



Advisory Opinion 14-006

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 April 22, 2014, the Information Policy Analysis Division (IPAD) received a letter dated April 21, 2014, from Tim Finnegan. In his letter, Mr. Finnegan asked the Commissioner to issue an advisory opinion about his right to gain access to certain data Independent School District 625, St. Paul (the District), maintains, as well as his rights as a subject of data.

IPAD, on behalf of the Commissioner, wrote to Superintendent Valeria Silva, data practices responsible authority, in response to Mr. Finnegan's request. The purposes of this letter, dated April 28, 2014, were to inform her of Mr. Finnegan's request and to ask her to provide information or support for the District's position. On May 12, 2014, IPAD received a response to Issue 1, dated same, from Jeffery Lalla, General Counsel to the District. On May 12, 2014, IPAD received a response to Issue 2, dated same, from Nancy Cameron, Deputy General Counsel for the District.

Based on the materials Mr. Finnegan submitted to the Commissioner, a summary of the facts follows. On March 14, 2014, Mr. Finnegan sent an email data request to Superintendent Silva, in which he wrote:

I seek access to the following: Any and all data that document ISD 625's public data collected, created, received, maintained or disseminated regarding, [an employee], once employed by ISD 625 and just recently resigned.

I am requesting all data as defined in Minnesota Statutes 13.43 Personnel Data, Subd. 2, (2), (3), (4), (5), (6), (7), (b), [sic].

I am also requesting any data that document all other persons or entities that have requested public data pertaining to [the employee] from February, 2014 through March 14, 2014.

The District provided Mr. Finnegan access to some of the requested data. On April 3, 2014, Mr. Finnegan wrote to Ms. Silva, asking for the statutory basis for denying him access to two of three complaints against the former employee, as well as the data that document persons or entities requesting public data about him. On April 4, 2014, Mr. Lalla responded on behalf of the District stating that the data were classified as private data pursuant to Minnesota Statutes, section 13.43.

On March 25, 2014, Mr. Finnegan submitted another data request to the District seeking access to data of which he is the data subject. He wrote: " I seek access to the following: Any and all data that document ISD 625's data collected, created, received, maintained or disseminated regarding me, Tim Finnegan, an employee of ISD 625 ".

On April 4, 2014, Mr. Finnegan received a response from Laurin Cathey, Executive Director for Human Resources on behalf of the District. Mr. Cathey noted that Mr. Finnegan had previously requested and received access to data of which he was the data subject. He wrote:

I am unclear as to what new or additional data you are asking to inspect. Please identify what new or additional data you would like to inspect, and the District will consider your request further.

Issues:

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

1. Pursuant to Minnesota Statutes, Chapter 13, did Independent School District 625, St. Paul, respond appropriately to a March 15, 2014, request for data?
2. Pursuant to Minnesota Statutes, Chapter 13, did Independent School District 625, St. Paul, respond appropriately to a March 25, 2014, request for data pursuant to Minnesota Statutes, section 13.04, subdivision 3?

Discussion:

Issue 1. Pursuant to Minnesota Statutes, Chapter 13, did Independent School District 625, St. Paul, respond appropriately to a March 15, 2014, request for data?

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 a government entity. Subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private.

Section 13.43, subdivision 2(a)(4) and (5) classify the following data about complaints against the employee and disciplinary actions as public:

- (4) the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
- (5) the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body[.]

On March 15, 2014, Mr. Finnegan requested access to data regarding a certain former public employee. At issue here, are data related to complaints against the employee and data documenting any persons or entities that had requested public data about the same employee.

In response to Mr. Finnegan, on April 4, 2014, Mr. Lalla wrote:

Complaints (as contrasted with disciplinary actions) against employees are not public data under Minnesota Statutes Section 13.43. Rather, this section not the law only makes public “the existence and status of any complaints or charges against the employee.” See Minnesota Statutes Section 13.43, subd. 2(a)(4). Yesterday you were advised that there were three complaints against [the former employee], one of which resulted in discipline. The status of the two complaints which did not result in discipline are “closed”. You were provided with documentation pertaining to the one complaint which resulted in discipline.

With regard to the complaint data, the Commissioner agrees that the District was not required to provide any more data regarding the two complaints that did not result in discipline. Mr. Finnegan was made aware of the existence of the complaints and Mr. Lalla informed him that the status of both complaints is “closed.” Because no discipline resulted, the underlying data about the complaint are private and Mr. Finnegan, as a member of the public, was not entitled to access that data. (Mr. Finnegan did not challenge his access to the data regarding the third complaint.)

Mr. Finnegan also requested access to “any data that document all other persons or entities” that requested public data about the employee. In his April 4, 2014 email, Mr. Lalla responded:

... Data dealing with data requests about an employee is not data declared to be public under Minnesota Statutes Section 13.43 or any other statute. Thus the School District is prohibited from providing you with data.

The Commissioner respectfully disagrees. As the Commissioner has stated before, Chapter 13 generally classifies data elements, not documents. (See Advisory Opinions 03-036, 05-033, and 12-006.) Data related to individuals requesting public data is not data collected, created, or maintained because the individual is an employee of a government entity. Moreover, “an entity” requesting public data is not an “individual.” Therefore, “data that document all other persons or entities” requesting public data cannot be private personnel data pursuant to section 13.43. Because Chapter 13 does not classify data related to public data requesters, those data are presumptively public. As such, the District should provide Mr. Finnegan with all public data responsive to his request, if any, in a prompt and reasonable manner.

Additionally, Minnesota Statutes, section 13.03, subdivision 3(f) requires the responsible authority or designee to state the grounds upon which a requester is denied access to data by citing to the specific statute, federal law, or temporary classification. Here, Mr. Lalla ultimately provided Mr. Finnegan with a determination, but not until after Mr. Finnegan had inspected the data and subsequently requested the basis for the denial. The Commissioner reminds entities that section 13.03 requires the responsible authority or designee to inform the requester of the not public classification, “either orally at the time of the request, or in writing as soon after that time as possible.” The requester should not need to inquire about the determination.

Issue 2. Pursuant to Minnesota Statutes, Chapter 13, did Independent School District 625, St. Paul, respond appropriately to a March 25, 2014, request for data pursuant to Minnesota Statutes, section 13.04, subdivision 3?

Pursuant to section 13.04, subdivision 3, when a government entity receives a data request from a data subject:

The responsible authority or designee shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.

Section 13.04, subdivision 3, also provides that an entity is not required to allow a data subject access to private data, if the data subject has accessed the same data within the last six months.

On March 25, 2014, Mr. Finnegan requested: “Any and all data that document ISD 625's data collected, created, received, maintained or disseminated regarding me, Tim Finnegan, an employee of ISD 625.” Eight days later on April 4, 2014, Mr. Cathey, on behalf of the District replied, “I am unclear as to what new or additional data you are asking to inspect.”

In her response to the Commissioner on behalf of the District, Ms. Cameron wrote:

Prior to [the March 25, 2014] request, Finnegan had also made a number of requests for public and private data on himself... The District answered all of those requests. Finnegan inspected data about himself and received copies of the requested data...

Against this backdrop [Mr. Cathey] responded to Mr. Finnegan. On April 4, 2014, Mr. Cathey wrote to Finnegan seeking clarification of the March 25, 2014 data request...

...
Although Mr. Cathey sought clarification, to date Finnegan has not clarified what specific data he would like to inspect.

The District does not know what data Mr. Finnegan would like to inspect... (Exhibit references omitted.)

In Advisory Opinion 01-016, which also involved ISD 625, a parent requested access to a complete record of his/her child's education data. There, the District argued, in part, that its delay in providing the requester with the data was due to a need to clarify and its attempts to call the requester. The Commissioner wrote:

First, X's request seems quite clear; s/he wanted a copy of everything the District maintained about his/her children. Second, X specifically asked to have communications conducted in writing. It is not clear why the District did not send X a letter.

...
As stated above, section 13.04, subdivision 3, requires that government entities respond [i.e., provide access to the data by inspection or copies] to data subject requests within ten working days. The statute does not allow for exceptions.

The situation is the same here: Ms. Cameron argued that because Mr. Finnegan had asked for data about himself in years past, the District was unsure as to what his March 25, 2014, request

meant and required clarification. However, Mr. Finnegan clearly requested all data that the District maintains about him. The plain language of section 13.04, subdivision 3, required the District to provide access to the data immediately, if possible, or within 10 days. (The six month limitation on access to private data noted above is not relevant here; Mr. Finnegan and the District agree that Mr. Finnegan's last request for private data was in December 2012.) While the Commissioner finds Mr. Finnegan's request to be straightforward here, when a data subject's request is vague or ambiguous, entities may need to seek clarification. In doing so, they must act in a timely manner that does not interfere with their obligations under section 13.04. (See also Advisory Opinions 03-026.)

Finally, while the Commissioner acknowledges the District's efforts to communicate with Mr. Finnegan, Mr. Cathey's April 4, 2014, response impermissibly limited Mr. Finnegan's right to access data about himself to "new or additional data." As noted above, entities may only limit a data subject's access to private within six months and in certain circumstances. (See Advisory Opinions 95-051 and 98-038.)

Because the District failed to provide Mr. Finnegan access to the data he requested within 10 days, it did not respond appropriately.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issues raised by Mr. Finnegan is as follows:

1. Independent School District 625, St. Paul, responded appropriately to a March 15, 2014, request for complaint data about a former employee. The District did not respond appropriately to a request for data relating to persons or entities requesting public data about a former employee; those data are presumptively public.
2. Independent School District 625, St. Paul, did not respond appropriately to a March 25, 2014, request for "any and all data" about a data requester, pursuant to Minnesota Statutes, section 13.04, subdivision 3, because it did not comply in a timely manner.


Spencer Cronk
Commissioner

June 5, 2014