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### **Advisory Opinion 11-011**

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 February 22, 2011, the Information Policy Analysis Division (IPAD) received a letter dated February 18, 2011, from Rachel Tierney, Assistant Saint Paul City Attorney. In her letter, Ms. Tierney asked the Commissioner to issue an advisory opinion regarding the classification of certain data the City maintains. IPAD asked for clarification, which Ms. Tierney provided in letters dated April 8 and May 23, 2011.

A summary of the facts follows. Ms. Tierney, who represents the City's Department of Safety and Inspections ("SPDSI"), stated that the City maintains building permit applications, architectural plans, and other documentation related to the construction of "a health care center, administrative headquarters and parking ramp from Planned Parenthood of Minnesota, North Dakota, South Dakota ('PPMNS' and 'PPMNS project')." The City received a request for copies of the architectural plans for the project, and subsequently received "a request from PPMNS to treat the architectural plans and all related documentation as nonpublic under Minn. Stat. § 13.37, subd. 1 (a) ...."

The City asked PPMNS for additional information necessary to evaluate its request that the City classify the data under Minnesota Statutes, section 13.37. Ms. Tierney stated that based upon the information PPMNS provided, the City believes it is appropriate to classify the data under section 13.37, subdivision 1 (a). Ms. Tierney provided copies of the information submitted to the City by Susan A. Casey, attorney and Chief Compliance Officer for PPMNS.

#### **Issue:**

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

May the City of Saint Paul classify architectural plans and other documents related to the construction of a particular building as not public "security information" pursuant to Minnesota Statutes, section 13.37, subdivision 1(a)?

#### **Discussion:**

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

Minnesota Statutes, section 13.37, subdivision 1 (a), in relevant part, defines security information as: “government data the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury.”

(Section 13.37, subdivision 2, classifies security information as not public.)

In her comments to the City, Ms. Casey wrote that PPMNS submitted approximately 1,200 pages of plans:

.... Every single drawing and the covers of each of the two specification books contain the identity and contact information for the entire design and construction team; select other documents contain the identity of various suppliers, manufacturers and vendors associated with the project.

In addition, the plans contain descriptions of infrastructure including the location of security cameras; types of security equipment and materials used; entrances and exits to secured areas; the location and type of communications and utility networks; and the location of surgical suites where our most vulnerable patients and the physicians who serve them could be attacked by anyone who – as a result of viewing the plans – breached the security systems [.]

All plans submitted as part of the building permit process have been copyrighted in accordance with the copyright law of the United States (Title 17, USC). Accordingly, these plans cannot be photocopied or otherwise reproduced. We believe, however, that mere inspection of these documents poses a threat to the immediate safety of individuals involved in the construction of the building as well as to our employees and the patients we serve. Moreover, information contained in the plans increases the likelihood of trespass, tampering, and destruction of property.

PPMNS and other Planned Parenthood affiliates around the country are the targets of picketing, harassment, intimidation, vandalism, and physical violence from a variety of individuals and organizations opposed to the reproductive health services we provide. [Ms. Casey included a document, “*Exhibit A*,” which] is a listing of security incidents that occurred at PPMNS clinics since 1976, when PPMNS opened its Highland Park [Saint Paul] clinic and headquarters. These incidents range from picketing and similar organized disruption of patient care to arson, bomb attacks, shootings, and physical assault of our CEO in his office.

Ms. Casey further stated that the identity of contractors, subcontractors, vendors, suppliers and manufacturers should also be protected under section 13.37, because:

Groups opposed to the construction of the PPMNS building have identified several of these companies and have already begun a campaign of boycott and threatened harm. These groups are monitoring the construction site and posting videos showing various vendors associated with the project ....

In addition to simple boycott, several vendors identified by the ... cameras have received threatening letters and email, and at least one of them received a suspicious package on January 13, 2011.

In addition, Ms. Casey stated that many of the subcontractors have taken steps to protect their identities (e.g., using unidentified equipment) because “several of the companies that were first on the site” were subject to harassment. (The general contractor is required by local code to post its name and contact information.)

Ms. Casey further wrote:

The plans at issue include information regarding every aspect of the building’s infrastructure, including security systems, safety features, utilities and emergency power sources, and floor plans. These documents are so detailed as to include the type and location of security cameras; entrances and exits to secured areas; types of equipment used for panic calls and to trigger lock-down; identification of which windows are bullet-proof and which are merely shatterproof; and the location of consultation, procedure, and related patient-care rooms. Disclosure of any subset of the infrastructure specifications would negate the careful and calculated planning designed to protect patients and staff from harm; disclosure of the entire set of plans would expose the building to violation and put its occupants in harm’s way.

[Ms. Casey also included a document, “*Exhibit B*,” which] is a report compiled by the Security Department at Planned Parenthood Federation of America of significant security threats occurring at Planned Parenthood affiliates throughout the country over the past year. .... These incidents, as well as those identified in *Exhibit A*, demonstrate the enmity that many individuals and organizations harbor against Planned Parenthood and the extent to which they will go to disrupt our services, even when it involves violence. The most egregious example, of course, were the slayings of eight people – four physicians, two clinic employees, a security guard and a clinic escort – since 1993.

The Commissioner has issued numerous advisory opinions on issues related to classifying data as security information under Minnesota Statutes, section 13.37, subdivision 1(a). In Advisory Opinion 02-014:

The Commissioner has previously opined that section 13.37, subdivisions 1(a) and 2, may not be employed as a blanket classification scheme, but instead applies to otherwise public data in those specific situations in which an entity has reason to believe that the disclosure would be likely to substantially jeopardize the security of information, possessions, individuals or property. (See, for example, Advisory Opinions 98-046 and 01-029.) ....

The Commissioner wants to emphasize that, in the exercise of this discretion, a government entity must have reason to believe that public disclosure of such data would likely lead to substantial jeopardy. The entity cannot simply protect data from disclosure under section 13.37 on an arbitrary basis, but must base the determination on reasoned analysis.

The Commissioner agrees with Ms. Tierney, that PPMNS has presented sufficient detailed information and reasoned analysis for the City to determine that, given the particular circumstances of the PPMNS building project, the data in question are properly classified as not public security information, pursuant to Minnesota Statutes, section 13.37, subdivision 1 (a).

Ms. Tierney further stated:

If the information identified by PPMNS is 'security information', then the building plans in their entirety also meet that definition. I have personally reviewed the requested building plans with St. Paul's Building Official. Literally every page of these plans contains information that raises an identifiable security concern. The documents are not text, they are pictures. As such, redaction would be meaningless because the location of what had been redacted would be obvious. Under these circumstances, the documents meet the test outlined in *Northwest Publications, Inc. v. City of Bloomington*, 499 N.W.2d 509 (Minn. App. 1993) and Advisory Opinion 04-014 because the public and nonpublic information is so inextricably intertwined that segregation of the material would leave the remaining part of the document with little informational value. ....

In Advisory Opinion 04-014, the Commissioner discussed *Northwest Publications*:

In *Northwest Publications, Inc. v. City of Bloomington*, ... the Minnesota Court of Appeals held that entire documents may be withheld under Chapter 13 only when public and nonpublic information is so inextricably intertwined that segregation of the material would impose a significant financial burden and leave the remaining part of the document with little informational value. The Commissioner has addressed similar issues in other advisory opinions. (See 03-018, 03-001, 00-065, 96-002, and 94-034.)

Therefore, if it is not possible for the District to appropriately redact the document, it may withhold the entire document. However, it is important to note that the Commissioner, as well as the court in *Northwest Publications, Inc.*, maintains that denial of access of data should occur only in situations where it is impossible to separate or redact the data appropriately.

Given the information provided to the Commissioner, it is reasonable for the City to take the position here that the data in question are inextricably intertwined and may be withheld from the public in their entirety.

The Commissioner notes that Ms. Tierney stated the City's request does not include the architectural renderings associated with the PPMNS project, except to the extent they identify contractors whose identities warrant protection.

### **Opinion:**

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

The City of Saint Paul may classify, in their entirety, architectural plans and other documents related to the construction of the PPMNS building as not public security information, pursuant to Minnesota Statutes, section 13.37, subdivision 1(a).

Signed:

  
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 Spencer Cronk  
 Commissioner

Dated:

\_\_\_\_\_ June 29, 2011