



Advisory Opinion 10-008

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 February 18, 2010, the Information Policy Analysis Division (IPAD) received a letter from Alberto Quintela, Jr., staff attorney for the Minnesota Department of Commerce. In his letter, Mr. Quintela asked the Commissioner of Administration to issue an advisory opinion regarding the classification of certain data the Department maintains.

A summary of the facts as Mr. Quintela provided them is as follows. He explained in his opinion request that the Department received a data request from someone wishing to inspect surveys of statewide retail prices for residential propane. Mr. Quintela wrote that the Department has data responsive to the request for “years 2003 to the present.” Mr. Quintela wrote:

[The Department] conducts a telephone survey ... of weekly residential propane prices during the winter heating season months on a voluntary basis on behalf of the Energy and Information Administration (EIA), which is part of the U.S. Department of Energy. ... The EIA uses the weekly fuels pricing information to monitor supply conditions for heating oil and propane, and it provides its analysts with the necessary information to monitor heating fuel prices in the event of sudden market changes or supply disruption.

The survey form ... includes a space for [the Department] to record the name of a particular company together with the company’s weekly residential price for No. 2 heating oil and propane. The EIA selects the particular group of companies to be included in each year’s EIA survey. ...

[The Department] conducts the [survey] by calling each EIA-selected company each week during the heating season ... [The Department] promptly reports the survey information to the EIA. [The Department] creates Minnesota-specific summaries of residential heating oil and propane prices from the data it obtains from the [surveys].

Issue:

Based on Mr. Quintela’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 that the Minnesota Department of Commerce maintains: the names of propane companies and their weekly residential propane prices for the heating seasons of 2003-2004 through the present obtained by the Department as part of a federal government survey?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified by state or federal law. (Minnesota Statutes, section 13.03, subdivision 1.)

In his opinion request, Mr. Quintela stated his position that the Department is not prohibited from publicly releasing the names of the propane companies and their weekly residential propane prices. First, he wrote:

... as stated by the EIA, the [Federal Freedom of Information Act (FOIA)] does not prohibit [the Department] from disclosing to the public the EIA [survey] data

[EIA] confirmed in [a February 4, 2010, email to the Department its] understanding that EIA does not consider federal law to prohibit the [the Department] from disclosing to the public the EIA [survey] data Rather, the EIA considers it to be permitted by Exemption 4 of FOIA to withhold EIA [survey] data when requests for the information are made to EIA, and the EIA does not disclose such data when asked. ...

(Exemption 4 allows the federal government to withhold certain commercial or financial information and trade secrets. 5 U.S.C. § 552(b)(4).)

Mr. Quintela included as part of his opinion request a copy of the February 4, 2010, email referenced above. In part, it states: “It is your office’s judgment in responding [to the data request] whether to apply any exceptions provided under federal FOIA law or rely solely on your state law in responding to [the request].”

Mr. Quintela also stated that the Department is not bound by a contract with the EIA that dictates classification of the data. This is significant because pursuant to Minnesota Statutes, section 13.35, as a condition of a contract, federal agencies can require that government entities treat, as private (data on individuals) or nonpublic (data not on individuals), data that an entity collects and maintains pursuant to the federal contract.

Further, Mr. Quintela asserted that the weekly residential propane prices of the propane companies are not trade secret data, as defined by Minnesota Statutes, section 13.37. He wrote:

[The Department] is of the view that the Propane Companies’ weekly residential propane prices are publicly available upon request of consumers. To test this understanding, [the Department] made several test calls Without identifying itself, [the Department] asked for a price quote for residential propane from three propane companies and received from each company its residential propane price. The pricing data appears to be consistent with the information [the Department] obtains in response to the weekly EIA [survey]. [The Department] concludes that the weekly residential propane prices of the Propane Companies are made public upon request and are not kept secret nor do they derive independent

