



Advisory Opinion 13-004

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 December 17, 2012, the Information Policy Analysis Division (IPAD) received a letter dated December 11, 2012, from Leita Walker, on behalf of Star Tribune Media Company, LLC. In her letter, Ms. Walker asked the Commissioner to issue an advisory opinion about her client's right to gain access to certain data the City of Minneapolis maintains. IPAD wrote to Ms. Walker that the Commissioner would accept her request as of January 9, 2013.

IPAD, on behalf of the Commissioner, wrote to Casey Joe Carl, City Clerk, in response to Ms. Walker's request. The purposes of this letter, dated January 17, 2013, were to inform him of Ms. Walker's request and to ask him to provide information or support for the City's position. On January 30, 2013, IPAD received a response from Peter Ginder, Deputy City Attorney, Civil Division.

A summary of the facts as Ms. Walker provided them follows. On August 17, 2012, a Star Tribune reporter asked the City for "documents associated with a complaint or charge made against Greg Stubbs, including, but not limited to, any investigation of a complaint or charge." According to Ms. Walker, there was a complaint pending against Mr. Stubbs at the time of his "recent departure" as the City's regulatory services director.

On August 30, 2012, the City Attorney's Office wrote in response to Star Tribune's data request that the City did not impose final discipline on Mr. Stubbs, and further wrote:

Although Mr. Stubbs works in a management capacity for the City of Minneapolis, which has a population of more than 7,500, he does not report to "the chief administrative officer or the individual acting in an equivalent position."

....

Mr. Stubbs does not meet the definition of a "public official" under [Minnesota Statutes,] section 13.43, subdivision 2(e)(4)(iii) because as Director of Regulatory Services he did not report directly to the chief administrative officer (a position that does not exist in the City of Minneapolis) or an individual acting in an arguably equivalent position (the City Coordinator). As a result, Mr. Stubbs is not a public official as defined by section 13.42 [sic], subdivision

2(e). The data you seek is therefore private personnel data under 13.43, Subd. 4, and may not be disclosed.

Ms. Walker discussed in-depth the structure of Minneapolis City government, as well as that of the other five largest cities in Minnesota, and asserted that Mr. Stubbs should be considered a public official for purposes of section 13.43. She wrote:

Under the City's interpretation of Minn. Stat. §13.43 subd. 2(e)(4), the following individuals are *not* public officials and complaint data about them is *private*:

- City Assessor
- City Attorney
- Fire Chief
- Police Chief
- Director of the Department of Civil Rights
- Director of the Department of Community Planning & Economic Development
- Director of the Department of Health and Family Support
- Director of Public Works
- Director of Regulatory Services

Meanwhile, individuals such as the heads of Emergency Management, the Minneapolis Convention Center, and the City's human resources department are public officials. [Emphasis provided.]

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, did the City of Minneapolis respond properly to a request for data related to a complaint/charge against a city employee?

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 current and former public employees. Certain personnel data are public and all other personnel data are private. (See section 13.43, subdivisions 2 and 4.) 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).)

However, section 13.43, subdivision 2(e), provides:

Notwithstanding paragraph (a), clause (5), and subject to paragraph (f), upon completion of an investigation of a complaint or charge against a public official, or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources.

In 2012, the Minnesota Legislature amended section 13.43, subdivision 2(e), by expanding the definition of “public official.” Of relevance here, “public official” now includes, in cities like Minneapolis with populations greater than 7, 500, “individuals in a management capacity reporting directly to the chief administrative officer or the individual acting in an equivalent position.” (Section 13.43, subdivision 2(e)(4)(iii).)

Subdivision 2(f), provides:

Data relating to a complaint or charge against an employee identified under paragraph (e), clause (4), are public only if:

- (1) the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or
- (2) potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement with another person.

On September 27, 2012, Ms. Walker asked the City to reconsider its position on whether Mr. Stubbs was a public official, given that he reported to the Executive Committee, which oversees both the City Coordinator and the Director of Regulatory Services. Ms. Walker wrote to the Commissioner:

Star Tribune argued in its letter that the “equivalent” language in § 13.43 subd. 2(e)(4)(iii) should be read to mean equivalent or “more than equivalent.” In other words, public officials should include individuals who report to (1) the chief administrative officer, (2) the equivalent of that position (arguably the City Coordinator), and/or (3) individuals to whom the “equivalent position” reports (the Mayor, the President of the City Council, etc.).

In his comments to the Commissioner, Mr. Ginder also discussed the structure of Minneapolis’s government. He wrote:

The Star Tribune argues that if the City Coordinator is the “equivalent” of a chief administrative officer, and both the City Coordinator and the Director of Regulatory Services report directly to the Executive Committee, then both the City Coordinator and the Director of Regulatory Services should be “public officials.” Additionally, the Star Tribune argues that its interpretation meets the perceived spirit and intent of section 13.43, subdivision 2(e)(4)(iii).

.....

Simply stated, the Executive Committee does not have the broad administrative duties of the City Coordinator and does not act in a position equivalent to a chief administrative officer. By its charter, the City has created the position of city coordinator and given that position the duties of a chief administrative officer. Although every department head may not report to the city coordinator, many do.

Stated another way, if the legislature had intended to capture all department heads appointed by a city as a “public official”, it could have simply stated so as it did in the case of state agencies, departments, bureaus, boards, commissions and institutions (See Minn. Stat. § 13.43, subdivision 2(e), clauses (1), (2) and (3)) or as it did when it identified specific positions in school districts (Minn. Stat. §13.43, subdivision (2)(e)(iv)). ... Under the plain language of the statute, only certain management positions are considered “public officials”. As described

above, the duties and responsibilities of the city coordinator clearly are those of a chief administrative officer or the individual acting in an equivalent position and Stubbs did not report to the City Coordinator.

Pursuant to Minnesota Statutes, section 645.16, “[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of law shall not be disregarded under the pretext of pursuing the spirit.” Here the plain words of the statute are unambiguous. Under Minneapolis’s structure, Mr. Stubbs is not a public official, for purposes of Minnesota Statutes, section 13.43, subdivision 2(e)(iii), just as its police and fire chiefs, etc., are not.

The Commissioner acknowledges Ms. Walker’s analysis regarding legislative intent, and that, in light of the strong legislative policy of public accountability that underlies much of Chapter 13, this may appear as a puzzling result. However, it is the result dictated by statute.

The Commissioner has an additional comment. Section 13.43, subdivision 2(f), provides that if a complaint or charge against a local public official does not result in disciplinary action, then data relating to the complaint or charge are public only if the employee resigns or is terminated from employment *while the complaint or charge is pending*.

Star Tribune stated that a complaint or charge was pending against Mr. Stubbs at the time he resigned. The City stated that it did not impose “final discipline” on Mr. Stubbs, but in the record before the Commissioner, it did not state clearly whether or not there was a pending complaint or charge at the time he left City employment. (The existence and status of any complaints or charges are classified as public under section 13.43, subdivision 2(a)(4).) Therefore, it is possible that the data the Star Tribune requested might not be public even if Mr. Stubbs were a public official for purposes of this section.

(Note: all footnotes and references to exhibits omitted.)

Opinion:

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

Pursuant to Minnesota Statutes, Chapter 13, the City of Minneapolis responded properly to a request for data related to a complaint/charge against a city employee.


Spencer Cronk
Commissioner

February 12, 2013