



---

## Advisory Opinion 12-010

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 19, 2012, the Information Policy Analysis Division (IPAD) received a letter dated March 14, 2012, from Ryan Vettleson, an attorney, on behalf of a client. In his letter, Mr. Vettleson asked the Commissioner to issue an advisory opinion regarding the response to a data request Mr. Vettleson made to the City of Minneapolis Police Department. IPAD asked for additional information/clarification, which Mr. Vettleson provided in a letter dated March 27, 2012.

In a letter dated April 5, 2012, the Commissioner invited Craig Steiner, Responsible Authority for the City, as well as “Y” and “Z”, data subjects whose rights may be affected by this opinion, an opportunity to comment. IPAD received comments on April 25, 2012, from Caroline Bachun, Assistant City Attorney. The data subjects did not submit comments.

Mr. Vettleson provides the facts as follows:

.... [My client] was pulled over and subjected to a strip search by Minneapolis police officers .... The officers never found any drugs or other criminal contraband on [my client] and released him at the scene. The incident was captured on the officer’s squad video. Shortly after the incident, [my client] filed a complaint with the Minneapolis Civilian Police Review Authority.

On June 8, 2010, this firm faxed to the Minneapolis Police Department, Police Reports & Videos, a letter requesting: “a complete copy (public and non-public) of your file relating to the investigation of the [April 9, 2009] incident, including ... videotapes.”

On August 18, 2010, this firm contacted Sergeant William Palmer, Public Information Officer for the Minneapolis Police Department, and again requested the squad video(s) of the April 9, 2009 incident. .... On August 31, 2010, Sergeant Palmer responded that the requested data would not be disclosed, on the ground there was an active internal investigation regarding the incident, and, as such, the requested data was non-public under Minn. Stat. § 13.43, subd. [2(a)(5)], “unless the complaint is sustained and the final disposition of any discipline has been reached.” [Emphasis omitted.]

**Issue:**

Based on Mr. Vettleson's opinion 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 June 8, 2010, request for data contained in a law enforcement squad car video?

**Discussion:**

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

Data that law enforcement agencies collect, create, and maintain are classified pursuant to Minnesota Statutes, section 13.82. Certain law enforcement data are always public, certain law enforcement data are never public, and certain law enforcement data may become public depending on the occurrence of certain events.

Of relevance here, section 13.82, subdivisions 2 and 6, provide that "arrest" and "response or incident" data are public. Arrest data are, "data created or collected by law enforcement agencies which documents any actions taken by them to cite, arrest, incarcerate *or otherwise substantially deprive an adult individual of liberty [and] shall be public at all times in the originating agency....*" [Emphasis added.]

Response or incident data are, "data created or collected by law enforcement agencies which documents the agency's response to a request for service including, but not limited to, responses to traffic accidents, or which describes actions taken by the agency on its own initiative [and] *shall be public....*" [Emphasis added.]

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. Pursuant to subdivision 2(a)(5), the following data are public: "the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body." Subdivision 2(b) provides when disciplinary action is final for purposes of section 13.43.

Both Mr. Vettleson and the City reference the Minneapolis Police Department's policies regarding the use of Mobile Video Recording equipment (MVR), section 4-218, which states:

The purpose of utilizing mobile video recording (MVR) equipment in Minneapolis Police Department vehicles is to:

- capture video evidence for criminal, civil and traffic-related court cases.
- assist officers with recalling facts or other details captured by the equipment that will help them accurately articulate a chain of events when writing reports.
- allow supervisors to review the contents of the recorded media as a management tool within their chain of command.

- be used as a training tool for officer safety and best practices in the MPD.
- assist in the assessment of contacts between officers and the public by reviewing procedures and interpersonal actions.

The City argues that the data are private personnel data:

.... The purposes for the collection of squad video and implementation of those purposes are enumerated in Section 4-218 of the Minneapolis Police Department Policies and Procedures. Because one of the purposes relates to the conduct of police officers, and the video being sought by [Mr. Vettleson's law firm] is part of an active [Civilian Review Authority] investigation, the video at issue is private personnel data under Minn. Stat. § 13.43 and cannot be released at this time.

Mr. Vettleson argues the data constitute public law enforcement data pursuant to section 13.82:

.... The first and second purposes – to capture video evidence and to help refresh the recollection of officers when they author reports – are undoubtedly the primary reasons the Minneapolis Police Department utilizes squad cameras. These purposes are necessarily connected to law enforcement activities. ....

Minnesota Statutes, Chapter 645, provides guidance on statutory interpretation. Section 645.26, subdivision 1, provides that if two provisions are irreconcilable, “the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail.”

In Advisory Opinion 03-021, the Commissioner opined:

The Commissioner acknowledges the care with which the Legislature has adopted policy concerning the classification of personnel data. It is also clear, based on the language in section 13.82, that the Legislature intended certain data about law enforcement employees to be public. .... Furthermore, while section 13.43 is specific in its classification of personnel data, section 13.82 is more specific in that it classifies personnel data maintained by law enforcement agencies in particular.

In Advisory Opinion 08-032, the Commissioner addressed this issue as it related to inactive criminal investigative data, which are also explicitly public under section 13.82:

.... Section 13.82 temporarily classifies active investigative data as not public; once any of three events occurs, data that had been protected become public when the investigation is no longer active. However, private personnel data don't become public unless the entity takes final disciplinary action against an employee. If an entity could protect otherwise public inactive criminal investigative data as private personnel data, the Legislature's intent, i.e., that protected criminal investigative data become public, could be thwarted (in a situation in which the entity does not take final disciplinary action.)

The Commissioner acknowledges the complexity of the issues in situations when a government entity that is conducting an investigation into employee misconduct is both the employer and a law enforcement agency, as is the case here. He stated in Advisory Opinion 03-021:

... because the Legislature adopted section 13.82 after adopting section 13.43, it clearly understood that certain information about personnel carrying out law enforcement functions would be public. Another indication the Legislature was aware that certain law enforcement personnel data would be public is that the Legislature specifically excluded undercover law enforcement officers from having to make data about themselves public pursuant to section 13.82, subdivision 6(b). Thus, the Commissioner opines that the data at issue are public pursuant to section 13.82.

The analysis here is similar. The squad car video data were created for law enforcement purposes. The first two purposes listed in the City's policies (collecting evidence and assisting officers with writing reports) apply to every situation in which a peace officer engages in a law enforcement activity, such as a traffic stop, and appear to be the primary reasons for creating the data.

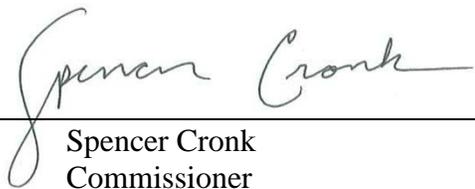
When the Legislature classified certain law enforcement data as public pursuant to section 13.82, it did not create an exception for law enforcement data that may also be part of an internal investigation of an enforcement officer. Accordingly, the videotape contains arrest and/or response/incident data, and as such, may not be classified as private personnel data, even if the City is now using those data in its internal affairs investigation against the officers.

**Opinion:**

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

The City of Minneapolis did not comply with Minnesota Statutes, Chapter 13, in its response to a June 8, 2010, request for data contained in a law enforcement squad car video.

Signed:

  
 \_\_\_\_\_  
 Spencer Cronk  
 Commissioner

Dated:

\_\_\_\_\_ May 16, 2012 \_\_\_\_\_