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### **Advisory Opinion 12-009**

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 March 28, 2012, the Information Policy Analysis Division (IPAD) received a letter dated same, from Carter Glendenning. In his letter, Mr. Glendenning asked the Commissioner to issue an advisory opinion about his right to gain access to certain data Independent School District 276, Minnetonka, maintains.

IPAD, on behalf of the Commissioner, wrote to Dennis Peterson, District Superintendent, in response to Mr. Glendenning's request. The purposes of this letter, dated March 30, 2012, were to inform him of Mr. Glendenning's request and to ask him to provide information or support for the District's position. On April 12, 2012, IPAD received a response, dated April 10, 2012, from Dennis O'Brien, attorney for the District.

A summary of the facts as Mr. Glendenning provided them follows. In an email dated November 30, 2011, Mr. Glendenning asked Dr. Peterson for a copy of his "compensation contract." Dr. Peterson responded the same day, stating, "[o]ur attorney will be in contact with you. The contract is not a public document. You may obtain all of the data from it that is public."

In a letter dated December 9, 2011, Mr. O'Brien wrote to Mr. Glendenning, and stated, "[s]ince you have requested information relative to Dr. Peterson's employment with the Minnetonka School District, I am summarizing that data which is public." Mr. O'Brien listed 21 categories of data with details about each, such as, salary, incentive compensation, vacation, medical leave, tax-sheltered annuity, severance and post-employment benefits, etc.

#### **Issue:**

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

Did Independent School District 276, Minnetonka, comply with Minnesota Statutes, Chapter 13, in its response to a request for a copy of its Superintendent's employment contract?

**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.

Mr. O'Brien, on behalf of the District, provided Mr. Glendenning with a summary of data in the contract. However, Mr. Glendenning asked for a copy of the contract, not a summary of its contents.

Mr. O'Brien wrote to the Commissioner:

The question at issue is whether the superintendent's contract is a public document. Under the plain terms of the statute, the contract *itself* is not public data. Some of the information contained *within* the document is public data, as enumerated in the statute.

Any other information remains private data and need not be revealed except pursuant to a court order. It is not incidental to note that the Personnel Data Privacy Act [sic] does not broadly define documents themselves as public, but only the data contained therein. ....

The Commissioner has opined numerous times that Chapter 13 classifies data, not documents. However, in Advisory Opinion 04-031, the Commissioner wrote:

[Minnesota Statutes,] Section 13.03, subdivision 3, states that individuals shall be permitted "to inspect and copy public government data." This means that when an individual asks to inspect public data, the entity shall provide the requestor with the actual data. This ensures that the requestor will be able to gain an understanding of the context relating to the data s/he is seeking, especially if the entity has redacted (blacked/whited out) surrounding data.

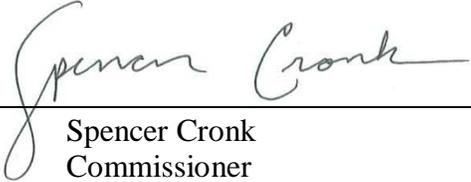
.... The Commissioner is aware that some entities might prefer to lift public data from a document and place those data on an otherwise blank document for the individual to inspect (cut-and-paste). This is problematic because (1) the entity is withholding the actual data and (2) the possibility exists that the entity will make an error transferring the data from its original source onto another document.

Accordingly, the District should have provided Mr. Glendenning a copy of the actual contract, rather than a summarization of public data contained therein. Mr. O'Brien stated that all data in the contract other than those he summarized are private under Minnesota Statutes, section 13.43. It is possible that the contract contains private data on Dr. Peterson, and if so, the District should redact those data. That enables Mr. Glendenning, or any member of the public, to understand the context of any redactions. It is also possible that the contract contains data that are not about Dr. Peterson, and which are presumptively public. (See Advisory Opinion 08-023.)

**Opinion:**

Based on the facts and information provided, the Commissioner's opinion on the issue raised by Mr. Glendenning is as follows:

Independent School District 276, Minnetonka, did not comply with Minnesota Statutes, Chapter 13, in its response to a request for a copy of its Superintendent's employment contract.

Signed:   
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Spencer Cronk  
Commissioner

Dated: \_\_\_\_\_ May 2, 2012