



Advisory Opinion 14-008

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 June 10, 2014, the Information Policy Analysis Division (IPAD) received a letter, dated same, from Scott Wentz, on behalf of the *South Washington County Bulletin* newspaper. In his letter, Mr. Wentz asked the Commissioner to issue an advisory opinion about his right to gain access to certain data Independent School District 833, South Washington County Schools, maintains.

In response to Mr. Wentz's request, IPAD, on behalf of the Commissioner, wrote to Keith Jacobus, District Superintendent. The purposes of this letter, dated June 11, 2014, were to inform him of Mr. Wentz's request and to ask him to provide information or support for the District's position. On June 26, 2014, IPAD received a response, dated same, from Michael J. Waldspurger, attorney for the District.

A summary of the facts as Mr. Wentz provided them follows. He wrote:

District 833 planned to fill an open seat on its ... School Board by appointment following the resignation of a board member. The district established an application period of May 19-30, 2014.

[On May 22, 2014], [t]he *Bulletin* requested verbally and in writing that District 833 provide public information about the applicants as their applications were received during the filing period, pursuant to Section 13.601, subd. 3, of the Minnesota Government Data Practices Act. [In his May 22, 2014, written request, Mr. Wentz asked for the following data: "[a]ll public candidate applications/materials for the open seat on the South Washington County School Board."]

District 833, through its attorney, verbally denied the request. In support of its position, it cited Minnesota Statute 13.43, subd. [sic] 3; Minnesota Department of Administration Advisory Opinion 07-022; and District 833's policy of treating School Board members as district employees for the purposes of the Minnesota Data Practices Act. In effect, the District contended that because the board members were treated as employees by the District, section 13.43, subd. 3, governed access to information about the applicants, and not section 13.601, subd.3.

District 833 did eventually provide public information about the School Board applicants to the *Bulletin* on June 5 - six days after the application period ended, and after the conclusion of a School Board meeting that included approval of a resolution changing the District's policy to treat board members as elected officials rather than employees.

The *Bulletin* believes that Section 13.601, subd. 3, is the applicable statute governing public access to data on applicants for appointment to a school board, whether they are considered to be employees or elected officials. As such, it is the position of the *Bulletin* that District 833 did not properly comply with

the newspaper's request for public information about applicants to the School Board as they submitted their applications.

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, did Independent School District 833, South Washington County Schools, respond appropriately to requests for access to data about applicants for an open seat on the School Board?

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, subdivision 1, defines "personnel data" as "government data on individuals maintained because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a government entity." Pursuant to subdivision 3, certain data on applicants, including their names, are private until "selected to be interviewed by the appointing authority."

Prior to a 2005 amendment, the definition of personnel data included data "on an individual who is a member of *or an applicant for* an advisory board or commission." That year, the Legislature removed those individuals from the definition of personnel data and enacted Minnesota Statutes, section 13.601, subdivision 3, which classified data on "all applicants for *election or appointment* to a public body, including those subject to chapter 13D...." [Emphasis added.]

In 2008, the Minnesota Legislature amended section 13.601, subdivision 3(a), as follows:

Data about *applicants for appointment to a public body* collected by a government entity as a result of the applicant's application for appointment to the public body are private data on individuals except that the following [data described in sub-clauses 1-9, including applicant's name] are public.... [Emphasis added.]

In his comments to the Commissioner, Mr. Waldspurgen noted that the Commissioner has issued numerous advisory opinions that state that it is up to the government entity to determine whether an appointed or elected official is an employee for purposes of Chapter 13. He stated that the Board "had historically considered its members to be employees for purposes of section 13.43. At a duly scheduled meeting on Thursday, June 5, 2014, the School Board adopted a resolution declaring that members of the Board are not 'employees' for purposes of..." Chapter 13.

Mr. Wenté asked the Commissioner whether data on applicants for appointment to the School Board were classified by section 13.43, or section 13.601. The advisory opinions to which Mr. Waldspurgen referred were issued prior to the 2008 amendments to section 13.601, and therefore are not applicable here. (Mr. Waldspurgen also referenced a 2006 opinion of the Minnesota Attorney General. Again, because that opinion was issued prior to 2008, the Commissioner does not believe that it is applicable to this discussion.)

Accordingly, data on *applicants for appointment* to a public body, such as the School Board, are classified under section 13.601, not section 13.43. The data enumerated at section 13.601, subdivision 3(a), were public when the District received the applications.

As to the timeliness of the District's response, Mr. Wentz stated that he asked the District to provide him with public data on School Board applicants as the Board received them. Mr. Waldspurger disputes that claim. However, in a May 23, 2014, email to Mr. Waldspurger, Mr. Wentz wrote that he wanted to clarify that the data on applicants were, "public when they apply, based on statute 13.601. *I've already requested that the district provide public data in 13.601 as applications are received*, but I want to clarify that the district is on the same page as far as what is public and what is not public." [Emphasis added.]

Mr. Waldspurger wrote in response to the Commissioner:

.... The District received the first application on Thursday afternoon, May 29, 2014. The District received the remaining six applications shortly before the 4:00 p.m. deadline on Friday afternoon, May 30, 2014. Because the majority of applications were received shortly before the close of business on Friday, the District did not have an opportunity to review and process the application materials until Monday, June 2, 2014.

As noted above, immediately following the June 5, 2014, School Board meeting (at which it passed a resolution that Board members are not employees), the District gave Mr. Wentz copies of all of the data it maintained that were responsive to his request.

The District was not correct that the data on applicants for the open seat on the School Board were classified as private under section 13.43; however, not all data on an applicant for appointment are public under section 13.601, subdivision 3. Therefore, the District was obligated to review the applications and redact as necessary before releasing public applicant data. The District received the first application on May 29, and provided Mr. Wentz with copies of all of the data he requested on June 5, 2014. Under the circumstances, the Commissioner believes the District's response was prompt and reasonable.

Opinion:

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

Pursuant to Minnesota Statutes, Chapter 13, Independent School District 833, South Washington County Schools, responded appropriately to requests for access to the data about applicants for an open seat on the School Board that are public under Minnesota Statutes, section 13.601, subdivision 3.



Spencer Cronk
Commissioner

July 11, 2014