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### Advisory Opinion 10-007

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 29, 2010, the Information Policy Analysis Division (IPAD) received a letter, dated January 28, 2010, from Dan McGrath. In his letter, Mr. McGrath asked the Commissioner to issue an advisory opinion regarding the fee Ramsey County charged him for copies of data.

IPAD, on behalf of the Commissioner, wrote to Julie Kleinschmidt, Ramsey County Manager, in response to Mr. McGrath's request. The purposes of this letter, dated February 8, 2010, were to inform her of Mr. McGrath's request and to ask her to provide information or support for the County's position. On March 3, 2010, IPAD received a response, dated same, from Darwin Lookingbill, Civil Division Director, Ramsey County Attorney's Office.

A summary of the facts is as follows. In an email dated January 19, 2010, Mr. McGrath wrote to Mr. Lookingbill regarding access to certain election data:

Please see attached spreadsheet for specific polling place roster pages and/or absentee ballot envelopes and/or EDR [Election Day Registration] signature pages. I can either look through the entire precinct with an election department staffer, or will accept the specific page(s) that contain the data sought, or sufficient pages to demonstrate that the data sought does not exist....

It may be simpler to produce the entire stack of documents for a given precinct and just let me flag the ones I may want copied...but, of course, that will be more work for me, so I'll be fine with having the documents already set aside for me if you prefer.

In addition, I will want to examine ALL documents (rosters, EDR signature pages, absentee ballot envelopes) for the following precincts...

The subject line of Mr. McGrath's email is, "List of documents for review and possible copying."

#### **Issue:**

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

Did Ramsey County comply with Minnesota Statutes, Chapter 13, in charging \$600 for copies of government data?

**Discussion:**

Minnesota Statutes, section 13.03, subdivision 3, applies when an individual who is not the data subject requests access to government data. If the individual wants to inspect the data, the entity may not charge any fee (section 13.03, subdivision 3(a)).

If the individual wants copies of the data, the entity may choose to charge a fee. Section 13.03, subdivision 3(c), provides that if the number of requested paper copies is 100 or fewer, the entity can charge no more than \$.25 per page. If the number of pages is more than 100, the entity's fee must be based on the actual costs of searching for and retrieving the data, and for making the copies.

In his comments to the Commissioner, Mr. Lookingbill wrote:

...[Mr. McGrath] asked for all documents for each [of the individuals on Mr. McGrath's list]... He asked for copies of all the documents we pulled for the individuals on the list which equaled exactly 118 pages.

A total of 25 hours of staff time was devoted to assembling and copying these documents....Ramsey County charged Mr. McGrath \$25 per hour for the staff time. This is a rate that is less than the actual salary and overhead of staff involved. The total initially requested was \$625.

After Mr. McGrath objected to the amount, I reviewed the billing and determined that some of the time could arguably relate to separating public from private data. The bill was then reduced to \$425....

This case is not like Advisory Opinion 04-038 where the party requested to inspect a large number of documents and then only copied a portion of those documents. The vast majority of the time incurred by Ramsey County related to retrieving and copying the information relating to the [requested data]. Mr. McGrath took copies of all that information....

Furthermore, Mr. McGrath never requested a "free" inspection and then a separate request for copies.

In addition, based on information Mr. Lookingbill provided, it appears the County, in its accounting of the 25 hours of staff time, billed Mr. McGrath for "obtaining documents from storage" and for "public inspection monitor."

In his opinion request, Mr. McGrath wrote:

On Wednesday, January 27<sup>th</sup> 2010, I....visited Ramsey County Elections...to inspect documents that Ramsey County workers retrieved at our request. I inspected the documents for two hours and requested copies of some that were pertinent...

A Ramsey County worker informed me that the copies totaled 120 pages and that exceeded 100 so we would be billed for staff time instead of the typical 25 cents per copy....

Going in, I did not know if I would want copies of any of the documents I asked to view or not. After reviewing them, I decided that I wanted copies of some of them....

Thousands of pages were requested for inspection. Only 120 were afterwards requested for copying....

Mr. Lookingbill states that Mr. McGrath, “asked for copies of all the documents we pulled...which equaled exactly 118 pages. A total of 25 hours of staff time was devoted to assembling and copying these documents.” Mr. McGrath states, “Thousands of pages were requested for inspection. Only 120 were afterwards requested for copying.”

The dispute here appears to be whether the County charged Mr. McGrath for searching for and retrieving data Mr. McGrath inspected but did not get copies of.

If Mr. McGrath requested copies of *all* the data he inspected, the County can charge him the actual cost (searching for and retrieving the data, and making the copies) of copying all the data. If Mr. McGrath inspected the data and requested copies of only *some*, the County should pro-rate the fee based on the number of pages copied and the actual cost to search for and retrieve those pages. (Advisory Opinion 04-038.)

The issue in this opinion is whether the County’s copy charge is allowable under Chapter 13. Regarding the portion of the charge for “obtaining documents from storage” and for “public inspection monitor,” the Commissioner’s opinion is that Chapter 13 does not allow government entities to include either of these as part of a copy fee. (The Commissioner discussed data storage issues in Advisory Opinion 95-044.)

Regarding the remaining part of the charge, because there is a factual dispute, the Commissioner is unable to determine whether it is allowable.

### **Opinion:**

Based on the facts and information provided, the Commissioner’s opinion on the issue that Mr. McGrath raised is as follows:

Ramsey County did not comply with Minnesota Statutes, Chapter 13, in requiring the requestor to pay, as part of the copy fee, for time staff spent obtaining documents from storage or monitoring during inspection. Regarding the remainder of the County’s copy fee, because there is a factual dispute, the Commissioner cannot determine whether it is allowable under Chapter 13.

Signed:

*Sheila M. Reger*

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Sheila M. Reger  
Commissioner

Dated:

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March 16, 2010