



---

### Advisory Opinion 11-013

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 August 1, 2011, the Information Policy Analysis Division (IPAD) received a letter dated July 29, 2011, from Pamela L. VanderWiel, attorney for the City of Hibbing. In her letter, Ms. VanderWiel asked the Commissioner to issue an advisory opinion regarding the classification of certain data "X," a former City employee, requested, representative copies of which Ms. VanderWiel provided. IPAD asked for clarification, which she provided in a letter dated August 15, 2011.

In a letter dated August 17, 2011, IPAD wrote to X inviting him/her to submit comments; X did not do so.

A summary of the facts as presented by Ms. VanderWiel follows. X asked for "all correspondence, including e-mails" sent between and among City Council members and the Mayor, or other individuals, relating to X. Ms. VanderWiel wrote:

In the course of reviewing documents potentially responsive to this request, the City has identified a number of emails from one or more City employees to one or more City Council members, informally commenting or complaining about [X's] activities while at work. .... No formal complaint about [X] was ever made, and the data was never used as a basis for discipline.

It is the City's position that these email communications are private 'personnel data' about both [X] and the author. .... The communications reveal the identity of one or more individuals who voiced their concerns about [X], and reveal as much about the work environment experienced by the complainant(s) as they do about [X].

Ms. VanderWiel also stated that the data cannot be redacted. Citing *Northwest Publications, Inc. v. City of Bloomington*, 499 N.W.2d 509, 511 (Minn. Ct. App. 1993), she wrote that even if the City redacted the name of the employee(s), X, due to his/her former position with the City, "would [be able] to identify the author(s) of these communications easily ..... For that reason, the City believes it is proper to withhold the documents in their entirety."

#### **Issue:**

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

Pursuant to Minnesota Statutes, Chapter 13, must the City of Hibbing provide access to the following data to a former employee: written informal complaints and observations about that former employee made by one or more City employees?

**Discussion:**

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

Minnesota Statutes, section 13.43, classifies data on individuals who are current or former employees of a government entity. Subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private. Ms. VanderWiel stated that the complainant-employee(s) did not lodge a formal complaint(s) and the City did not take disciplinary action.

Ms. VanderWiel wrote:

In Advisory Opinion 96-002, the Commissioner advised the City of Mahtomedi that information identifying City-employee complainants on nonpending police department internal affairs complaint forms was classified as private personnel data about the complainants. The emails in this circumstance are no different. The communications reveal the identity of one or more individuals who voiced their concerns about [X], and reveal as much about the work environment experienced by the complainant(s) as they do about [X].

Upon examination of the sample data Ms. VanderWiel provided, it appears that the documents contain private personnel data about more than one individual. In such cases, when one of the data subjects makes a request for access to data about him/herself, it is incumbent upon the government entity to try to separate the data and provide the requestor with data about him/her without releasing private data about the other data subject(s). If separation is impossible, it may be necessary for the entity to withhold the entire document.

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.)

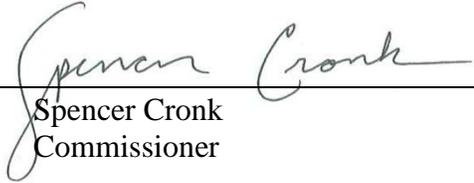
Therefore, if it is not possible for the District to appropriately redact the document, it may withhold the entire document. However, it is important to note that the Commissioner, as well as the court in *Northwest Publications, Inc.*, maintains that denial of access of data should occur only in situations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

According to Ms. VanderWiel, the identities of the employees cannot be redacted from the documents at issue, because to do so would “render the remaining parts of the document with little informational value.” The Commissioner agrees; it is reasonable for the City to take the position here that the data in question are inextricably intertwined and may be withheld in their entirety.

**Opinion:**

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

Pursuant to Minnesota Statutes, Chapter 13, the City of Hibbing may not provide access to the following data to a former employee: written informal complaints and observations about that former employee made by one or more City employees.

Signed:   
\_\_\_\_\_  
Spencer Cronk  
Commissioner

Dated: September 30, 2011