



Advisory Opinion 10-019

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2010). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On July 23, 2010, the Information Policy Analysis Division (IPAD) received a letter from Jacquelyn Wehking and Jennifer Marquardt, co-publishers of *The Parkers Prairie Independent* newspaper. In the letter, they asked the Commissioner to issue an advisory opinion regarding their access to certain data from School District 547, Parkers Prairie.

IPAD, on behalf of the Commissioner, wrote to Kent Baldry, who was believed to be the responsible authority, in response to the request from Ms. Wehking and Ms. Marquardt. The purposes of this letter, dated August 9, 2010, were to inform him of the request and to ask him to provide information or support for the District's position. On September 1, 2010, the Superintendent, Thomas Ames, provided a response. (Kent Baldry was the previous Superintendent.)

A summary of the facts as Ms. Wehking and Ms. Marquardt provided them is as follows. In their opinion request, Ms. Wehking and Ms. Marquardt wrote:

... [At the February 16, 2010, meeting] the board requested to close the meeting under section 13.05, subd. 3(a), stating it wished to evaluate Superintendent Kent Baldry. [He] was asked to not be present ... and left the meeting room with the rest of the public. The board re-opened the meeting at 9:30 p.m. The board summarized its evaluation conducted during the closed meeting, offering only positive remarks regarding Superintendent Baldry. But immediately following the summary, [a Board Member] made a motion to terminate Superintendent Baldry's contract, which didn't expire until the end of the 2011 school year. ... No discussion whatsoever was held and a roll call vote immediately was taken. All members voted to approve the motion

In a letter dated March 1, 2010, Ms. Wehking and Ms. Marquardt requested data from the District:

... [On February 16, 2010, the Board] requested to close the regular school board meeting to evaluate Superintendent Kent Baldry. By Minnesota Statute, a recording of the closed meeting was required. ... [Pursuant to Minnesota Statutes, Chapter 13], the subject (Superintendent Kent Baldry) of the data (recorded tape) is the only party that has access and to whom the data is now available. ...

... As you can see by the letter enclosed, Superintendent Kent Baldry has given the *Parkers Prairie Independent, LLC* consent to listen to the tape of the closed meeting evaluation We request reviewal of the tape

In their opinion request, Ms. Wehking and Ms. Marquardt wrote:

[Board Chairperson Steven Inwards] came to *The Independent* in person [on March 5] and stated that our request would be denied on Minnesota School Board Association (MSBA) policy. ... Beyond this, he never provided any specific legal basis for refusing our requests to listen to the tape.

Issue:

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

Did School District 547, Parkers Prairie, comply with Minnesota Statutes, Chapter 13, in responding to a request to gain access to the tape recording of a closed meeting?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, a government entity must respond to requests for government data. In responding to a request, the entity must provide the data, advise that the data are classified such that the requestor is denied access, or inform the requestor that the data do not exist.

Ms. Wehking and Ms. Marquardt wrote that the Board closed the February 16, 2010, meeting to evaluate then-Superintendent Baldry. (Closing a meeting for this reason is allowable under Minnesota Statutes, Chapter 13D.05, subdivision 3(a).)

On February 18, 2010, Ms. Wehking and Ms. Marquardt obtained written consent from then-Superintendent Baldry which gave the District permission to release to the newspaper private data in the audio recording of which he is the subject. (As the Commissioner discussed in Advisory Opinion 10-001, the classification of data in audio recordings of closed meetings depends upon how the data are classified pursuant to Chapter 13. In the current situation, given that the Board closed the meeting to evaluate then-Superintendent Baldry's performance, portions of the tape very likely contain private data about him.

Pursuant to Minnesota Statutes, section 13.04, subdivision 3, a government entity must respond within ten business days when a data subject has given consent to release his/her private data to another individual.

On March 1, 2010, Ms. Wehking and Ms. Marquardt made a written request to the District for the tape and attached a copy of then-Superintendent Baldry's consent form. Ms. Wehking and Ms. Marquardt wrote in their opinion request:

[Board Chair Steven Inwards] came to the [newspaper] in person the morning of Friday, March 5th and stated that our request would be denied ... he never provided any specific legal basis for refusing our requests to listen to the tape.

On April 16, 2010 the Board received a second request in writing from our attorney ... On Saturday, April 17, 2010 we were again told by [Board Chair Inwards] that we would not be allowed to listen to the tape. [Board Chair Inwards] told us that the whole board agreed no access would be granted without a court order.

(Ms. Wehking and Ms. Marquardt did not provide the Commissioner with any written documentation of the District's denial and the District, in its comments to the Commissioner, did not refute the facts as Ms. Wehking and Ms. Marquardt presented them.)

In his comments to the Commissioner, Superintendent Ames wrote:

On July 2, 2010, I began serving as the superintendent of [the District].

On [August 26, 2010, the Board] voted to allow Jacquelyn Wehking and Jennifer Marquardt ... consent to listen to the tape of the closed meeting in question. ...

Ms. Wehking and Ms. Marquardt asked the Commissioner to comment on whether the District responded appropriately to their March 1, 2010, data request. Given that the District did not provide the statutory basis upon which it denied access to the data and did not release the data even though the newspaper obtained consent from then-Superintendent Baldry, the District's response was not in compliance with Chapter 13. Based on the information Superintendent Ames submitted, it appears the District has changed its previous position and is willing to provide Ms. Wehking and Ms. Marquardt with the data they requested.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issue that Ms. Wehking and Ms. Marquardt raised is as follows:

School District 547, Parkers Prairie, did not comply with Minnesota Statutes, Chapter 13, in responding to a March 1, 2010, request to gain access to the tape recording of a closed meeting for the following reasons: (1) the District did not provide the statutory basis for denying access to the data; and (2) the District did not release the data even though the newspaper obtained written consent for the release from then-Superintendent Baldry.

Signed:

Sheila M. Reger

Sheila M. Reger
Commissioner

Dated:

September 20, 2010