



Advisory Opinion 11-008

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 May 2, 2011, the Information Policy Analysis Division (IPAD), received a letter dated April 8, 2011, from an individual, "X." In the letter, X asked the Commissioner to issue an advisory opinion as to whether Castle Rock Township violated certain rights afforded him/her under Minnesota Statutes, Chapter 13.

IPAD, on behalf of the Commissioner, wrote to Jane Bistodeau, Township Clerk, in response to X's request. The purposes of this letter, dated May 3, 2011, were to inform her of X's request and to ask her to provide information or support for the Township's position. On May 20, 2011, IPAD received a response, dated May 18, 2011, from Robert Bauer, an attorney representing the Township.

A summary of the facts as X provided them is as follows. In his/her opinion request, X wrote:

[I am requesting an opinion] with regards to whether the [Township] did make public my identity on numerous occasions with regards to a real property issue, noise nuisance complaint, I made against the Dakota County Fairgrounds on September 15, 2009 concerning numerous rock concerts/rodeos held at the property since August 2006.

... [t]he [Township Board] decided to send my complaint to the Joint Farmington/Castle Rock Township Discussion Group for a decision on how to enforce these complaints ... Without my knowledge, at the October 13, 2009 Regular Meeting of the [Township Board] they discussed my complaint making it and my identity public information at this public meeting. ...

X provided to the Commissioner a copy of the complaint s/he filled out. The form is entitled, "Castle Rock Township, Minnesota Zoning Ordinance Violation Complaint Form." On the form, in the "Nature of Violation" section, X wrote, "Noise, 7.12, 7.12E, #3." In another document, X made reference to these being some type of nuisance laws/ordinances.

X also provided to the Commissioner a copy of the October 13, 2009, Township Board meeting minutes. The minutes state, "[X's name] – the Board directed the Clerk to write a letter that [his/her] complaint letter was received and will be addressed at the next Castle Rock Township and City of Farmington meeting November 19, 2009 and invite [him/her] to attend."

Issue:

Based on X's opinion request, the Commissioner agreed to address the following issue:

Did Castle Rock Township comply with Minnesota Statutes, Chapter 13, if it released X's identity after X registered a complaint concerning a violation of state laws or local ordinances relating to real property?

Discussion:

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

Pursuant to Minnesota Statutes, section 13.02, subdivision 11, certain metropolitan area townships are subject to Minnesota Statutes, Chapter 13. Mr. Bauer, in his comments to the Commissioner, did not dispute that Castle Rock Township is subject to Chapter 13.

Minnesota Statutes, section 13.44, subdivision 1, classifies the following data as confidential: the identities of individuals who register complaints with government entities concerning violations of state laws or local ordinances concerning the use of real property.

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

In this matter, the complaint made by X does not relate to the enforcement of any Castle Rock zoning ordinance. Instead, X has made complaints concerning the activities at the Dakota County Fairgrounds ... The Township does not have jurisdiction over the activities conducted by Dakota County and its Fairgrounds. ...

When X provided [his/her] complaint on September 15, 2009, [X] acknowledged that the purported violations relate to permit violations, presumably issued in connection with the large assembly permit. The response by the Township Clerk invited X to participate in a group discussion between the Township, the City of Farmington and representatives of Dakota County concerning events that occur at the Fairgrounds.

The issue of whether a government entity has jurisdiction over a particular state law or local ordinance concerning the use of real property is not one over which the Commissioner has authority. Furthermore, it is not addressed in Chapter 13. Chapter 13, though, does provide that when an individual makes the type of complaint described in Minnesota Statutes, section 13.44, subdivision 1, his/her identity is confidential. Thus, when an entity receives the type of complaint X made to the Township, the entity must protect the individual's identity and cannot release it to the public.

In the situation before the Commissioner, the Township released X's identity in a public meeting. Minnesota Statutes, section 13.03, subdivision 11, states, "Not public data may be discussed at a meeting open to the public to the extent provided in section 13D.05." Minnesota Statutes, section 13D.05, subdivision 1(b), provides that public bodies are protected from liability if they discuss not public data at a public meeting "if the disclosure relates to a matter within the scope of the public body's authority and is reasonably necessary to conduct the

business or agenda item before the public body.” Mr. Bauer did not comment on whether releasing X’s identity related to “a matter within the scope” of the Township Board and was “reasonably necessary” to conduct the business or agenda item before the Board. If so, the Board could have released X’s identity. If not, the Board should not have disclosed X’s identity.

Finally, Mr. Bauer noted that X had written to Township Board members regarding his complaints about noise. Mr. Bauer provided a copy of one such letter and asserted that X’s identity was public because X complained about the noise issues in correspondence with Board members and elected officials can make correspondence public (Minnesota Statutes, section 13.601, subdivision 2).

The Commissioner respectfully disagrees with Mr. Bauer’s argument. Minnesota Statutes, section 645.26, discusses interpreting statutory provisions that are irreconcilable. Section 645.26, subdivision 4, states:

When the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail.

Minnesota Statutes, section 13.44, subdivision 1, which classifies the identity of a complainant as confidential, was enacted in 1980. Minnesota Statutes, section 13.601, subdivision 2, which provides that elected officials can make public correspondence from individuals, was enacted in 1979. Thus, as the later-enacted provision, section 13.44 prevails; the Township’s elected officials cannot rely on section 13.601 to make X’s identity public.

Opinion:

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

Pursuant to Minnesota Statutes, sections 13.03, subdivision 11, and 13D.05, subdivision 1(b), Castle Rock Township could not have released X’s identity in an October 13, 2009, Board meeting unless the disclosure was related to a matter within the scope of the public body’s authority and was reasonably necessary to conduct the business or agenda item before the Board.

Signed:



Spencer Cronk
Commissioner

Dated:

June 17, 2011