



Advisory Opinion 11-002

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 January 6, 2011, the Information Policy Analysis Division (IPAD) received an email from Janet Shefchik, the data practices compliance official for the Dakota County Community Development Agency (CDA). In her email, Ms. Shefchik asked the Commissioner to issue an advisory opinion regarding the classification of certain data the CDA maintains.

A summary of the facts as Ms. Shefchik provided them follows. A person asked the CDA for the following data: "Certified payroll reports for the Thompson Heights Project located in South St. Paul for the following: LBI Companies, Rocohn [sic] Corporation Show [sic] removal company-weeks of 11/15/2010 to 11/21/2010, 11/22/2010 to 11/28/2010." Ms. Shefchik wrote:

.... In reviewing the payroll data in light of the request as stated above, and MN Statutes 13.05 and 13.43, [CDA redacted] several items from the payroll reports ... such as the individual employees' tax withholding information, and the employees' addresses.

... [The data requestor responded that] ... he felt the employee addresses should be included as public information. He sent a copy of a Supreme Court opinion on a data request made by the International Brotherhood of Electrical Workers Local No 292 v. City of St. Cloud, as evidence of his point.

....

In this latest email, however, [the data requestor] indicates that he feels the addresses should be released, as they are public. Upon review of the supreme court case it appears the data requested *are* public. [Emphasis provided.]

Issue:

Based on Ms. Shefchik'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 the Dakota County Community Development Agency (CDA) maintains in compliance with prevailing wage laws: the home addresses of contractor/subcontractor employees contained in certified payroll reports?

Discussion:

Pursuant to Minnesota Statutes, section 13.03, subdivision 1, government data are public unless otherwise classified. Upon request, government entities must provide access to public government data.

Minnesota Statutes, section 13.43 classifies data on individuals maintained by a government entity “because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a government entity.”

Public personnel data are enumerated at section 13.43, subdivision 2(a); pursuant to subdivision 4, all other personnel data are private. Home addresses of public employees are not listed in subdivision 2(a), and are therefore classified as private.

As noted above, in 2009, the Minnesota Supreme Court held that payroll records of a subcontractor obtained by the City of Saint Cloud to confirm payment of the prevailing wage are not personnel data for purposes of section 13.43, and thus the payroll records, including home addresses of the subcontractor’s employees, are public pursuant to section 13.03. (See *Intl. Brotherhood of Elec. Workers, Loc. No. 292 v. City of St. Cloud and Design Electric Inc.*, 765 N.W.2d 64 (Minn. 2009).

The Court based its decision on the definition of personnel data as data on an individual. “Individual” is defined at Minnesota Statutes, section 13.02, subdivision 8, as a natural person, which does not include a corporation. The Court found that even though the subcontractor’s employees are individuals, the individual employees are not acting as the City’s independent contractors. The corporation is the City’s contractor; therefore section 13.43 does not apply to the corporation’s employees.

The Court concluded that unless the data are protected by another provision in Chapter 13 (e.g., Social Security numbers are private under Minnesota Statutes, section 13.355), the employee payroll data maintained by the City are public.

The issue here is the same as that in *Intl. Brotherhood*, i.e., CDA maintains data about individuals employed by its contractor/subcontractor. Accordingly, the payroll data CDA maintains, including home addresses of those individuals, are presumptively public.

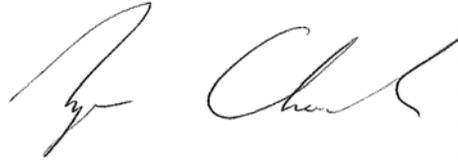
The Court noted, “[a]lthough the result here - that an individual employed by a private company is entitled to less data protection than an individual employed by the State - seems anomalous, that is how the legislature wrote the statute.”

Opinion:

Based on the facts and information provided, my opinion on the issue that Ms. Shefchik raised is as follows:

Pursuant to Minnesota Statutes, Chapter 13, the following data the Dakota County Community Development Agency (CDA) maintains in compliance with prevailing wage laws are public: the home addresses of contractor/subcontractor employees contained in certified payroll reports.

Signed:



Ryan Church
Acting Commissioner

Dated:

January 20, 2011