



Advisory Opinion 14-016

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2014). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On September 12, 2014, the Information Policy Analysis Division (IPAD) received an advisory opinion request from James R. Andreen, attorney for Winona County. IPAD required additional information, which Mr. Andreen provided on September 30, 2014. In his letter, Mr. Andreen asked the Commissioner to issue an advisory opinion regarding a question of access to data the County maintains.

According to Mr. Andreen:

Winona County has private or confidential data (for the most part welfare data) [about] Person A. Person A is now deceased. There is no personal representative for Person A.

Person B is Person A's sister. Person B has requested data on Person A from the Winona County Community Services Department.

Person B has been appointed a trustee for the purposes of bringing a wrongful death action pursuant to Minn. Stat. § 573.02 although no such action has yet been brought.

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, may Winona County release private data on a deceased individual to that individual's sister without a court order?

Discussion:

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

Pursuant to Minnesota Statutes, section 13.10, subdivision 1(a) and (b), confidential or private data on decedents are data which, prior to the death of the individual data subject, were classified as confidential or private data about the individual. Per subdivision 1(c), the "'representative of the decedent' is the personal representative of the estate of the decedent during the period of

administration, or if no personal representative has been appointed ... the surviving spouse, any child of the decedent, or, if there is no surviving spouse or children, the parents of the decedent.”

According to section 13.10, subdivision 3:

Rights conferred by this chapter on individuals who are the subjects of private or confidential data shall, in the case of private data on decedents or confidential data on decedents, be exercised by the representative of the decedent. Nonpublic data concerning a decedent, created or collected after death, are accessible by the representative of the decedent. Nothing in this section may be construed to prevent access to appropriate data by a trustee appointed in a wrongful death action.

Person B is Person A’s sister, but not the personal representative within the meaning of section 13.10, subdivision 1(c). However, she has been appointed a trustee for purposes of a wrongful death action under Minnesota Statutes, section 573.02, subdivision 3.

Pursuant to section 13.10, subdivision 4:

Any person may bring an action in the district court located in the county where the data is being maintained ... to authorize release of private data on decedents or confidential data on decedents. The responsible authority for the data being sought or any interested person may provide information regarding the possible harm or benefit from granting the request. The data in dispute shall be examined by the court in camera. The court may order all or part of the data to be released to the public or to the person bringing the action. In deciding whether or not to release the data, the court shall consider whether the harm to the surviving spouse, children, or next of kin of the decedent, the harm to any other individual identified in the data, or the harm to the public outweighs the benefit to the person bringing the action or the benefit of the public.

Mr. Andreen stated that the County does not believe Person B is entitled to data about Person A, and that section 13.10, subdivision 3, “suggests that if Person B were to bring a court action under [section 13.10, subdivision 4], nothing would prevent the court from ordering Winona County to provide the data. Otherwise, the legislature simply would have added such a trustee to the list of individuals in subdivision 1(c).”

Subdivision 3 bestows upon the personal representative, or if none, certain family members (not including siblings), the full Chapter 13 rights of the decedent. The rights of a trustee appointed in a wrongful death action, however, are limited in subdivision 3 to access to “appropriate” data. Accordingly, the County must determine which data are “appropriate” data, and release them to Person B, as Person A’s trustee.

In his request, Mr. Andreen specifically asked about releasing *private* data on Person A to the trustee. However, the trustee has access to *appropriate* data, not just private data. For example, a personal representative is not entitled to get access to confidential data on a decedent, because while alive, the decedent was not entitled to get access to confidential data. (See section 13.02, subdivision 3.) So although a trustee may not exercise the full Chapter 13 rights of the decedent, the trustee potentially may be entitled to gain access to more data than a personal representative, under the operation of subdivision 3.

If the County determines that it must withhold some of the data it maintains on Person A as not appropriate, and Person B disagrees with that determination, she may bring an action under subdivision 4 to obtain the data.

Opinion:

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

Pursuant to Minnesota Statutes, Chapter 13, Winona County may release "appropriate" data, however classified, on a deceased individual to that individual's sister, as a trustee in a wrongful death action, without a court order, as provided in Minnesota Statutes, section 13.10, subdivision 3.



Matthew Massman
Acting Commissioner
October 28, 2014

