



Advisory Opinion 14-019

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 25, 2014, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Carolyn Schworer, Chief Privacy Official for the Minnesota Department of Human Services. IPAD required additional information, which Ms. Schworer provided on October 17, and November 10, 2014. Admin accepted the opinion request on November 10, 2014. In her letter, Ms. Schworer asked the Commissioner to issue an advisory opinion regarding the classification of data the Department maintains that relate to an audit of Community Action of Minneapolis (CAM).

IPAD wrote to Anthony Spears, Chief Financial Officer for CAM, and to its Board of Directors, to offer them an opportunity to submit comments. They did not respond.

According to Ms. Schworer, the Department's internal audit office conducted a financial audit of CAM, a grantee. CAM is a private non-profit organization. It is also a community action agency, and therefore is a political subdivision subject to Chapter 13 (see Minnesota Statutes, sections 256E.30 to 256E.32, and section 13.02, subdivision 11).

The Department has published its final audit report. The data at issue are the supporting documentation CAM submitted during the auditing process, and other related data, including data on CAM employees, Board members, and individuals who are neither Board members nor employees. Ms. Schworer wrote:

This supporting documentation is in a variety of formats, includes data for which reimbursement under the grant was not requested, and references data subjects that are apparently neither employees of the grantee nor board members. The supporting documentation includes charge account statements, vouchers, and a wide variety of receipts that detail the expenditures for which reimbursement was requested.

In addition, after the internal audit report was published, the grantee sent a communication to the [Department] in response to the internal audit report. The Department also has paper copies of the grantee's audit reports dating back to June 30, 2007, which were prepared by the grantee's outside auditor, and electronic copies of some board minutes, but not agendas or documents distributed at board meetings, dating back to September 2010.

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, how are the following data the Minnesota Department of Human Services maintains classified: certain data related to an internal audit, including supporting documentation and other documents collected as part of the audit?

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, classifies data on individuals who are current or former employees of a government entity. Subdivision 2 lists the types of personnel data that are public and subdivision 4 generally classifies other types of personnel data as private.

Of relevance here, section 13.43, subdivision 2(a) classifies the following data as public:

- (1) name; employee identification number, actual gross salary; salary range; terms and conditions of employment relationship; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
- (2) job title and bargaining unit; job description; education and training background; and previous work experience;

Ms. Schworer wrote:

There is supporting documentation that lists the names of personnel of Community Action of Minneapolis with employee titles, positions, hours worked, amounts paid, etc. The Department has determined that this supporting documentation relating to employees is public as personnel data. The Department would redact any data included on these charts that are not public as personnel data according to Minnesota Statutes, section 13.43. These charts also indicate the percentage of the employees' time that is allocated to the various grants. The Department has determined that these data are public because the data is essentially financial data relating to the grants and grant reimbursement, and is not classified as personnel data because the employee is not the subject of the data. Any other data on employees in the supporting documentation are classified according to Minnesota Statutes, section 13.43.

Minnesota Statutes, section 13.601, subdivision 3, classifies as private certain data on applicants for appointment and appointees to a public body. According to Ms. Schworer:

There is supporting documentation that includes data on board members. The board members of Community Action of Minneapolis are not employees of the private non-profit. Because they are not employees, Minnesota Statutes, section 13.43 does not apply to the data. Data on board members are not subject to classification under Minnesota

Statutes, section 13.601 because Community Action of Minneapolis is a private non-profit organization. Requiring the community action agency to comply with Chapter 13 as a political subdivision does not change the organization into a public body or a government entity as contemplated under Minnesota Statutes, section 13.601. Therefore, the board members are neither elected nor appointed officials as described in the statute. Data on individuals who receive benefits from a community action agency are classified under Minnesota Statutes, section 13.462 as private. However, the individuals in the supporting documentation are not receiving benefits from a community action agency, and therefore Minnesota Statutes, section 13.462 does not apply and the data are classified as public.

The Commissioner concurs with Ms. Schworer's analysis and the Department's determinations. The data about CAM employees are either expressly public under section 13.43, subdivision 2(a), or private per subdivision 4. Also, based upon her description, data on CAM Board members are not classified under either section 13.43 or 13.601, and are therefore presumptively public. Section 13.462 classifies data on individuals who are recipients of benefits from a community action agency, and thus is not applicable to the data at issue.

Ms. Schworer also wrote to the Commissioner that Minnesota Statutes, section 13.392, subdivision 2, which classifies certain internal audit data, is not applicable to the supporting documentation:

[T]he statute requires that the information would not have been provided to the internal audit office or person performing audits without an assurance to the individual that the individual's identity would remain private. The supporting documentation was not provided under such assurances.

Accordingly, section 13.392 does not classify any of the data in question.

As noted above, Ms. Schworer wrote that the Department also maintains a letter CAM sent to the Department in response to the internal audit report, as well as some CAM audit reports and board minutes, which the Department has determined are presumptively public per section 13.03.

Ms. Schworer also stated that, "[t]he Department has determined that some of the data in the supporting documents, such as credit card numbers and bank account numbers, are private under Minnesota Statutes, section 13.37 as security data. Social Security numbers would also be classified as private under Minnesota Statutes, section 13.355."

Ms. Schworer wrote, "[t]he Department asks whether [the Commissioner of Administration] concur[s] with the Department's analysis that these data, the supporting documentation, the communication sent in response to the audit report, the audit reports and minutes, are presumptively public, with the exception of security data, social security numbers, and private personnel data, which are private."

The Commissioner concurs with Ms. Schworer's analysis and the Department's determinations regarding the classification of the data at issue.

Opinion:

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

Pursuant to Minnesota Statutes, Chapter 13, some of the data the Minnesota Department of Human Services maintains, described above, that relate to an internal audit, including supporting documentation and other documents collected as part of the audit, are classified as private pursuant to Minnesota Statutes, sections 13.43, 13.355, and 13.37. The remainder of the data in question are presumptively public, per section 13.03, or expressly public personnel data under section 13.43.

A handwritten signature in cursive script that reads "Matthew J. Massman".

Matthew Massman
Acting Commissioner
December 1, 2014