



Advisory Opinion 10-009

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 23, 2010, the Information Policy Analysis Division (IPAD) received a letter, dated February 22, 2010, from Cynthia Porter, News Editor of the *Winona Post*. In her letter, Ms. Porter asked the Commissioner to issue an advisory opinion regarding her right to gain access to certain data from School District 861, Winona. IPAD asked for additional information, which Ms. Porter provided on March 9, 2010.

IPAD, on behalf of the Commissioner, wrote to Paul Durand, District Superintendent, in response to Ms. Porter's request. The purposes of this letter, dated March 11, 2010, were to inform him of Ms. Porter's request and to ask him to provide information or support for the District's position. On March 30, 2010, IPAD received a response, dated same, from Eric Quiring, an attorney representing the District.

A summary of the facts as Ms. Porter provided them is as follows. In a January 8, 2010, email to the District, Ms. Porter wrote:

We are requesting access to all e-mails or other written forms of correspondence regarding how the superintendent evaluation is being conducted.

I understand that the evaluation itself contains protected personnel data regarding [performance], and that such information is not available. However, what we are requesting is communication regarding the preparation of the evaluation, including who is completing evaluation forms for the review, what the process will be for tabulating them and what the communication has consisted of regarding execution of that process.

In a January 27, 2010, email to the District, Ms. Porter reiterated her request.

In an email later in the day of January 27, 2010, the District responded: "Upon review of all e-mails by our attorney, I have been advised that all existing e-mails related to the superintendent evaluation process are private personnel data and can not [sic] be released."

In a February 9, 2010, email to the District, Ms. Porter disputed the District's position:

... the Winona Post respectfully disagrees with the characterization that documents detailing how the evaluation is being conducted are protected personnel data. The contents of a personnel evaluation are private, the procedures to conduct one are not.

That an evaluation is being conducted is not protected data. Procedural information regarding how the process is carried out, the names of the individuals submitting evaluations, the process for tabulating and disseminating data, and the employee's rights before, during and after the evaluation process are a matter of protocol and not evaluative in nature.

Communications regarding that protocol do not constitute protected personnel data, they represent district communications regarding policies and procedures. We understand that in some situations statements can be made in the body of these documents that might be evaluative in nature and we acknowledge the district's responsibility to redact those specific statements.

About the time Ms. Porter submitted her opinion request, Pat Blaisdell, the District's Director of Human Resources, sent an email to Ms. Porter. (Mr. Quiring provided a copy to the Commissioner.) The email contains a list of the names of the individuals who "were provided a copy of the superintendent evaluation form to complete."

Ms. Blaisdell further wrote:

The individuals listed ... were provided an addressed, stamped envelop [sic] and asked to complete the evaluation and return it by November 30, 2009. The individuals were advised the evaluation forms were anonymous and did not need to be signed.

Once collected, the evaluation forms were tabulated, as per the superintendent's contract, by Brian Neil and Stacey Mounce Arnold.

With regard to the employee's rights before, during, and after the evaluation process, I refer you to Article IX Section 5 (Superintendent Performance Appraisal) as amended July 27, 2006, which outlines the process for evaluation, and to Minnesota Statute 13.43.

The District previously had provided a copy of the contract to Ms. Porter.

Issue:

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

Did School District 861, Winona, comply with Minnesota Statutes, Chapter 13, in responding to a request for "all e-mails or other written forms of correspondence regarding how the superintendent evaluation is being conducted?"

Discussion:

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

Minnesota Statutes, section 13.43, classifies data on individuals who are current or former employees of a government entity. Subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private.

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

Ms. Porter's request for communications regarding the superintendent's evaluation involves personnel data on an individual, Superintendent Durand. Even if Mr. Durand is not named, any data regarding his evaluation would be classified as data on an individual because Mr. Durand could be easily identified as the subject of that data. ... The data sought by Ms. Porter relates to Mr. Durand's employment and is not specifically classified as public under [Chapter 13]. Accordingly, the [District] properly determined that the communications relating to the superintendent evaluation are private personnel data.

... The [District] has identified the individuals who were provided evaluation forms, disclosed that the evaluations were anonymous, disclosed [who tabulated the evaluation forms]...

The [District] is not authorized to release private personnel data on Mr. Durand, whether it is part of the evaluation process or not. The communications sought by Ms. Porter do not contain data that would be public under Minnesota Statutes Section 13.43, subdivision 2. While it is true that any data that do not, or could not, identify an individual employee would be public, no such data exists in this case. ...

In responding to data requests, government entities 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. Here, the District's initial response was that the data Ms. Porter requested were not public. After Ms. Porter disputed the District's determination, and nearly a month later, the District provided information regarding the process for evaluating the Superintendent. However, the District did not provide Ms. Porter with actual data, i.e., communications regarding the evaluation procedures and protocols. Rather, in her email, Ms. Blaisdell listed the evaluators and summarized parts of the process. As the Commissioner previously has opined, Chapter 13 gives people the right to gain access to government data as those data exist in the entity. (Advisory Opinions 04-031 and 07-015.)

In his comments, Mr. Quiring states that the communications Ms. Porter seeks do not contain public data. However, it seems likely that the information Ms. Blaisdell provided in her email to Ms. Porter came from government data maintained by the District. Such data are public and should have been provided to Ms. Porter – if they are part of a document that also contains not public data, the District's obligation is to redact the not public data and provide a copy of the remaining public data.

Ms. Porter correctly asserts that data detailing how the evaluation is being conducted are public. These data are not data about the superintendent and, therefore, are not classified pursuant to

