



Advisory Opinion 14-012

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 August 20, 2014, the Information Policy Analysis Division (IPAD) received a letter dated same, from Curtis Gilbert, on behalf of Minnesota Public Radio (MPR). In his letter, Mr. Gilbert asked the Commissioner to issue an advisory opinion about his right to gain access to certain data from the City of Minneapolis.

IPAD, on behalf of the Commissioner, wrote to Casey Joe Carl, City Clerk and responsible authority for the City, in response to Mr. Gilbert's request. The purposes of this letter, dated August 26, 2014, were to inform him of Mr. Gilbert's request and to ask him to provide information or support for the City's position. On September 8, 2014, IPAD received a response, dated September 2, 2014, from Mike Bloom, Assistant City Attorney.

A summary of the facts as Mr. Gilbert provided them follows. In various communications in June and July of 2014, Mr. Gilbert asked for access to:

All data contained in employee responses to the city's 2014 Employee Engagement Survey.

This data I seek is described in the city's contract with Kenexa as the "raw data file." That section spells out procedures for sanitizing the data to remove personally identifiable information such as employee numbers. To be clear, I am requesting the sanitized data. I am not seeking any information that would identify individual employees.

The City's contract with Kenexa contains the following provision:

Kenexa will, upon written request, provide Customer with a raw data file.... The data file will include Individual responses to the survey including answers to opinion questions and coding demographics.... Prior to providing the data file, Kenexa and Customer will agree on a reasonable sanitization that Kenexa will perform on the data file solely for the purpose of maintaining assurances of respondent confidentiality and anonymity (such as removal of employee IDs).

The City denied Mr. Gilbert's request. Subsequently MPR's attorney objected; Mr. Bloom responded that the City believed that the "raw data file" is classified as private data on City employees.

Issue:

Based on Mr. Gilbert'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 the "raw data file" related to the City's 2014 Employee Engagement Survey?

Discussion:

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

"Data on individuals" means all government data in which any individual is or can be identified as the subject of that data. (Minnesota Statutes, section 13.02, subdivision 5.)

Under Minnesota Statutes, section 13.43, "personnel data" are defined as "government data on individuals maintained because the individual is or was an employee of or an applicant for employment by ... a government entity." Subdivision 2 lists the types of personnel data that are public; subdivision 4 classifies most other personnel data as private. Thus, the general presumption that all government data are public is reversed in section 13.43; personnel data are presumptively private.

Pursuant to section 13.43, subdivision 7(a):

Personnel data includes data submitted by an employee to a government entity as part of an organized self-evaluation effort by the government entity to request suggestions from all employees on ways to cut costs, make government more efficient, or improve the operation of government. An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion.

In his opinion request, Mr. Gilbert stated:

Our position is that the data are not "data on individuals," and thus are presumed to be public government data. According to ... the city's contract ... the company is required to perform "reasonable sanitization on the data file solely for the purposes of maintaining assurances of respondent confidentiality and anonymity" before furnishing the file to the city. In other words, the raw data file comes to the city already stripped of "government data in which any individual is or can be identified as the subject of that data," and thus it could not be "data on individuals" as defined in section 13.02, subd. 5.

According to Mr. Bloom, the "raw data file" related to the City's 2014 Employee Engagement Survey is classified as private personnel under section 13.43. He wrote:

The “raw data file” in question consists of data submitted to the City by its employees as part of the City’s organized self-evaluation effort through which the City requested suggestions from its employees on ways to cut costs, make government more efficient, or otherwise improve government operation.

Subdivision 7a is silent as to the classification of employee suggestion data. Because employee suggestion data is not classified as public under section 13.43, subdivision 2, it is private data on individuals under section 13.43, subd. 4.

MPR’s position is that the data being requested are not “data on individuals,” and thus are presumed to be public government data. MPR’s position has no merit. Section 13.43, subd. 7a provides that the employee suggestion data being requested is “personnel data.” Personnel data is defined as “government data on individuals maintained because the individual is or was an employee of ... a government entity.” By stating that personnel data includes employee suggestion data, the legislature has already determined that employee suggestion data is data on individuals. The language in Section 13.43 is clear and unambiguous and dictates the result - that employee suggestion data is personnel data that the data is classified as private. Moreover, there is no need to ascertain whether employee suggestion data also meets the statutory definition contained in section 13.02, subd. 5. This is because Section 13.43, subd. 4, protects as private all personal data not listed in subd. 2.

Upon examining section 13.43, subd. 7a, it is clear the Legislature intended that employee suggestion data collected from employees be protected. Had the legislature intended a different result, it would not have placed employee suggestion data in section 13.43. Likewise, the Legislature could have easily provided that employee suggestion data are public by simply including employee suggestion data in subdivision 2. Instead, by operation of section 13.43, the Legislature ensured that employee suggestion data would remain private, since it falls under subdivision 4. [Emphasis omitted.]

The Commissioner acknowledges Mr. Bloom’s arguments regarding the application of section 13.43, subdivision 7a, but respectfully disagrees with the City’s position.

In order to be personnel data subject to classification under section 13.43, the data must be data on individuals. De-identified data are not data on individuals because an individual cannot “be identified as the subject of that data”. Mr. Bloom stated that because employee suggestion data are included in the definition of personnel data, even de-identified data are private under the operation of section 13.43. However, once “sanitized” or de-identified, the data in question are no longer personnel data, because they are not data on individuals.

Accordingly, in order for de-identified data to be inaccessible to the public, they would need to be classified as *nonpublic* data. (Section 13.02, subdivision 9.) There is no statute that classifies the data held by the City as nonpublic.

As Mr. Bloom noted, section 13.43, subdivision 7a, does not classify suggestion data. Instead it clarifies that in data that are not de-identified, an “employee who is identified in a suggestion shall have access to all [otherwise private personnel] data in the suggestion except the identity of the employee making the suggestion.”

The Commissioner notes that per the City's contract with Kenexa, they "will agree on a reasonable sanitization that Kenexa will perform on the data file solely for the purpose of maintaining assurances of *respondent confidentiality* and anonymity" It is not clear whether the "sanitization" also removes identifying data on any employees mentioned by employee respondents. If the raw data file the City maintains contains data that identify an employee who is the subject of another employee's suggestion, those data are private personnel data.

Mr. Gilbert also questioned whether the purpose of the City's employee engagement survey fits the description of the specific kind of survey to which section 13.43, subdivision 7(a), applies. However, in this context it doesn't matter what kind of employee survey the City conducted. Mr. Gilbert asked only for data in which an individual cannot be identified, and per the terms of its contract, Minneapolis maintains those data. Thus, Mr. Gilbert did not ask for access to private personnel data. He asked for the "sanitized" raw data file, which does not contain data in which an individual employee is identified. Therefore, those data are presumptively public under section 13.03, subdivision 1.

Opinion:

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

Pursuant to Minnesota Statutes, Chapter 13, the City of Minneapolis did not respond properly to a request for the "raw data file" related to the City's 2014 Employee Engagement Survey. The City must redact data that identify a City employee, if the file contains such data.



Matthew Massman
Acting Commissioner

October 8, 2014