Advisory Opinion 12-019

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 25, 2012, the Information Policy Analysis Division (IPAD) received a letter from Joan Christensen, attorney for the Duluth Airport Authority (Authority), dated October 23, 2012. In her letter, Ms. Christensen asked the Commissioner to issue an advisory opinion regarding certain data that the Authority maintains.

In letters dated, October 29, 2012, the Commissioner offered Allegiant Air, LLC (Allegiant), and the Authority board member data subjects, an opportunity to comment. On November 13, 2012, Aaron A. Goerlich and Jason E. Maddux, attorneys for Allegiant, submitted comments on Allegiant's behalf. The board member data subjects did not respond.

A summary of the facts follows. Ms. Christensen wrote in her opinion request:

> The Authority consists of seven appointed Board members who are not employees of the Authority. The Authority does not provide Board members with or reimburse Board members for cell phones or computers. Additionally, Board members do not utilize an Authority email address or telephone number/extension.
> …
> On September 24, 2012, the Authority received a request from Allegiant under the Freedom of Information Act (1966) and the Minnesota Data Practices Act (2011) requesting that the Authority provide:
>
> > … all data and information pertaining to any conversations, communications, or correspondence, including but not limited to: emails, letters, and text messages, between all employees, representatives, officers, directors, and any other individuals speaking for or on behalf of Monaco Air, and any members of the Authority and/or [Duluth International Airport] staff within the last two years.

(Allegiant also requested data regarding meetings among the Authority, airport staff and Monaco Air, which are not the subject of this opinion.)

Issue:

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

1. Pursuant to Minnesota Statutes, Chapter 13, are text messages, emails, and letters between board members of the Duluth Airport Authority and employees or representatives of Monaco Air, "government data," when sent to or from the Board Members' personal cellphones, computers, or home addresses?
2. If the answer to the first issue is yes, how are the data classified?

Discussion:

Issue 1. *Pursuant to Minnesota Statutes, Chapter 13, are text messages, emails, and letters between board members of the Duluth Airport Authority and employees or representatives of Monaco Air, "government data," when sent to or from the Board Members' personal cellphones, computers, or home addresses?*

Pursuant to Minnesota Statutes, section 13.02, subdivision 7, "'government data' means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use."

In 2008, the Commissioner opined that when a superintendent used a personal data recorder to record portions of a school board meeting, he was acting in his official capacity and therefore, the recording was government data. The Commissioner stated, "there often are situations in which government employees use their own equipment (cars, computers, cell phones, pagers, etc.) for work related purposes. It is not reasonable to conclude that in those situations, related data could not be considered government data." (See Advisory Opinion 08-028.)

Ms. Christensen stated that the Board members are not employees of the Authority. (See Advisory Opinion 03-011.) In a 2010 advisory opinion, the Commissioner noted that regardless of the facts that a mayor corresponded with an organization using his personal email address and did not use official letterhead, the data in the email were still considered government data because he was acting in his official capacity as an elected official. (See Advisory Opinion 10-023.)

Here, the data requester, Allegiant, asked the Authority to provide data documenting conversations and correspondence between the Authority and Monaco Air. Some of the correspondence between Authority board members was sent to and received from personal email accounts, phones and home addresses.

Mr. Goerlich and Mr. Maddux wrote:

> It is thus irrelevant whether the Authority's Board members communicated with Monaco Air using Authority email addresses, telephone numbers, cellphones and/or computers. If the Board members communicated in their capacity as Board members… the resulting data is unquestionably government data.

The Commissioner agrees. As long as the members of the Authority, or staff of the Airport, were communicating in their capacity as board members or public employees, the data are government data, subject to Chapter 13.

Issue 2. *If the answer to the first issue is yes, how are the data classified?*

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

As noted above, the Authority does not consider its board members to be employees. Therefore, data collected and maintained about them are not classified pursuant to Minnesota Statutes, section 13.43.

Minnesota Statutes, section 13.601, subdivision 2, provides, "[c]orrespondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient."

Per the plain language of that section, subdivision 2 only applies to elected officials. Because the Authority is comprised of seven appointed officials, section 13.601, subdivision 2, does not apply to the Authority's board members. (The Commissioner also wishes to note that section 13.601 applies only to correspondence between an elected official and an individual, not an organization. See Advisory Opinion 10-023.)

Section 13.601, subdivision 3(b), does classify the residential address and either a telephone number or electronic mail address where the appointee can be reached (or both at the request of the appointee) as public data.

Therefore, data documenting correspondence or communication between the board members and Monaco Air are public data pursuant to the general presumption. Residential address and email or telephone number are public data, pursuant to section 13.601, subdivision 3(b), as well.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issues Ms. Christensen raised is as follows:

1. Text messages, emails, and letters among between members of the Duluth Airport Authority and employees or representatives of Monaco Air, are "government data" when the board members are acting in their capacity as public officials, regardless of whether the correspondence was sent to or from the Board Members' personal cellphones, computers, or home addresses.
2. Correspondence between the Authority board members and Monaco Air are public data pursuant to the general presumption. (Minnesota Statutes, section 13.03, subdivision 1.)

Spencer Cronk
Commissioner

December 11, 2012