



Advisory Opinion 12-018

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 October 19, 2012, the Information Policy Analysis Division (IPAD) received an email dated October 10, 2012, from Matthew Rustad, in which he asked the Commissioner to issue an advisory opinion about his rights as a subject of data Independent School District 15, St. Francis, maintains. IPAD asked for additional information/clarification, which Mr. Rustad provided on October 25, 2012.

IPAD, on behalf of the Commissioner, wrote to David Lindberg, the District's Human Resources Director and Responsible Authority, in response to Mr. Rustad's request. The purposes of this letter, dated October 29, 2012, were to inform him of Mr. Rustad's request and to ask him to provide information or support for the District's position. On November 14, 2012, IPAD received a response, dated same, from Amy E. Mace and Courtney R. Sebo, attorneys for the District. Ms. Mace and Ms. Sebo provided additional information on November 19, 2012, in response to a request from IPAD.

A summary of the facts as Mr. Rustad provided them follows. Mr. Rustad is a member of the District school board. On September 10, 2012, he met with Mr. Lindberg, the board chair, the superintendent, and the editor of the newspaper, "to discuss the issue of censure" of Mr. Rustad in response to a complaint against him.

On September 11, 2012, Mr. Lindberg sent an email to a member of the public, in which he discussed the specific nature of that complaint. In his email, Mr. Lindberg wrote about the September 10 meeting:

Administration felt that it was important for the board members to be aware of the issue in a timely manner and give the board member involved in the issue an opportunity to discuss the situation in an appropriate context. The group ... arrived at a consensus decision to place an agenda item on the next school board meeting to censure... Matt Rustad. The consensus of the group for the censure agenda item will be regarded as the "final disposition" of this matter in relation the the [sic] MN Govt. data practices act.

That same member of the public then asked Mr. Lindberg if school board members were employees of the District, to which Mr. Lindberg replied, in a September 19, 2012, email, “[y]es they are considered employees for specific contexts such as the purpose of that [life insurance] benefit and for MN Data Practices Act purposes.”

Mr. Rustad wrote to the Commissioner that the board met on September 24, 2012, “to vote on the censure as the final disposition.” He asked whether Mr. Lindberg had the authority to release the details of the complaint against him to the public, “before the authorized authority (School Board)” made a final decision, and whether the District violated Minnesota Statutes, section 13.43, “by stating that a final disposition had been made” prior to the board’s vote. He also asked whether the District had violated his rights “by allowing the editor of the newspaper to be present at the private meeting.”

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, did Independent School District 15, St. Francis, violate a school board member’s rights when it released certain data about him to the public?

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.

The existence and status of a complaint or charge against an employee are public. If an entity disciplines an employee, the final disposition, the specific reasons for and data documenting the basis of the discipline become public. (See section 13.43, subdivision 2(a)(4) and (5).) Subdivision 2(b) provides when disciplinary action is final for purposes of section 13.43.

(Not of relevance here, Minnesota Statutes, section 13.601, subdivision 2, classifies certain data on elected officials as not public.)

In his September 19, 2012, email to the member of the public, Mr. Lindberg stated that board members were District employees “for MN Data Practices Act purposes.” Ms. Mace and Ms. Sebo correctly stated that the Commissioner has consistently opined that it is up to an entity to determine whether its elected officials, such as school board members, are employees for purposes of Chapter 13. (See, for example, Advisory Opinion 03-011.) They wrote:

[T]he District does not consider its School Board members to be employees; rather, it considers them to be elected officials. The School Board has never passed a resolution finding that School Board members are employees. In fact, the School Board has adopted a resolution finding that School Board members are *not* employees of the District. As such, the provisions of Section 13.43 do not apply to Mr. Rustad as an elected official, and all data maintained by the District about him, including the data in the email sent by Mr. Lindberg to the citizen, are public pursuant to Section 13.03, subdivision 1. [Emphasis provided.]

Ms. Mace and Ms. Sebo provided an undated copy of the resolution to which they refer. However, they provided supplemental documentation that the board adopted the resolution at its October 22, 2012, board meeting.

Ms. Mace and Ms. Sebo discussed Mr. Lindberg's September 19, email, referenced above:

Despite Mr. Lindberg's statement, there is no evidence that the governing body of the District, i.e., the School Board, considers Board members to be District employees. ...Mr. Lindberg is the responsible authority under [Chapter 13] for receiving and responding to data requests. Mr. Lindberg, however, does not have the authority to determine whether Board members are employees The determination of whether a position within a governmental entity enjoys the status of employee is not one of the responsibilities [of responsible authorities listed in Minnesota Rules, section 1205.0900.]

Ms. Mace and Ms. Sebo are correct that responsible authorities do not have a statutory duty to determine the employment status of individuals in an entity. However, Mr. Lindberg is also the District's human resources director, and at the time he publically released data about Mr. Rustad, he considered the school board members to be District employees. The school board passed its resolution that members are not employees six weeks later, and there is no evidence in the record that the District had taken any other affirmative action regarding their employment status before October 22, 2012. Accordingly, the data Mr. Lindberg released were personnel data about Mr. Rustad, regardless of any action to the contrary the board took subsequently.

As an employee, absent a final disposition of disciplinary action, personnel data detailing the nature of the complaint/charge against Mr. Rustad were private, pursuant to section 13.43, subdivision 2(a)(5). As the District's responsible authority, Mr. Lindberg was obligated to determine the classification of District data before releasing it to the public.

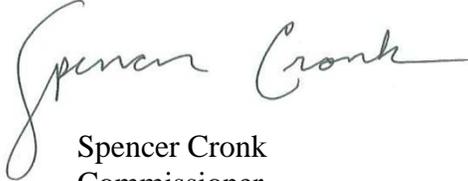
According to Ms. Mace and Ms. Sebo, the "newspaper editor" who attended the September 10, 2012, meeting was the District's Assistant Director of Community Education, who has responsibility to publish the District newsletter. It was appropriate for him to attend only if his "work assignment reasonably require[d]" him to get access to those private data about Mr. Rustad. (See Minnesota Rules, part 1205.0400.)

Opinion:

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

Pursuant to Minnesota Statutes, Chapter 13, Independent School District 15, St. Francis, violated a school board member's rights when it publically released certain personnel data about him, which were private, because it apparently considered board members to be employees at the time it released the data.

Subsequently the board passed a resolution clearly stating that board members are not employees for purposes of Minnesota Statutes, section 13.43.



Spencer Cronk
Commissioner

December 5, 2012