



Advisory Opinion 14-013

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 26, 2014, the Information Policy Analysis Division (IPAD) received a letter dated August 25, 2014, from Amy Kantorowicz. In her letter, Ms. Kantorowicz asked the Commissioner to issue an advisory opinion about her right to gain access to certain data that the City of Waite Park (City) maintains.

IPAD, on behalf of the Commissioner, wrote to Shauna Johnson, City Administrator, in response to Ms. Kantorowicz's request. The purposes of this letter, dated August 29, 2014, were to inform her of Ms. Kantorowicz's request and to ask her to provide information or support for City's position. On September 9, 2014, IPAD received a response, dated same from Gordon Hansmeier, City Attorney.

A summary of the facts as Ms. Kantorowicz provided them follows. She wrote:

After [contacting IPAD], I contacted the City of Waite Park by phone and requested a copy of the [City's data practices] policy. I also requested it twice in writing. Despite the requirement in Minnesota Section 13.025, subd. 4 to make the policies available to the public, I have not received a copy of the policy. I did receive an email indicating that Shauna Johnson is the designated responsible authority for the City of Waite Park.

On March 19, 2014, I sent three requests for data to the responsible authority, Shauna Johnson. One of the requests was resolved and the records were provided. The other two are attached.

In her first request at issue here, Ms. Kantorowicz wrote:

Pursuant to Minn. Stat. sec. 13.82 subd. 6... and subd. 3..., I am requesting the following information:

All requests for service and response and incident data for [X]. [Two reports] are still pending cases and are private data so I have included a signed release from [Y] whom I believe to be a party in both incidents.

Also, please provide a copy of the incident report for an accident on January 10, 2014 where [Y] was the driver. (Emphasis omitted.)

Ms. Kantorowicz included Ms. Johnson's reply to this request in her submission to the Commissioner. Ms. Johnson wrote:

We will not be providing the data in your Request for Law Enforcement Data involving [X and Y]. The requested data remains confidential or protected non public [sic] data. See Minn. Stat. Section 13.82, subd. 7. Further, based on the relationship and the history of the parties involved, we reasonably believe that the release of the requested data will interfere with an open investigation, as well as the justice process. See Minn. Stat. Section 13.82, subd. 13.

After further communication with the City regarding this request, Ms. Kantorowicz received a letter from Mr. Hansmeier, dated March 25, 2014, which she also provided to the Commissioner. Mr. Hansmeier wrote:

Please provide me with a copy of the "signed release" mentioned in the [X/Y request]. Please also provide a detailed explanation, with appropriate legal citations, why you believe you are entitled to the following information at this time and without limitations on the use or dissemination of the information through a protective order, etc. [Mr. Hansmeier then restated the data request for X and Y.]

In her submission to the Commissioner, Ms. Kantorowicz noted, "to date, I have received no data pertaining to this request."

In the second data request at issue here, dated March 19, 2014, Ms. Kantorowicz wrote:

Pursuant to Minn. Stat. sec. 13.82 subd. 6... and subd. 3..., I am requesting the following information:

All requests for service and response and incident data for [Z]...

Ms. Johnson's responded by letter on April 10, 2014. She wrote:

We are in the process of obtaining documents responsive to your data request. Please confirm that someone in your office represents [Z]. If so, please provide a signed retainer agreement or a copy of any other document substantiating the attorney/client relationship. Please also confirm that the requested data is on behalf of [Z]. This information is necessary because of Minn. Stat. Section 260B.171, subd. 5.

Regarding the City's response to this request, Ms. Kantorowicz wrote to the Commissioner:

First, [the City] requested a signed retainer agreement showing that our office represents the subject of the data practices request [Z]. Second, they quoted a statute that pertains to juvenile records which is not applicable in this case because [Z] is an adult.

Issues:

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

1. Pursuant to Minnesota Statutes, Chapter 13, did the City of Waite Park respond appropriately to two data requests dated March 19, 2014, for certain law enforcement data?
2. Pursuant to Minnesota Statutes, Chapter 13, did the City of Waite Park respond appropriately to a request for a copy of the policy required by Minnesota Statutes, section 13.025?

Discussion:

Issue 1. *Pursuant to Minnesota Statutes, Chapter 13, did the City of Waite Park respond appropriately to two data requests dated March 19, 2014, for certain law enforcement data?*

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

Data that law enforcement agencies collect, create, and maintain are classified pursuant to Minnesota Statutes, section 13.82. Subdivision 7 of that section allows a law enforcement agency to classify some law enforcement data as confidential or protected nonpublic while there is an active investigation. Certain other law enforcement data are always public, regardless of whether there is an active investigation. Section 13.82, subdivisions 2 (arrest data), 3 (request for service data), and 6 (response or incident data), list data that are always public.

March 19, 2014, request for data about X and Y.

In her first March 19, 2014, request, Ms. Kantorowicz requested copies of, “all response or incident or request for service data” for a specific individual. She also requested a copy of an incident report involving a traffic accident for another individual.

The Commissioner has the following comments. Ms. Kantorowicz requested public data, but then stated that some of the data are “pending cases and are private,” and included a signed release from Y with the request. However, data listed in section 13.82, subdivisions 3 and 6, are always public, regardless of whether there is an active investigation, and therefore a signed release (consent) is not necessary. In contrast, data classified by section 13.82, subdivision 7, are confidential or protected nonpublic (not private). Consequently, even with a signed release, Ms. Kantorowicz, or any other member of the public could not get access to active investigative data. (Individuals may not consent to release of confidential data about themselves. See Advisory Opinion 11-015.) To the extent, the release Ms. Kantorowicz provided contributed to confusion about the appropriate response, the City was responsible for clarifying the request. (See Advisory Opinions 06-004 and 06-029.) Here, the City denied Ms. Kantorowicz access to all of the data she requested.

Section 13.82, subdivision 13, does not apply to this situation. This section allows a “prosecuting authority” to release investigative data to a victim of a crime or an alleged crime. Ms. Kantorowicz did not request access to investigative data as a crime victim or a crime victim’s representative; she requested public data.

In addition, contrary to Mr. Hansmeier’s March 25 letter, Chapter 13 does not allow government entities to require a person “to identify themselves, state a reason or justify a request to gain

access to public government data” unless authorized by statute. (See Minnesota Statutes, section 13.05, subdivision 12.) Members of the public may have access to public data for any reason.

The City should have provided Ms. Kantorowicz with all public request for service and response or incident data for X and any public data in the traffic incident report for Y.

March 19, 2014, request for data about Z.

While section 13.82 applies to most law enforcement data, peace officer records about children who are or may be delinquent, or who may be engaged in criminal acts are classified pursuant to Minnesota Statutes, section 260B.171, subdivision 5. Generally, that section classifies those data as private. (Similar to section 13.82, subdivision 13, section 260B.171, also contains a provision that allows for a victim of an allegedly delinquent juvenile to obtain access to certain data about the juvenile. See section 260B.171, subdivision 5(h).)

In response to the Commissioner’s letter, Mr. Hansmeier wrote:

The voluminous documents that were gathered by the City of Waite Park in response to the [Y] request contain multiple references to “children who are or may be delinquent or who may be engaged in criminal acts”. This information is clearly “private” data pursuant to Minn. Stat. Section 260B.171, subd. 5. In order to determine the permissible scope of information to release, the City of Waite Park needed to know whether Ms. Kantorowicz was a representative of the “child’s parent or guardian”. If she was not, the “Peace officer records of children” could not be disclosed to Ms. Kantorowicz because the request was not made by the “child’s parent or guardian.”

Mr. Hansmeier is correct; the City has an obligation to protect not public data, including peace officer records of children. However, Ms. Kantorowicz requested public request for service and response or incident data about Z, who is an adult. She did not request private data on Z, nor did she request private data on any other individuals. Therefore, while an entity is responsible for clarifying an ambiguous request, the City’s response here is incongruous with the data request. The City argued that it could not respond to the data request based on the classification of data that Ms. Kantorowicz had not requested.

The City should have provided Ms. Kantorowicz with the public data that were responsive to her request and redacted any data that were otherwise not public.

Issue 2. *Pursuant to Minnesota Statutes, Chapter 13, did the City of Waite Park respond appropriately to a request for a copy of the policy required by Minnesota Statutes, section 13.025?*

Under Minnesota Statutes, section 13.025, the responsible authority “must prepare a written policy detailing its data access policies.” Further, it provides that the responsible authority “shall make copies of the policies...available to the public.” The responsible authority may fulfill that obligation by distributing free copies, posting the policies in a conspicuous place, or posting it on the entity’s website. Minnesota Rules, Chapter 1205 also provides guidance about access procedures for members of the public and data subjects.

The Commissioner has issued numerous opinions on the access policies and procedures required by Chapter 13. (See Advisory Opinions 04-049, 05-003, and 13-007.) The requirement for

access policies is longstanding. The Legislature enacted the requirements in Minnesota Statutes, section 13.03, in 1999 and they went into effect January 1, 2001. The Legislature transferred the access policy provisions to section 13.025 in 2012.

Here, Ms. Kantorowicz asked the City for a copy of the policy required by section 13.025, identifying the responsible authority. Mr. Hansmeier replied and stated, "Shaunna Johnson is the designated person for data practices for the City of Waite Park." He then directed Ms. Kantorowicz to forward all requests to him.

Mr. Hansmeier, in response to the Commissioner, wrote:

With regard to the request for the City of Waite Park's written policy, the City of Waite Park's written policy is memorialized in Chapter 13 of the Minnesota Statutes. In responding to government data requests, the City of Waite Park complies with applicable provisions of Chapter 13 including but not limited to Minn. Stat. Section 13.03, Minn. Stat. Section 13.04, Minn. Stat. Section 13.05 and Minn. Stat. section 13.82.

The Commissioner respectfully disagrees with Mr. Hansmeier's position. Reference to Chapter 13 is not sufficient to satisfy the requirement for written access policies. The provision requires that the responsible authority proactively prepare written data access policies. In the absence of written policies identifying designees, the responsibility for responding to data requests is retained by the responsible authority. (See Advisory Opinion 00-021.) While Mr. Hansmeier identified Ms. Johnson as the "responsible person for data requests," the City did not provide documentation that Ms. Johnson was appointed as the responsible authority or a designee for the City, nor did it provide documentation that Mr. Hansmeier had that authority. More specifically, the purpose of the statutory requirement "to prepare a written policy detailing its data access policies" is to articulate to whom the public should direct data requests and what procedures the city will follow to comply with Chapter 13.

Opinion:

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

1. Pursuant to Minnesota Statutes, Chapter 13, the City of Waite Park did not respond appropriately to requests for public law enforcement data about X, Y, and Z.
2. Pursuant to Minnesota Statutes, Chapter 13, the City of Waite Park did not respond appropriately to a request for a copy of the policy required by Minnesota Statutes, section 13.025.


Matthew Massman
Acting Commissioner

October 13, 2014

