



Advisory Opinion 14-002

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 February 3, 2014, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Josh Tilsen, Commissioner of the Bureau of Mediation Services (Bureau). In his letter, Mr. Tilsen asked the Commissioner to issue an advisory opinion regarding the classification of certain data that the Bureau maintains. IPAD requested additional information, which Mr. Tilsen provided on March 7, 2014.

Mr. Tilsen provided a summary of the facts as follows. The Bureau has a statutory duty, under Minnesota Statutes, section 179A.04, subdivision 3(a)(7), to "...receive, catalogue, file, and make available to the public all decisions of arbitrators..." Mr. Tilsen asked about the interaction of that provision and the relevant provision in Minnesota Statutes, section 13.43, subdivision 2(b), which states, "[a] disciplinary action does not become public data if an arbitrator sustains a grievance and reverses all aspects of any disciplinary action."

Mr. Tilsen also wrote:

As background, please be aware that publication of arbitration awards serves important purposes. First publication of awards provides transparency to the process and standards Minnesota uses in resolving disputes concerning the conduct of public employees.

Second, arbitrator reasoning and standards that appear in published decisions serve as guidance to other public employers in making decisions concerning similar issues. Finally, other arbitrators regularly refer to reasoning and standards in published decisions when examining new cases. This is the way the law of labor arbitration develops and improves.

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, what is the classification of data in an arbitration decision that sustains a grievance and reverses all aspects of any disciplinary action against a public employee?

Discussion:

Pursuant to Minnesota Statutes, section 13.03, subdivision 1, all government data are public unless otherwise classified.

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; subdivision 4 classifies most other types of personnel data as private.

When a government entity has taken disciplinary action against an employee and a final disposition has occurred, the following data are public under section 13.43, subdivision 2(a)(5): the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis for the action.

Pursuant to Minnesota Statutes, section 179A.21, subdivision 3:

Arbitration decisions authorized or required by a grievance procedure are subject to the limitations contained in section 179A.16, subdivision 5. The arbitrator shall send the commissioner a copy of each grievance arbitration decision and any written explanation. If any issues submitted to arbitration are settled voluntarily before the arbitrator issues a decision, the arbitrator shall report the settlement to the commissioner.

Pursuant to Minnesota Statutes, section 179A.04, subdivision 3(a)(7), the Commissioner of the Bureau shall, “receive, catalogue, file, and make available to the public all decisions of arbitrators and panels authorized by sections 179A.01 to 179A.25, all grievance arbitration decisions to the extent the decision is public under section 13.43, subdivision 2, paragraph (b), and the commissioner’s orders and decisions.”

As noted above, section 13.43, subdivision 2(b) provides, “[a] disciplinary action does not become public data if an arbitrator sustains a grievance and reverses all aspects of any disciplinary action.”

Data related to a disciplinary action that an entity imposes on a public employee, which was subsequently completely reversed in arbitration, are not enumerated as public pursuant to subdivision 2 of section 13.43; therefore the data are private per subdivision 4.

Commissioner Tilsen stated that the Bureau’s current practice is to publish this type of decision with the employee’s name redacted. However, the fact that an employee was disciplined, and the discipline was completely reversed in arbitration, is not public under section 13.43. Thus, in this context, the employee’s name is private.

Accordingly, the Bureau may not publish or in any other way make public arbitration decisions (that arbitrators must forward to it) that reverse all aspects of disciplinary action, as section 179A.04 otherwise requires, because the entire decision is private under section 13.43.

The Commissioner acknowledges and appreciates Commissioner Tilsen’s comments that the decisions are instructive to the public and other arbitrators, and offers the following guidance to the Bureau in response to its questions about whether it can release any data in the circumstances at issue here.

The Bureau can always seek the employee's consent to release the arbitrator's decision to the public. In addition, although government entities are not required to create data under Chapter 13, the Bureau may elect to redact or summarize a decision and make it public, if it can do so without disclosing private personnel data. In that case, the Bureau might seek to work with the employer, who is in the best position to decide which specific data in the decision do or could identify the employee. However, particularly in high-profile situations, when details of the disciplinary action are known to the public, the Bureau may need to secure the data subject's consent to release any data.

The Commissioner emphasizes that the Bureau cannot release private data, and is not obligated to take any measures in order to do so. Thus any of the preceding options is entirely discretionary, and the Bureau should make those determinations on a case-by-case basis.

Opinion:

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

Pursuant to Minnesota Statutes, Chapter 13, data in an arbitration decision that sustains a grievance and reverses all aspects of any disciplinary action against a public employee are private personnel data, pursuant to Minnesota Statutes, section 13.43, subdivision 4.



Spencer Cronk
Commissioner

April 15, 2014