



Advisory Opinion 12-003

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2011). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On December 15, 2011, the Information Policy Analysis Division (IPAD) received a letter, dated same, from Cathleen Rico. In her letter, Ms. Rico asked the Commissioner to issue an advisory opinion regarding her right to gain access to certain data from the City of Minneapolis.

IPAD, on behalf of the Commissioner, wrote to Craig Steiner, Responsible Authority and Data Practices Compliance Official for the City, in response to Ms. Rico's request. The purposes of this letter, dated December 20, 2011, were to inform him of Ms. Rico's request and to ask him to provide information or support for the City's position. On January 5, 2011, IPAD received a response, dated same, from Mr. Steiner.

A summary of the facts follows. In an email dated November 15, 2011, Ms Rico asked the City for access to "applicant data for the Assessor II position, job posting #20817." She wrote: "I would like the application dates of all applicants. I would also like to know what dates the selected applicants took the test. I am not requesting names or any private personnel information associated with the applicants."

In its November 17, 2011, response, the City wrote to Ms. Rico: "[t]he data you requested is not public. However, the City will prepare summary data responsive to your request subject to the City's Data Charges Policy. The cost to you for the City to prepare this data is estimated to be \$17.00. Please inform me whether you still want the city to prepare the data."

Issue:

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

Did the City of Minneapolis comply with Minnesota Statutes, Chapter 13, in its response to a November 15, 2011, request for access to the following data: dates of applications and dates of testing for all applicants for a certain City position?

Discussion:

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

Data on individuals who are employees of or who apply for employment with a government entity are classified pursuant to Minnesota Statutes, section 13.43. Under section 13.43, subdivision 3, the following data about all applicants are public: veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. An applicant's name is not public until s/he becomes a finalist. The treatment of personnel data runs contrary to the general presumption that government data are public unless otherwise classified by state or federal law (see section 13.03, subdivision 1.) Subdivision 3 of section 13.43 sets forth the types of applicant data that are public and subdivision 4 classifies most other personnel data as private.

In his response to the Commissioner, Mr. Steiner wrote:

.... Personnel data is private unless specifically codified as public in Minn. Stat. sec. 13.43. Neither "dates of applications" nor "dates of testing" appears in this list. Minn. Stat. sec. 645.16 states:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

Minn. Stat. sec. 13.43 Subd. 3 is clear and free from ambiguity. Minn. Stat. sec. 645.19 states: '[e]xceptions expressed in a law shall be construed to exclude all others.' The legislative exceptions to private personnel data do not include dates of application or dates of testing. As required, the City followed the plain language of section 13.43, Subd. 3, and Minnesota statutes regarding statutory construction, in concluding that dates of applications and dates of testing are private data.

Nevertheless, the City prepared summary data responsive to Ms. Rico's request and offered it to her

As noted above, data on applicants are classified as either public or private data *on individuals*. Ms. Rico asked for access to dates of application and dates when applicants took a test; she specifically stated that she was not seeking access to "names or any private personnel information associated with the applicants."

Pursuant to Minnesota Statutes, section 13.02, subdivision 5, "data on individuals" is defined as "all government data in which any individual is or can be identified as the subject of that data" "Data not on individuals" are data the subjects of which are not individuals. (See section 13.02, subdivision 4.)

In Advisory Opinion 04-023:

Section 244.052, subdivision 3(c) does not classify data that are not about an individual sex offender.

Here, the Star Tribune asked the Department to redact the data about Mr. Rodriguez from the end-of-confinement review materials, and provide it with access to the remaining public data, e.g., dates of meetings, participants in meetings, length of meetings, etc. The Star Tribune asserts, and the Commissioner agrees, that any such data that are not about the individual offender are not classified under section 244.052, subdivision 3(c). The Commissioner is not aware of any provision that classifies any end-of-confinement review data that are not on individuals as not public.

Here, the situation is similar. Ms. Rico asked for dates of application and testing, not associated with an individual. As such, the dates alone are not data on individuals, and therefore cannot be private data. In order to comply with Ms. Rico's request, the City simply needed to redact all data from the applications and tests except the dates.

In addition, the Commissioner respectfully disagrees with Mr. Steiner that the City properly responded to Ms. Rico by preparing summary data. Minnesota Statutes, section 13.02, subdivision 19, defines summary data as "statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable."

In Advisory Opinion 00-011, the Commissioner opined:

.... The definition of summary data is key to understanding the difference between preparation of summary data and separation of public from not public data. Summary data must be derived from what is otherwise completely private or confidential data.

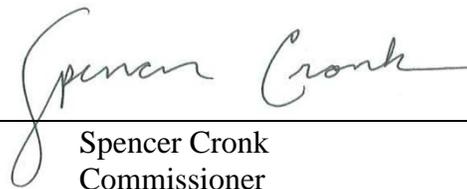
Accordingly, summary data cannot be derived from applicant data, which are public and private.

Opinion:

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

The City of Minneapolis did not comply with Minnesota Statutes, Chapter 13, by denying a November 15, 2011, request for access to the following data: dates of applications and dates of testing for all applicants for a certain City position.

Signed:



 Spencer Cronk
 Commissioner

Dated:

 January 31, 2012