



Advisory Opinion 11-006

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 April 25, 2011, the Information Policy Analysis Division (IPAD) received a letter dated April 21, 2011, from Maggie Wallner, on behalf of Independent School District 834, Stillwater. In her letter, Ms. Wallner asked the Commissioner to issue an advisory opinion regarding the classification of certain data the District maintains.

A summary of the facts as Ms. Wallner provided them is as follows. In her opinion request, Ms. Wallner wrote:

... [t]he School Board conducted a search for a new superintendent. In mid-March, the Board released the names of the finalists. Shortly thereafter, the School Board Chair received an email from a member of the general public which contained information regarding his/her perception of the performance and conduct of one of the finalists while employed by another school district. The Board Chair did not disclose the email to any other board member, nor did he share it with School District administrators or employees. ... The finalist was not offered the superintendent position. Shortly thereafter, he requested a copy of the email as public data. Neither the Board Chair or [sic] sender of the email wish to release the email.

Issues:

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

1. Is the email sent to an elected official from a member of the public "government data" under Minnesota Statutes, Chapter 13?
2. If the email is not "government data," can it be classified as "data on individuals?"
3. If the email is "government data," is it classified as private data on the individual who sent the email?
4. If the email is government data and classified as private data on the sender of the email, does the individual who is the subject of the email (the finalist for the superintendent position), have a right to inspect or copy the email upon request and, if so, must the name or other personally identifiable information of the sender be redacted from the email?

Discussion:

Issue 1: Is the email sent to an elected official from a member of the public “government data” under Minnesota Statutes, Chapter 13?

Minnesota Statutes, section 13.02, subdivision 7, defines government data as “all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.”

Here, the individual receiving the email in question is the chair of the governing body of a school district. The email was sent to him in his capacity as board chair. Therefore, the email is government data.

Issue 2: If the email is not “government data,” can it be classified as “data on individuals?”

See Issue 1; the email is government data.

Issue 3: If the email is “government data,” is it classified as private data on the individual who sent the email?

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 between individuals and elected officials” as private data but also provides that the correspondence “may be made public by either the sender or the recipient.”

Generally, when the term “data” is discussed in Minnesota Statutes, Chapter 13, it refers to data elements that make up documents, emails, reports, videotapes, etcetera. Thus, generally, it certainly is possible that a document could be comprised of data about more than one individual, and could contain both public and private data.

Minnesota Statutes, section 13.601, subdivision 2, though, specifically classifies as private the “correspondence,” not the data within the correspondence. Section 13.601, subdivision 2, also provides that either the sender or the recipient can make the correspondence public. The Commissioner concludes, therefore, that the Minnesota Legislature intended both the elected official and the sender to be the subject of the correspondence - the only subjects - unless the correspondence is disclosed to a government entity, at which point section 13.601, subdivision 2, no longer applies. (Advisory Opinion 08-019.)

Ms. Wallner wrote, “The Board Chair did not disclose the email to any other board member, nor did he share it with School District administrators or employees.”

Thus, section 13.601, subdivision 2, applies to the correspondence in question and classifies the correspondence as private data about both the individual who sent the email and the elected official to whom the individual sent the email.

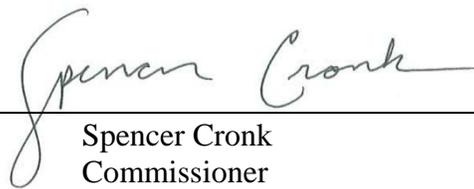
Issue 4: If the email is government data and classified as private data on the sender of the email, does the individual who is the subject of the email (the finalist for the superintendent position), have a right to inspect or copy the email upon request and, if so, must the name or other personally identifiable information of the sender be redacted from the email?

As discussed in connection with Issue 3, in the situation before the Commissioner, the email sender and the board chair are the subjects of the correspondence; the individual whom the email sender wrote about is not the subject of the correspondence. Therefore, the individual whom the email sender wrote about can get access to the correspondence only if the email sender or the board chair makes it public.

Opinion:

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

1. The email sent to an elected official from a member of the public is “government data” under Minnesota Statutes, Chapter 13.
2. See Number 1.
3. Pursuant to Minnesota Statutes, section 13.601, subdivision 2, the email is private data on both the individual who sent the email and the elected official to whom the individual sent the email.
4. The individual whom the email sender wrote about is not the subject of the email. S/he can get access only if the email sender or the board chair makes the email public.

Signed: 

Spencer Cronk
Commissioner

Dated: _____
June 8, 2011