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### Advisory Opinion 10-023

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 13, 2010, the Information Policy Analysis Division (IPAD) received a letter, dated July 12, 2010, from John Fax. In his letter, Mr. Fax asked the Commissioner to issue an advisory opinion regarding his right to access certain data from the City of North Saint Paul. IPAD requested additional information, which Mr. Fax provided on September 7, 2010.

IPAD, on behalf of the Commissioner, wrote to Walter Wysopal, City Manager, in response to Mr. Fax's request. The purpose of this letter, dated September 13, 2010, was to inform him of Mr. Fax's request and to ask him to provide information or support for the City's position. On September 29, 2010, IPAD received a response from Mr. Wysopal.

A summary of the facts as Mr. Fax provided them is as follows. In a letter dated April 23, 2010, Mr. Fax requested certain data from the City. Of relevance here is his request for the following:

... any and all information [since March 1, 2010] related to written or oral communication between Mayor Mike Kuehn and ... Mr. John Oldendorf, President of the Gateway Trail Association, Lake Elmo, MN

Communications between the City and Mr. Fax continued. At issue in this opinion, is an email the Mayor sent to Mr. Oldendorf. The City references this email in a May 27, 2010, letter to Mr. Fax:

... you were advised that certain correspondence between the Mayor and the other individuals is shielded from becoming public data under Minnesota Statute 13.601, Subd. 2. This statute classifies such correspondence between the Mayor and individuals as private data on individuals. ...

... The correspondence that you are seeking was an email between a private individual and the Mayor of North St. Paul, an elected official, on the Mayor's private email address. The specific correspondence was never shared with another elected official or city staff member.  
...

In his opinion request, Mr. Fax wrote:

... I feel the City is misinterpreting M.S. 13.601, Subd. 2, which they allege controls why this one e-mail I am seeking is not public information ... I highly disagree ... Furthermore, I

am interested in finding out from the content of this e-mail, why the Gateway Trail Association ... changed its original position regarding a Conditional Use Permit ISD 622 ... it initially advocated against and then, almost immediately after receipt of the e-mail, advocated for it. ....

**Issue:**

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

Has the City of North Saint Paul complied with Minnesota Statutes, Chapter 13, in denying access to data in an email?

**Discussion:**

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

Minnesota Statutes, section 13.601, subdivision 2, classifies correspondence data between individuals and elected officials: "Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient."

Private data are data on individuals that are accessible to the data subject but not to the public. (Minnesota Statutes, section 13.02, subdivision 12.)

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

... the nature of the communication as well as the substance and context need to be considered in determining its appropriate classification. In this particular situation, the correspondence was not composed on city letterhead ... did not purport to be a formal communication between the City and the association and was addressed to and from Mr. Oldendorf rather than to his non-governmental association or office. ...

Under these circumstances the City determined that the requested correspondence was between the Mayor, an elected official, and Mr. Oldendorf, an individual ... .

Before proceeding, it is important to point out that although Mayor Kuehn composed the email on something other than City letterhead and sent it using his private email account, as long as he wrote the email in his capacity as Mayor, the data in the email are government data. The City did not make any statements suggesting the content of the email is not related to Mayor Kuehn's duties as Mayor.

The Legislature enacted the language in section 13.601, subdivision 2, in 1979. In classifying the data as private, the Legislature provided a mechanism by which an individual can correspond with his/her elected official on a matter that is personal to that individual. Some examples include correspondence between a parent and his school board member about an issue involving the parent's child, correspondence between a resident and her city council member about a neighborhood zoning matter, correspondence between a grandparent and his county board representative about the grandparent's desire to adopt his grandchild.

