



Advisory Opinion 12-016

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2012). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On September 7, 2012, the Information Policy Analysis Division (IPAD) received a letter, dated August 20, 2012, from Jennifer Martin-Romme of the *Zenith City Weekly*. In her letter, Ms. Martin-Romme asked the Commissioner to issue an advisory opinion about the classification of certain data administered by St. Louis County.

IPAD, on behalf of the Commissioner, wrote to Gary Eckenberg, Deputy St. Louis County Administrator and Data Practices Compliance Official for the County, in response to Ms. Martin-Romme's request. The purposes of this letter, dated September 14, 2012, were to inform him of Ms. Martin-Romme's request and to ask him to provide information or support for the County's position. In an email dated October 10, 2012, Mr. Eckenberg wrote, "I believe you have the position of the St. Louis County Auditor and the St. Louis County Attorney regarding this Data Practices Information Request, as conveyed to the *Zenith City Weekly* through earlier communications." IPAD also solicited comments from Secretary of State, Mark Ritchie. Bert Black, Legal Advisor to the Secretary of State, responded on October 5, 2012, in a letter dated the same.

A summary of the facts follows. Ms. Martin-Romme wrote in her opinion request:

On April 4, we called St. Louis County Director of Elections Patricia Stollee [sic] to request "the names and/or number of voters in Morse Township whose eligibility to vote was challenged by the St. Louis County Board of Elections with regards to the March 13, 2012 election" and "the reason(s) their eligibility to vote was challenged." Ms. Stollee [sic] asked us to send her the request in writing, which we did on April 9.

...

On April 11, Ms. Stollee [sic] responded in writing that the data are not public pursuant to [Minnesota Statutes, section] 201.091.

...

On April 23, we resubmitted our request, citing [Advisory Opinion 00-038]. On May 3, we received a reply from Deputy Administrator Gary Eckenberg, indicating that the county attorney had denied our request: "[I]t remains the opinion of the County Attorney that Minn. Stat. 201.091

prohibits the release of the information you have requested. The statute has been amended several times since the IPAD opinion you provided was written.”

The *Zenith City Weekly* resubmitted its request on July 2, 2012, asking for summary data. Mr. Eckenberg responded in a letter dated July 10, 2012, stating, “my May 3 response to your initial Data Practices Information Request represents St. Louis County’s final position on this matter.”

Issue:

Based on Ms. Martin-Romme’s opinion request, the Commissioner agreed to address the following issue:

Pursuant to Chapter 13, did St. Louis County respond appropriately to a request for the names and/or numbers of voters in Morse Township whose eligibility to vote was challenged and the reasons for those challenges, by stating that the data were not public under Minnesota Statutes, section 201.091?

Discussion:

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

Minnesota Statutes, section 201.091, subdivision 1, provides:

Each county auditor shall prepare and maintain a current list of registered voters in each precinct in the county which is known as the master list... It must show the name, residence address, and date of birth of each voter registered in the precinct. The information contained in the master list may only be made available to public officials for purposes related to election administration, jury selection, and in response to a law enforcement inquiry concerning a violation of or failure to comply with any criminal statute or state or local tax statute.

Section 201.091, subdivision 1, does not classify data, instead it restricts public access to the “master list.” Subdivision 4, however, refers to other data in the statewide registration system that are accessible to the public:

The county auditor shall make available for inspection a public information list which must contain the name, address, year of birth, and voting history of each registered voter in the county. The telephone number must be included on the list if provided by the voter. The public information list may also include information on voting districts... The secretary of state may provide copies of the public information lists *and other information from the statewide registration system* for uses related to elections, political activities, or in response to a law enforcement inquiry from a public official concerning a failure to comply with any criminal statute or any state or local tax statute.

... Requests to examine or obtain information from the public information lists *or the statewide registration system* must be made and processed in the manner provided in the rules of the secretary of state. [Emphasis added.]

The plain language of section 201.091, subdivision 4, anticipates providing access to data on the public information lists, “and other information from the statewide registration system.” Access to the “master list” is restricted, however, not all of the data in the statewide registration system are treated thus. The statute provides that the Secretary of State will provide rules regarding access to the data.

In 2000, the Commissioner opined on the classification of voter challenge status data that were the subject of a rule then *proposed* by the Secretary of State. (See Advisory Opinion 00-038.) Pursuant to Minnesota Statutes, section 204C.10, voters must sign a polling place roster, which is a list of voters within a given precinct. The polling place roster includes: the voter’s name, address, entire date of birth, and voter registration status. Voter registration status includes, “‘active’; ‘challenged’ (usually due to residency questions); ‘felon’ (disfranchised until the restoration of voting rights); or ‘guardianship’ (disfranchised until the guardianship of the person is ended).” At that time, no statute or rule specifically addressed the issue of inspecting polling place roster data. The proposed rule included a provision to deny access to voter challenge status. After a hearing on the rule, an Administrative Law Judge concluded that voter challenge status data are public based on the general presumption. In 00-038, the Commissioner agreed.

The Secretary of State subsequently promulgated Minnesota Rules, part 8200.9120, which provides:

An individual who asks to inspect a polling place roster used on election day must provide the county auditor with identification and a written request stating the information required by Minnesota Statutes, section 201.091, subdivision 4. Before fulfilling the request for inspection, the auditor must conceal the month and day of birth of each person on the roster.

Read together, Minnesota Statutes, section 201.091, subdivision 4, and Minnesota Rule, part 8200.9120, provide that the data on the polling place roster (which includes voter challenge status) should be treated substantially the same as the data elements contained in the public information list, i.e., publically accessible for the purposes specified.

Mr. Black, on behalf of the Secretary of State, argues that, *McGrath v. Minnesota Secretary of State*, No. 15-3500-21801-HV (Minn. Ct. App. Nov. 21, 2011) (unpublished), answers the question at issue in this opinion: “[w]e believe ... that election data, in the wake of the *McGrath* opinion, is private unless otherwise designated.” The Commissioner respectfully disagrees. (Before discussing this unpublished opinion, it is important to note that pursuant to Minnesota Statutes, section 480A.08, subdivision 3(c), unpublished opinions of the Court of Appeals are not precedential.)

McGrath involved a Help America Vote Act (HAVA) complaint against the Secretary of State. One of the issues on appeal was whether the relators had adequate opportunity for discovery. Specifically, they wanted access to a complete master list of voting history for each registered voter. (While voting history is an element of the public information list, the public information list is not as “complete” as the master list, since some voter information may be withheld or removed from the public information list based on various factors or circumstances.) The Court stated, “[i]t was relators’ wish to have access to the private master list. But by statute the only

list available for inspection by members of the public is the public information list.” [Emphasis added.]

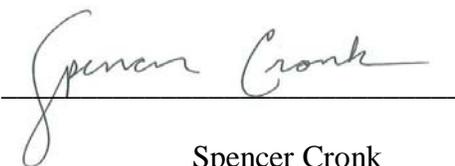
As noted above, the plain language of section 201.091, subdivision 4, makes clear that other voter information, in addition to the elements identified on the public information list, may be accessible by the public. Furthermore, while the master list is properly withheld from the public, the *Zenith City Weekly* was not requesting access to it. In fact, voter challenge status is not an element on the master list. The general presumption that government data are public is not reversed in the case of data on registered voters. Here, where there is no statutory classification of data, the data are presumptively public.

The Commissioner reiterates his comments in 00-038, that the best way to eliminate confusion over access to data maintained in the statewide registration system is for the Legislature to provide statutory clarity.

Opinion:

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

Pursuant to Chapter 13, St. Louis County did not respond appropriately to a request for the names and/or numbers of voters in Morse Township whose eligibility to vote was challenged and the reasons for those challenges, by stating that the data were not public under Minnesota Statutes, section 201.091.

A handwritten signature in cursive script that reads "Spencer Cronk". The signature is written in black ink and is positioned above a horizontal line.

Spencer Cronk
Commissioner

October 22, 2012