Advisory Opinion 13-014

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2013). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On October 9, 2013, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Barbara Sporlein, Deputy Commissioner and Responsible Authority for the Minnesota Housing Finance Agency (Minnesota Housing). In her letter, Ms. Sporlein asked the Commissioner to issue an advisory opinion regarding access to certain data Minnesota Housing maintains.

IPAD, on behalf of the Commissioner, wrote to Tom Luce at the Institute of Metropolitan Opportunity (Institute), the original data requester, in order to offer him an opportunity to submit comments. In a letter dated, November 4, 2013, Jack McCann, Senior Staff Attorney and Myron Orfield, Executive Director of the Institute, responded.

Ms. Sporlein provided a summary of the facts as follows:

> The Institute of Metropolitan Opportunity (the "Institute") requested Minnesota Housing to provide it with the following data for each household in each [low-income housing tax credit] development monitored by Minnesota Housing: race, ethnicity, use of rental assistance, disability status, family composition (children or no children), age (under 62 or 62 and over), income, and monthly rental payments. The requested data is associated with one tenant in a unit, namely, the head of household for that unit (with the exception of the family composition characteristic and the disability status characteristic, which reflect all of the tenants in the unit).
>
> Minnesota Housing is willing to provide the requested data to the Institute as summary data, provided that: (1) a certain amount of suppression is applied in order to protect the identity of an individual or characteristics that could uniquely identify an individual and (2) the Institute pays for the preparation of summary data pursuant to Minnesota Statutes section 13.05, subdivision 7.
>
> The Institute disagrees with Minnesota Housing's suppression method.

Issue:

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

> Does the Minnesota Housing Finance Agency's method in preparing summary data comply with Minnesota Statutes, Chapter 13, in responding to a request for certain benefit data classified by Minnesota Statutes, section 13.462?

Discussion:

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

Summary data are "derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable." (See Minnesota Statutes, section 13.02, subdivision 19.) Minnesota Statutes, section 13.05, subdivision 7, classifies summary data as public. Minnesota Rules, part 1205.0200, and 1205.0700, provide additional guidance regarding summary data.

In Advisory Opinion 00-011, the Commissioner opined:

> Summary data must be derived from what is otherwise completely private or confidential data. To create summary data, government entities are required to remove all personal identifiers from the private or confidential data.

Minnesota Statutes, section 13.462, classifies certain benefit data related to applicants and recipients of benefits or services from various housing programs administered by government entities. Subdivision 2, classifies some data as public; however that subdivision does not apply to individuals seeking or receiving rental assistance. (See Advisory Opinions 05-023 and 08-002.) Subdivision 3, classifies all other benefit data as private.

The Institute and Minnesota Housing agree that the summary data at issue here are derived from solely private data as classified pursuant to section 13.462.

Ms. Sporlein wrote:

> Minnesota Housing is willing to provide the data as summary information after applying the following two suppression factors: (1) it would suppress the data for developments that contain 12 or fewer reporting households, and (2) it would provide aggregate numbers for a characteristic for a particular development so long as the minimum cell size for non-predominant households reporting a status was met. The minimum cell size is based on a sliding scale. The result is that summary data about a particular characteristic would be suppressed in developments in which households with the predominant characteristic make up at least 90% of the households in the development. This ensures that someone would not have a 90% or more probability of correctly identifying a tenant or characteristics of a tenant by choosing the predominant characteristic.
> …
> The Institute does not object to the 12 household suppression threshold. The Institute does object to Minnesota Housing's suppression method.

In the Institute's comments to the Commissioner, Mr. McCann and Mr. Orfield, argue that, "there clearly is a bright line rule regarding summary data: it is to be suppressed only to the extent it uniquely identifies a specific individual." They further wrote that "revealing a

characteristic is a concern only with respect to data on individuals, when individual identities are known."

While the Commissioner believes that the method described by Minnesota Housing does not seem to disclose private data, he is unable to determine whether the method provides appropriate access to public summary data.

The Commissioner has previously opined on the disclosure of data about students and public employees, concluding that entities may not release de-identified private data where there is a risk that an individual will be uniquely identified. (See Advisory Opinions 09-00, 01-053, and 07-001.) In those instances, however, various other data elements including the ultimate unique identifier – an individual's name – are, or could be, public (students' names may be public directory information). Thus, when the de-identified data are matched against the public data, private data on an individual could be revealed. Here, where the requested benefit data are private, the likelihood of uniquely identifying a specific renter seems somewhat remote. Moreover, Minnesota Housing notes that not all units report the demographic characteristics requested by the Institute and some of the requested elements apply to the heads of household, whereas other data elements (like disability status) apply to all tenants in the rental unit. Both of these factors would also seem to reduce the risk that Minnesota Housing would disclose private data about a specific individual. (See also, Advisory Opinion 99-045.)

Nevertheless, whether the 90% threshold described by Minnesota Housing impermissibly withholds public summary data, as the Institute argues, is not an issue the Commissioner can resolve. In the absence of clearer guidance from state or federal law, the Commissioner believes that Minnesota Housing is in the best position to make that decision. He has repeatedly opined that government entities are in the best position to make these types of determinations based on their familiarity with the data and the context in which they are administered. Minnesota Housing has an obligation to provide summary data to the Institute. In doing so, it must balance its obligations to protect the private data upon which the summary data are based and to provide all of the public data that are responsive to the Institute's request.

Opinion:

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

> The Commissioner cannot determine whether Minnesota Housing's method of creating summary data complies with Minnesota Statutes, Chapter 13.

Spencer Cronk
Commissioner

November 27, 2013