minnesota Statutes, section 13.43; data about elected officials are classified pursuant to section 13.43 or are public pursuant to the general presumption in Minnesota Statutes, section 13.03, subdivision 1; and data about non-employee witnesses are public pursuant to section 13.03, subdivision 1.

Signed:



Sheila M. Reger
Commissioner

Dated:

March 3, 2010