



Advisory Opinion 14-020

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 November 14, 2014, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Trevor Helmers, attorney for Independent School District 833, South Washington County Schools (the District). In his request, Mr. Helmers asked the Commissioner to issue an advisory opinion regarding the classification of certain data that the entity maintains. In a letter dated November 20, 2014, IPAD wrote to Roger Aronson, attorney for the data subject, former principal Aaron Harper, to invite him to submit comments. Mr. Aronson did not provide comments.

Mr. Helmers provided a summary of the facts as follows:

Pursuant to complaints the District received against Principal Harper, the District conducted an investigation. During the course of the investigation, the District interviewed witnesses and reviewed a number of documents.... After the interview with Principal Harper, the District closed its investigation and the School Board did not take disciplinary action. No final "investigation report" was prepared.

Subsequent to the close of the investigation, Principal Harper submitted his written resignation letter to the District, effective November 6, 2014, and in a separate document, executed a "Release of Claims," agreeing to release any and all claims that he may have had against the District prior to signing the release... At its Board Meeting on November 6, 2014, the District accepted Mr. Harper's resignation and signed the Release of Claims Agreement.

After the meeting, the District released public information to [Scott Wentz of the *South Washington County Bulletin*] regarding the existence and status of the complaints that had been made against Mr. Harper. The District also notified Mr. Wentz that Mr. Harper had resigned and provided some details regarding the Agreement between the District and Mr. Harper. Mr. Wentz made a formal request the next day for all "public information" related to the complaints and investigation of Mr. Harper....

Mr. Harper and the District disagree as to the classification of the information regarding the complaint and the District's investigation. The District believes that all information related to the complaint and charge against Mr. Harper, other than Attorney-Client Privileged documents, are public, pursuant to Minnesota Statutes, 13.43, Subdivisions 2(f)(1-2), because Mr. Harper and the District entered into a release of Claims

Agreement. Mr. Harper disagrees, and believes that this information remains private data because the requirements of Subdivision 2(f)(2) have not been met.

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, what is the classification of certain data maintained by Independent School District 833, South Washington County Schools, relating to a complaint or charge about a school principal who resigned and signed a "Release of Claims," but was not disciplined?

Discussion:

Pursuant to Minnesota Statutes, section 13.03, subdivision 1, government data are public unless otherwise classified. 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 classifies most other types of personnel data as private.

Generally, only the existence and status of a complaint or charge are public data, when an entity does not discipline an employee as a result of the complaint or charge. (See Section 13.43, subdivision 2(a)(4) and (5).) For employees who are public officials, however, all data relating to a complaint or charge are public if certain conditions are met. Pursuant to subdivision 2(e)(4)(iv), a principal is a public official.

Section 13.43, subdivision 2(e), provides:

Notwithstanding paragraph (a), clause (5), and subject to paragraph (f), upon completion of an investigation of a complaint or charge against a public official, or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources.

Section, 13.43, subdivision 2(f), applies to certain "local" public officials, including principals, and provides:

(f) Data relating to a complaint or charge against an employee identified under paragraph (e), clause (4), are public only if:

(1) the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or

(2) potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement.

Here, the District closed its investigation and did not impose discipline on Mr. Harper. Mr. Harper subsequently offered his resignation to the District. At issue, then, is the application of section 13.43, subdivision 2(f)(2).

Mr. Helmers wrote:

Mr. Harper's disagreement with [the District's] analysis essentially boils down to two arguments. First he does not believe that his resignation letter and the Release of Claims Agreement between the parties constitutes a "Settlement Agreement," and second, he argues that he did not specifically release any legal claims that related to the conduct that was the subject of the complaint or charge, and the District never released any claims that it may have had against him.

The District believes that the Release of Claims agreement constitutes a "Settlement Agreement" sufficient to trigger the release of data under this statute. While the term is not specifically defined in this statute, or elsewhere in the [Minnesota Statutes, Chapter 13], the statute clearly makes public "the complete terms of any agreement settling any dispute arising out of an employment relationship." The District believes that this language indicates that any agreement that settles a dispute between a public employer and public employee is thus considered a "Settlement Agreement," for the purposes of this statute. (Citations omitted.)

The Commissioner agrees with Mr. Helmer's analysis. The Legislature did not define the meaning of the phrase "settlement agreement" in section 13.43, subdivision 2(f)(2). However, Minnesota Statutes, section 645.08, provides that words and phrases not defined in statute are to be construed according to their common and approved usage. "Settlement" is defined as "a formal agreement or decision that ends an argument or dispute." "Agreement" is defined as "an arrangement, contract, etc., by which people agree about what is to be done." (Merriam-Webster.com. 2014. <http://www.merriam-webster.com> (December 2014).)

Mr. Helmers provided the Commissioner with a copy of the Release of Liability. The agreement states:

In consideration for good and valuable consideration including the district's agreement to accept Harper's resignation and release him from his contract, Harper hereby fully and completely releases... the District... from any and all liability for any and all damages, actions, or claims, regardless of whether they are known or unknown, direct or indirect, asserted or unasserted that arise out of or relate to any action, decision, event, fact, or circumstance occurring before Harper signs this Release.

Based on the plain language of section 13.43, subdivision 2(f)(2), and the language of the release, that document is a "settlement agreement," regardless of the title of the document. (See also Advisory Opinion 03-036.) Because Mr. Harper signed a settlement agreement releasing the District from liability, all data about the complaint or charge are public, except data that would reveal confidential sources, per subdivision 2(e).

Opinion:

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

Pursuant to Minnesota Statutes, section 13.43, subdivision 2(e) and (f), all data about the complaint or charge against a former principal maintained by

Independent School District 833 are public, because the former principal entered into a settlement agreement releasing the District from potential legal claims arising out of the conduct that was the subject of the complaint or charge.

A handwritten signature in cursive script that reads "Matthew J. Massman". The signature is written in black ink and has a fluid, connected style.

Matthew Massman
Commissioner
December 23, 2014