Advisory Opinion 13-002

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 November 9, 2012, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Michelle Boeck, dated November 8, 2012. In her letter, Ms. Boeck asked the Commissioner to issue an advisory opinion regarding certain data that Scott County maintains. IPAD asked for additional information, which Ms. Boeck provided on November 26, 2012.

In letters dated, December 4, 2012, the Commissioner offered Gary Shelton, Scott County Administrator and responsible authority, and the data subject, an opportunity to comment. Jeanne Andersen, Assistant Scott County Attorney, responded on behalf of the County on December 14, 2012. The data subject did not respond.

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

> On or around February 21, 2012 I first requested copies of all public personnel data on the application and application supplement for [X]. From February 21, 2012 to June 25, 2012, I contacted several Scott County employees, by email, including the subject of the data, to try to obtain copies of the requested data.

In the County's response to Ms. Boeck's opinion request, Ms. Andersen wrote:

> The request in question asked for all the public data regarding a specific applicant for a specific employment position within the County. The County responded by providing listed data and did not provide copies of any actual documents maintained in the applicant file.

Issue:

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

> Pursuant to Chapter 13, did Scott County respond appropriately to a data request for copies of public personnel data from an employment application and application

supplement by providing the requester with a list of data instead of copies of the actual data?

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, as well as data on applicants for, a government entity. Subdivision 2, lists the types of personnel data that are public, including job description, education and training background, and previous work experience. Subdivision 3, classifies certain data about applicants as public including veteran status, relevant test scores, rank on eligible list, job history, education and training, and work availability. Subdivision 4, classifies most other types of personnel data as private.

The Commissioner has opined in numerous opinions that data requesters are entitled to access the actual data that they are requesting. (See Advisory Opinions 94-022, 95-001, 04-021, and 12-009.)

In Advisory Opinion 04-031, the Commissioner wrote:

> [Minnesota Statutes,] Sectoion 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.
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> …. 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.

In response to Ms. Boeck's request for copies of public data in an applicant's application and application supplement, the County provided Ms. Boeck with a list of data elements it determined to be public under section 13.43, subdivisions 2 and 3, instead of providing redacted copies of the application and application supplement.

Ms. Andersen wrote:

> The County bases its actions on the Minnesota Court of Appeals holding in *Demers v. City of Minneapolis,* 438 N.W.2d 828 (Minn. App. 1992). In that case, the Court specifically held, that while certain pieces of personnel data from or about a complaint against an employee were public, "the statute does not compel disclosure of the complaint itself." As such, forms containing public data were specifically recognized as private personnel data under Minn. Stat. §13.43 and deemed not subject to disclosure; only information about the form in general and specific data items are public.

The *Demers* case involved a data requester seeking access to complaint forms about alleged police officer misconduct, arguing, in part, that the data were classified as public under Minnesota Statutes, section 13.82, subdivision 5 (now, subdivision 7). The Court held that the data were more properly classified as personnel data, under section 13.43. The Court's holding specifically addressed the narrow issue of the classification of and access to the actual complaint forms:

> *Complaint forms* and other data created during an internal investigation into the use of force by a police officer are private personnel data unless disciplinary action is taken against the officer. (Emphasis added.) *Demers* at 832.

Indeed, as Ms. Andersen points out, the Court also stated, "the statute does not compel disclosure of the *complaint itself*." (Emphasis added.) *Demers* at 831. The Court did not address the broader issue of access to *any* personnel-related documents, such as routine application materials; the discussion was confined to the issue of complaint-related data:

> The clear language of the statute mandates the city to tell Demers (a) whether complaints or charges have been filed against individual police officers, (b) the status of complaints or charges, and (c) the specific reasons for and final disposition of any disciplinary action taken against an officer, together with supporting data. *Demers* at 831.

The plain language of section 13.03, subdivision 3, states that data requesters "*shall* be permitted to inspect and copy public government data." (Emphasis added.) This section, read together with the general presumption that government data are public unless otherwise classified, requires that data requesters have access to the actual data that they request. (Additionally, in reviewing the blank application and application supplement at issue here, it is apparent that there are data not on individuals included on the documents that would not be classified under section 13.43 and are presumptively public.)

Furthermore, Chapter 13 does not generally require government entities to create data in order to respond to data requests. (See Advisory Opinions 00-048, 01-011, and 01-012.) Here, the County's interpretation would suggest that requests for the public data classified in section 13.43, subdivisions 2 and 3, require the creation of data by setting out the data in a separate document from the original. However, Chapter 13 contains no such requirement.

The Commissioner would like to provide a final note. In the course of her data request, Ms. Boeck corresponded with a number of different individuals at the County. She included in her opinion request materials, *Scott County Guidelines and Procedures for the Minnesota Government Data Practices Act*. Appendix C of the document identifies Mr. Shelton, County Administrator, as the Responsible Authority. The document also identifies (by names) a designee, a Compliance Official, and a list of "Responsible Authorities for Divisions." Generally, Chapter 13 requires one responsible authority and one data practices compliance official per entity (see Minnesota Statutes, section 13.05, subdivision 13). The appointment of designees is optional and they may perform a variety of duties (see Minnesota Statutes, section 13.02, subdivision 6). The County may be able to streamline some of its data practices correspondence and avoid confusion in the future by clearly identifying its data practices contacts and directing data requesters to those specific parties empowered to respond to particular requests.

Opinion:

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

> Pursuant to Chapter 13, Scott County did not respond appropriately to a data request for copies of public personnel data from an employment application and application supplement; the County should have provided the requester with redacted copies of the actual data.

Spencer Cronk
Commissioner

January 14, 2013