



---

## Advisory Opinion 10-006

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 25, 2010, the Information Policy Analysis Division (IPAD) received a letter from David DeLong. In his letter, Mr. DeLong asked the Commissioner to issue an advisory opinion regarding his right to access certain data about the City of Northfield Hospital.

IPAD, on behalf of the Commissioner, wrote to Deborah Little, City Clerk, in response to Mr. DeLong's request. The purposes of this letter, dated February 9, 2010, were to inform her of Mr. DeLong's request and to ask her to provide information or support for the City's position. IPAD received a response from Ms. Little on February 24, 2010, and a response from Marin Swanson, attorney for the Northfield Hospital, on February 26, 2010.

A summary of the facts as Mr. DeLong provided them is as follows. He wrote in his opinion request:

...the Northfield Hospital...announced that they would be commencing a search to replace the current President/CEO...

On 12/04/2009 [Friday] I made a public data request for the names of two finalists.

...I made a data request at the Administration Office of the Northfield Hospital.... [the current Hospital Administrator, Ken Bank said] we're not releasing the names yet, they need time to tell their employers and clear their schedules....I restated that I was making this request under the data practices act, and he said something to the effect that we don't deal with that here and that I should go check with City Hall.

I went over to Northfield City Hall, and explained that I had just been at the Hospital trying to find out the names of the two administrator finalists and they had sent me over here....[city staff] said that Deb (city clerk, and the city's responsible authority) was out, but she gave me a data request form to fill out. I filled out the form...[city staff] said she didn't expect Deb back today, but she would see that she got it....

At 1:11 pm [Monday, December 7, 2009], Deb Little leaves me a message with the two names.

In a letter dated December 11, 2009, Ms. Swanson wrote to Mr. DeLong:

At the time of your request on December 4, the process of selection of finalists to be interviewed for the position of President of the Northfield Hospital had not been completed....In other words, the process included both an offer of an interview by the Hospital and acceptance of the offer by the applicants....

Accordingly, at the time of your request...the names of the applicants under consideration to be interviewed as finalists were still private data...The names became public when the Hospital's search consultant confirmed that those persons had not withdrawn their names and had accepted the opportunity to be interviewed as finalists....

With regard to your request being made to Ken Bank and his referring you to the City Clerk, please be aware that the Hospital is an instrumentality of the City and is subject to the data practices procedures and policies of the City. The City Clerk is the responsible authority and data practices compliance official of the City....[The City Clerk] has not designated the Hospital President [to assist in complying with the Data Practices Act]; therefore the City Clerk is the proper person to respond to a request such as yours....

**Issue:**

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

Did the City of Northfield comply with Minnesota Statutes, Chapter 13, in denying access to the names of the two finalists for the position of president of the Northfield Hospital?

**Discussion:**

In analyzing the responses from the City and the Hospital, the Commissioner has determined there are two questions to resolve; one is whether the City responded in a timely manner and the second is whether the response was responsive to Mr. DeLong's request.

Regarding the timely response, 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. (Minnesota Statutes, section 13.03, subdivision 2(a), and Minnesota Rules, part 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.

In her comments to the Commissioner, Ms. Little wrote that on Friday, December 4, 2009, she left the office shortly before Mr. DeLong made his data request. She further stated:

...On Monday, December 7, 2009, upon returning to work, I received the data request...Staff informed me that Mr. DeLong had been sent [to the City] from the Northfield Hospital...

[On December 7] I sent an e-mail to Mr. Ken Bank, Hospital Administrator, for the requested information...I noted that I left a voice mail message for the requestor at 1:11 p.m.

on December 7...The request was, therefore responded to within less than one business day from receipt...

After review of this situation, the City of Northfield has requested that Northfield Hospital adopt their own data practices policy and designate their own responsible authority. The Hospital has special data privacy issues and has staff with the related expertise in those areas. The City will, of course, continue to respond to all requests for data in the City's possession such as related to the purchase and sale of real estate and facilities and the construction of facilities when these items relate to City Council actions....

Ms. Swanson wrote to the Commissioner:

Under Chapter 14 of the Northfield Charter...the Hospital is owned and operated by the City. "Control and management" of the City's Hospital and related facilities is committed to a Board whose members are appointed by the Mayor and confirmed by a majority of the City Council....

...Historically and presently, the City of Northfield and its responsible authority have been responsible for data practices matters for all of these board, commissions and authorities...

If the City Clerk needs to obtain data from the Hospital in order to respond to a data request, that is no different from obtaining data from the community development department or the finance department or the police department....

I am not aware of any law which states that a municipal hospital is a separate political subdivision of the State of Minnesota....

Lacking any legal authority which establishes that Northfield Hospital is a separate political subdivision, and given the local Charter and ordinance provisions which establish and affect the Hospital, I have concluded and I believe it is reasonable to conclude that the Hospital is an instrumentality of the City of Northfield. Accordingly, it is governed by the data practices policies and procedures of the City unless and until a different policy or set of procedures is adopted for it.

Mr. DeLong requested data on Friday, December 4, 2009, from the Hospital. Staff there denied him access to the data and advised him to check with the City. Mr. DeLong then went to the City, also on December 4, and made a data request. The City responded on the following Monday by providing him with the names of two individuals.

The Commissioner concludes the City did respond in a timely manner but disagrees with the City's determination of how some of the data related to Mr. DeLong's request are classified (see discussion below).

In addition, the City and the Hospital need to clarify their policy on whether people should request Hospital-related data from the Hospital or from the City. According to Ms. Swanson, the Hospital falls under the umbrella of the City and therefore cannot be a separate political subdivision. Thus, if the parties determine the Hospital should respond to Hospital-related data, the City would need to designate someone at the Hospital to be the designee for those types of data. (Minnesota Statutes, section 13.03, subdivision 2, and Minnesota Rules, part 1205.1100.) The Commissioner urges the City and the Hospital to make a decision promptly and make any

necessary changes to the City's data access procedures so that people know where to direct their data practices requests. (Minnesota Statutes, section 13.03, subdivision 2(b).)

The other question before the Commissioner is whether the City/Hospital provided Mr. DeLong with data responsive to his request. On this issue, the Commissioner respectfully disagrees with Ms. Swanson's determination as to how data about the applicants are classified.

Pursuant to Minnesota Statutes, section 13.43, subdivision 3, prior to an individual becoming a finalist, the following data are public: veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. Section 13.43, subdivision 3, further states:

Names of applicants shall be private except...when applicants are considered by the appointing authority to be finalists for a position in public employment. For purposes of this subdivision, 'finalist' means an individual who is selected to be interviewed by the appointing authority prior to the selection.

Thus, an applicant's name becomes public when s/he is selected to be interviewed by the appointing authority; the applicant has become a "finalist" for purposes of Minnesota Statutes, Chapter 13.

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

As indicated in my letter to Mr. DeLong on December 11, 2009, Northfield Hospital did not consider candidates for the particular position to be finalists until they had accepted the opportunity to be considered and interviewed as such by the Full Hospital Board....preferred candidates were identified by a search committee and conveyed to the search consultant. The consultant then communicated their selection to the candidates and gave them a deadline of December 7, 2009, to decide if they would accept the opportunity to be interviewed as a finalist and to inform their present employer. Until December 7, 2009, the candidates were *potential* finalists and not actual finalists for the position...[Emphasis provided.]

In *Mankato Free Press Co. v. City of North Mankato*, the Minnesota Court of Appeals opined on a similar issue. The Court wrote:

...The inclusion of the definition of finalist [in section 13.43, subd. 3] is a key consideration; it indicates that the triggering event that makes a name public is the *selection* of a candidate to be interviewed, not the candidate's acquiescence to the interview. To hold otherwise would give the candidate control over when his or her name is made public. The statute does contemplate such a result...[Emphasis provided.]

...The legislature's addition of the definition of "finalist" as well as the "selected to be" clause indicates an intent that the identities of finalists are to be made public when the appointing authority chooses them for interviews, not when the candidates agree to go forward with the interviews. [Emphasis provided.]

We recognize that the privacy concerns for public employment are at stake, but the statute and its legislative history suggest that the public's right to be informed outweighs an individual's privacy right in this context. We believe that the concerns raised by respondents can be addressed if the appointing authority advises candidates before they apply (or early in

