



Advisory Opinion 12-005

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 February 27, 2012, the Information Policy Analysis Division (IPAD) received a letter dated February 23, 2012, from Richard Paulson. In his letter, Mr. Paulson asked the Commissioner to issue an advisory opinion about his right to gain access to certain data Independent School District 709, Duluth, maintains.

IPAD, on behalf of the Commissioner, wrote to William Gronseth, District Superintendent, in response to Mr. Paulson's request. The purposes of this letter, dated March 2, 2012, were to inform him of Mr. Paulson's request and to ask him to provide information or support for the District's position. On March 16, 2012, IPAD received a response, dated same, from Kevin J. Rupp and Trevor S. Helmers, attorneys for the District.

A summary of the facts as Mr. Paulson provided them follows. He wrote:

On August 25, 2011, I emailed William Hanson at Independent School District 709 and asked for access to certain data. I inspected data on October 24, 2011, and I believe the District did not provide me with some of the data I requested. I am enclosing copies of my data request, and the District's responses.

My request asked to inspect all documents, correspondence, confirmations, and contracts between PEIP and the Duluth School District since the District contacted PEIP for health insurance coverage effective 1/1/10.

The District responded by providing a mostly blank copy of the PEIP Group Application form, which is not a contract. No other documents between PEIP and the District were available for my inspection. I told Mr. Hanson the Group Application was not what I wanted, and that I wanted to see the confirmation PEIP gave the District to start this coverage and any other documents and correspondence. Mr. Hanson said he would provide the data, but hasn't done so as of this date.

I also asked to inspect all notes, memos, and emails between the District, Union, and School Board regarding negotiations and costs of health insurance coverage with PEIP. In Mr. Hanson [sic] response October 18, 2011, Mr. Hanson said "information is available" but I have not been provided with any.

Issues:

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

1. Did Independent School District 709, Duluth, comply with Minnesota Statutes, Chapter 13, in its response to an August 25, 2011, request to inspect "all documents, correspondence, confirmations, and contracts between the Minnesota Public Employees Insurance Program (PEIP) and the District since the District contacted PEIP for health insurance coverage effective 1/1/10?"
2. Did the District comply with Chapter 13 in its response to an August 25, 2011, request to inspect "all notes, memos, and emails between the District, Union, and School Board regarding negotiations and costs of health insurance coverage with PEIP?"

Discussion:

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

Issue 1. Did Independent School District 709, Duluth, comply with Minnesota Statutes, Chapter 13, in its response to an August 25, 2011, request to inspect "all documents, correspondence, confirmations, and contracts between the Minnesota Public Employees Insurance Program (PEIP) and the District since the District contacted PEIP for health insurance coverage effective 1/1/10?"

According to Mr. Rupp and Mr. Helmers, Mr. Paulson's August 25, 2011, data request, "followed a long line of requests and communications between Mr. Paulson and the District ... regarding these issues." They wrote that Mr. Paulson's request "was quite broad, and as written, sought documents which contained private personnel data, as well as" possibly other not public data.

Mr. Hanson contacted Mr. Paulson by email on September 13, 2011, and also by telephone, in order to "discuss the request and to attempt to make it more specific." Mr. Hanson wrote Mr. Paulson on October 18, 2011: "[y]ou previously asked for 'contract' information with PEIP and it was previously provided. Additional correspondence deals with personal data that you indicated that you did not want. Other documents are available."

Mr. Rupp and Mr. Helmers wrote to the Commissioner:

Mr. Paulson appears to believe that the District withheld documents on October 24, 2011.... However, all documents which were referenced by Mr. Hanson in his October 18, 2011, email were provided to Mr. Paulson for his review.

The District has no "confirmation" or "contract" with PEIP regarding the health insurance coverage for District employees. The only documents which the District had

with PEIP were the Group Application, dated January 1, 2010, and the Summary of Benefits Documents. Both of these documents were provided to Mr. Paulson on May 16,

2011. The District is not aware of whether the union signed any contract or documents with PEIP, and does not have access to those documents. On May 26, 2011, Mr. Hanson again notified Mr. Paulson that there was no contract between the District and PEIP.

Mr. Hanson informed Mr. Paulson of the fact that there was no “contract” again on October 24, 2011. The District is not required to create new data to respond to data requests.

Mr. Paulson wrote that when he inspected the data the District made available on October 24, 2011, “I told Mr. Hanson the Group Application was not what I wanted, and that I wanted to see the confirmation PEIP gave the District to start this coverage and any other documents and correspondence. Mr. Hanson said he would provide the data, but hasn’t done so as of this date.”

According to Mr. Rupp and Mr. Helmers, the District provided Mr. Paulson with access to all data it maintains that are responsive when he inspected data on October 24, 2011. The Commissioner cannot resolve that factual dispute.

Mr. Rupp and Mr. Helmers are correct; the District is not required to create data in response to a request. However, given the nature of the data Mr. Paulson is seeking, the Commissioner encourages the District to review its obligations under Minnesota Statutes, section 15.17, “to make and preserve all records necessary to a full and accurate knowledge of [its] official activities.”

Issue 2. Did the District comply with Chapter 13 in its response to an August 25, 2011, request to inspect “all notes, memos, and emails between the District, Union, and School Board regarding negotiations and costs of health insurance coverage with PEIP?”

In his October 18, 2011 email to Mr. Paulson, Mr. Hanson stated, “[i]nformation is available.” Mr. Rupp and Mr. Helmers wrote to the Commissioner:

The District also provided all documents related to the negotiations and costs of health insurance coverage with PEIP on October 24, 2011. Again, the District has no obligation to create new data, and simply provided the documents that were in its possession which were responsive to the request.

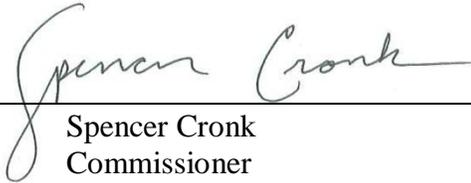
Mr. Hanson wrote in his October 18, 2011, email that “information is available,” but Mr. Paulson stated that he has “not been provided with any.” Again, the Commissioner cannot resolve the factual dispute between the parties, but suggests the District review its obligations under Minnesota Statutes, section 15.17.

Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issues Mr. Paulson raised is as follows:

1. The Commissioner cannot determine whether Independent School District 709, Duluth, complied with Minnesota Statutes, Chapter 13, in its response to an August 25, 2011, request to inspect “all documents, correspondence, confirmations, and contracts between the Minnesota Public Employees Insurance Program (PEIP) and the District since the District contacted PEIP for health insurance coverage effective 1/1/10.”
2. The Commissioner cannot determine whether the District complied with Chapter 13 in its response to an August 25, 2011, request to inspect “all notes, memos, and emails between the District, Union, and School Board regarding negotiations and costs of health insurance coverage with PEIP.”

Signed:



Spencer Cronk
Commissioner

Dated:

April 3, 2012