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### Advisory Opinion 14-014

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 13, 2014, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Chuck Lymangood, dated August 12, 2014. In his letter, Mr. Lymangood asked the Commissioner to issue an advisory opinion regarding the Corcoran City Council members' conduct under Minnesota Statutes, Chapter 13D, the Minnesota Open Meeting Law (OML).

IPAD requested additional information/clarification from Mr. Lymangood, which he provided on August 27, 2014.

On August 29, 2014, IPAD wrote to Mayor Ken Guenther, Chair of the City Council (Council). In its letter, IPAD informed Mr. Guenther of Mr. Lymangood's request and gave the members of the Council an opportunity to explain their position. On September 17, 2014, IPAD received a response, dated September 16, 2014, from Jeffrey Carson, Corcoran City Attorney.

A summary of the facts as provided by Mr. Lymangood follows. The Council held two closed meetings, one on March 13, 2014, and one on June 12, 2014, to discuss obtaining an easement across a number of properties. Mr. Lymangood raised several issues with respect to those meetings and a subsequent data request. He wrote to the Commissioner:

The individual properties discussed during the closed session were not properly disclosed at the meetings.... At the first meeting, March 13, 2014, no disclosure was provided to the public of any of the properties that were to be discussed at the closed meeting (the city attorney simply stated, "the 13 properties"). At the second meeting, June 12, 2014, the city attorney, Jeff Carson, who is not a member of the public body, made an attempt to list the properties to be discussed at the closed meeting. He disclosed 11 property addresses and stated, "2 unassigned addresses on 101, the McGee property".

...

The City of Corcoran did not properly respond to my request for data on July 14, 2014.

...

The mayor, as a member of the public body, did not properly state on the record the specific grounds permitting the meeting to be closed... Based on the tapes of the meetings, the transcripts and the copy of the council minutes provided with this narrative, Mayor Guenther, in my opinion did not state on the record the "specific grounds" permitting the meeting to be closed. Further, as mentioned above, the statements of the city attorney, Jeff

Carson, do not relieve the public body from making the proper statement on the record as Mr. Carson is not a member of the public body.

**Issues:**

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

1. Pursuant to Minnesota Statutes, sections 13D.01, subdivision 3 and 13D.05, subdivision 3, did the Corcoran City Council properly close the March 13, 2014, meeting to discuss the sale or purchase of property?
2. Pursuant to Minnesota Statutes, sections 13D.01, subdivision 3 and 13D.05, subdivision 3, did the Corcoran City Council properly close the June 12, 2014, meeting to discuss the sale or purchase of property?
3. Pursuant to Minnesota Statutes, Chapter 13, did the City of Corcoran respond appropriately to a July 14, 2014, data request for all public data regarding easement negotiations?

**Discussion:**

**Issue 1.** *Pursuant to Minnesota Statutes, sections 13D.01, subdivision 3 and 13D.05, subdivision 3, did the Corcoran City Council properly close the March 13, 2014, meeting to discuss the sale or purchase of property?*

Minnesota Statutes, section 13D.01, subdivision 3, provides: "before closing a meeting, a public body shall state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed."

This subdivision requires that a public body do three things before a meeting is closed: (1) make a statement on the record; (2) give the specific grounds permitting the closure of the meeting; and (3) describe the subject to be discussed. (See Advisory Opinion 06-020.)

Chapter 13D does not define the phrase "on the record" in sections 13D.01 and 13D.05. However, the Commissioner has issued numerous opinions on the requirements to close a meeting (see Advisory Opinions 07-018, 13-012, 14-004, and 14-005) and has consistently interpreted those provisions to mean a verbal statement in open session. In addition, the Commissioner recently opined in Advisory Opinion 14-005, that per the plain language of section 13D.01, subdivision 3, the public body is responsible for making the statements and that a statement by the body's attorney is not sufficient to meet the strict language of the law.

Minnesota Statutes, section 13D.05, subdivision 3(b)(3), permits a meeting to be closed, "to develop or consider offers or counteroffers for the purchase or sale of real or personal property." That clause further provides that the public body "must identify on the record the particular real or personal property that is the subject of the closed meeting."

Mr. Lyman good provided the Commissioner with a partial transcript of the March 13, 2014, meeting. Shortly before going into closed session, the following exchange took place:

Mr. Guenther: With that, the one remaining item on the agenda is a closed session. We have been informed by the city attorney that he would like to present us information pertaining to easement acquisition.

Mr. Carson: Yes, Mayor it is to view the appraisals that we now have for the 13 properties in the southeast sewer and water project.

[The Mayor then addressed a boy scout who was in attendance.]

Mr. Guenther: Ok, so with that I will recess the public session. We will reconvene in closed session across the hall.

Here, while Mr. Guenther made a statement in open session, he did not state the grounds for closing the meeting and he did not provide a particularized description of the subject of the closed meeting. As the Commissioner has suggested in previous opinions, the simplest way to state the grounds for closing a meeting is to cite to the statutory provision allowing or requiring the closing. (See Advisory Opinion 06-020.) While *Mr. Carson* identified a broad subject of the closed meeting – the southeast sewer and water project – it is the Council’s responsibility to make the required statement, and that responsibility cannot be delegated to an attorney. Further, the statement made by a member of the public body must also state the grounds for closing the meeting.

With regard to identifying the particular real property on the record, as required by section 13D.05, subdivision 3(b)(3), Mr. Carson wrote, “the identification of the 13 properties being considered for utility easement acquisition as printed on the public agenda could only have meant the Southeast Sewer and Water Project properties.” The agenda Mr. Carson submitted to the Commissioner for the March 13, 2014, meeting does not contain a list of properties. Nevertheless, listing the specific properties on an agenda would not satisfy the requirement to identify the properties on the record.

As reflected in Mr. Carson’s comment below, the Commissioner appreciates and is encouraged by the City’s effort to comply with the requirements of Chapter 13D going forward:

Notwithstanding our assertion that the public was well-informed and well-aware of those properties that were the subject of the closed meetings on March 13, 2014 and June 12, 2014, I believe that we can provide a clearer path to statutory conformity with the closed session requirements... City staff has met and reviewed the above complaints, together with the statutory requirements and we are developing a more deliberate process for closing meetings that will comply with the letter of the law. This review of the law, process and procedure has proven very helpful to the City. (Citations omitted.)

**Issue 2.** *Pursuant to Minnesota Statutes, sections 13D.01, subdivision 3 and 13D.05, subdivision 3, did the Corcoran City Council properly close the June 12, 2014, meeting to discuss the sale or purchase of property?*

Mr. Lyman good’s transcript of the June 12, 2014, documents the following exchange:

Mr. Guenther: So we have a scheduled closed session related to sewer and water. Jeff, did you want to comment before we do that?

Mr. Carson: Thank you Mayor. What we will be doing is recessing in the closed session to consider negotiations for the sewer and water easements project for the following properties. They are all on County Road 101. That would be: 6635, 6705, 6735, 6801, 6819, 6851, 6863, 6901, 6951, 7205, 6648, and two unassigned addresses on 101 the McGee property.

Mr. Guenther: Ok, thank you Jeff, with that then the council we will recess the public session and reconvene in closed session after we receive information on the negotiations in closed session we will come back into public session.

The analysis here is the same as Issue 1: the statement was inadequate and made by the Council's attorney, instead of the members of the public body. An example of a statement that would be sufficient in these circumstances is: "The Council is going into closed session under section 13D.05, subdivision 3(b)(3) to discuss south east sewer and water easement negotiations for the following properties: [identify the properties]."

Additionally, and notwithstanding the fact that Mr. Carson's statements on the record were insufficient, Mr. Lymangood raised the issue of whether the statement "two unassigned addresses on 101 the McGee property," appropriately identified the particular properties that were the subject of the closed meeting. The Commissioner offers the following guidance. If there was information that would more clearly identify the location of the properties, then the identification was not "particular," within the meaning of section 13D.05, subdivision 3(b)(3). If, on the other hand, Mr. Carson's statement reflects how the properties are actually identified (i.e., in property records, on maps, etc.), then the identification would likely have been sufficient had it been provided by the Council.

**Issue 3.** *Pursuant to Minnesota Statutes, Chapter 13, did the City of Corcoran respond appropriately to a July 14, 2014, data request for all public data regarding easement negotiations?*

Pursuant to Minnesota Statutes, section 13.03, when a government entity receives a data request from an individual who is not the subject of the data, the entity is required to respond in an appropriate and prompt manner, and within a reasonable time. (See section 13.03, subdivision 2(a), and Minnesota Rules, part 1205.0300.)

Mr. Lymangood made the following data request to the City of Corcoran:

This data request is for all public data regarding the SE Sewer and Water easement negotiations. The request includes, but is not limited to, tapes of council meetings in open session where the easement is discussed, council meeting minutes where the easement is discussed, etc. This request includes the city council meetings of March 13, 2014 and June 12, 201, as well as any other meetings.

In his letter to the Commissioner, Mr. Lymangood wrote, that he only received five items and did not receive copies of the Council meeting minutes, legal billing statements regarding the easements, or a resolution that the Council approved at a previous meeting.

Mr. Carson in his letter to the Commissioner wrote:

[I]t appears to be true that certain of the requested data was omitted... The omission of the [requested information] was inadvertent and clearly not intentional...

With regard to the billings of the attorneys mentioned by Mr. Lymangood, I am not sure that in the normal course of events anyone would think to include such billing statements unless they were specifically asked for in the data request.

Mr. Lymangood requested “all public data” about the easement negotiations. He specifically noted that he wanted access to council meeting minutes. The Commissioner realizes that when a government entity receives a data request for “all data” on a particular subject, it may not initially recognize the full scope of the request. In those instances, it is the responsibility of the government entity to clarify with the requester.

The Commissioner urges both requesters and government entities to work together to resolve data requests in a timely and appropriate manner.

**Opinion:**

Based on the facts and information provided, the Commissioner’s opinion on the issues Mr. Lymangood raised is as follows:

1. The Corcoran City Council did not properly close the March 13, 2014, because it did not make the required statement on the record, as required by Minnesota Statutes, sections 13D.01, subdivision 3, and 13D.05, subdivision 3.
2. The Corcoran City Council did not properly close the June 12, 2014, because it did not make the required statement on the record, as required by Minnesota Statutes, sections 13D.01, subdivision 3, and 13D.05, subdivision 3.
3. The City of Corcoran not respond appropriately to a July 14, 2014, data request for all public data regarding easement negotiations because the City did not provide access to all of the responsive data it maintained.



Matthew Massman  
Acting Commissioner  
October 13, 2014

