Admin Minnesota
DEPARTMENT OF ADMINISTRATION

Advisory Opinion 15-006

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2015). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On October 1, 2015, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Margaret Skelton, attorney for the City of Hastings. In her letter, Ms. Skelton asked the Commissioner to issue an advisory opinion regarding the classification of certain data that the City maintains.

The Commissioner also wrote to John Fabian, attorney for the data subject, and offered him an opportunity to submit comments on her behalf. Mr. Fabian referred the Commissioner to his comments to the City, which Ms. Skelton included in the City's opinion request.

Ms. Skelton provided a summary of the facts as follows:

> Charlene Stark began working for the City as its Assistant Finance Director and was later promoted to Finance Director. On or about July 7, 2015, the City Administrator received a complaint about Ms. Stark. Following the investigation, the City Administrator prepared a draft investigation report.
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> After the investigation was concluded, but before the report was completed, Ms. Stark resigned. The City Council accepted her resignation at its September 21, 2015, meeting. No disciplinary action was pending or proposed at the time of her resignation. The investigation report was never finalized.
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> On or about September 21, 2015, the City received the first request from the media for data related to the complaint against Ms. Stark. The City provided a redacted copy of the initial complaint and an audit conducted by the City in response to the complaint. However, the City did not provide a copy of the draft investigation report based upon an objection by Ms. Stark's attorney. [Citations and notes omitted.]

Issues:

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

1. Pursuant to Minnesota Statutes, Chapter 13, are data in a draft investigation report prepared by the City of Hastings about a local public official, as designated by Minnesota Statutes section 13.43, subdivision 2(e)(4), government data?

2. If the answer to question 1 is yes, how are the data in the report classified?

3. If the data in the draft report are classified as public, can the City agree to the data subject's proposed redactions prior to the release of the report?

Discussion:

Issue 1. *Pursuant to Minnesota Statutes, Chapter 13, are data in a draft investigation report prepared by the City of Hastings about a local public official, as designated by Minnesota Statutes section 13.43, subdivision 2(e)(4), government data?*

Minnesota Statutes, section 13.02, subd. 7, defines government data as, "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." Minnesota Statutes section 13.43, subdivision 1 defines personnel data as "government data on individuals." Subdivision 2 of that section classifies certain "personnel data" as public, and includes the data described in paragraphs 2(e) and (f).

In his comments to the City on behalf of Ms. Stark, Mr. Fabian argued that the term "data" as used in section 13.43, subd. 2(e) and (f), is not defined, and therefore should be interpreted using a plain language analysis. Relying on a dictionary definition of "data" that omits the statutory definition of "government data," he concluded that the data in the investigation report cannot be disclosed.

The Commissioner is not persuaded by Mr. Fabian's argument. Section 13.43, clearly defines personnel data as government data, both of which are defined terms in Chapter 13. Section 13.43, subdivision 2, specifically states "the following *personnel data* are public" and then goes on to describe the public elements, including paragraphs 2(e) and (f). Therefore, the data at issue here are government data.

Issue 2. *If the answer to question 1 is yes, how are the data in the report classified?*

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

Section 13.43, subd. 2(e), provides that *all data* related to a complaint or charge against certain local public officials are public, subject to the conditions in paragraph (f). A local public official includes directors of departments, divisions, bureaus, or boards of a city or county with more than 7,500 people.

Paragraph (f) provides:

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

> This paragraph and paragraph (e) do not authorize the release of data that are made not public under other law.

On behalf of the City, Ms. Skelton wrote:

> As the City's Finance Director, Ms. Stark was a "public official" for purposes of the Minnesota Government Data Practices Act. *See* Minn. Stat. sect 13.43, subd. 2(e)(4)(iii).... Therefore, the draft investigation report must be classified in accordance with Minnesota Statutes, section 13.43, subdivision 2(e) and (f).
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> ...
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> The investigation against Ms. Stark was complete prior to her resignation. The underlying complaint or charge, however, had not been resolved before she resigned. Therefore, it would appear that the complaint or charge was "pending" at the time of the resignation. Moreover, the written resignation agreement contained a release of all claims arising out of Ms. Stark's employment with the City. Therefore, it appears that "all data" regarding the complaint or charge against Ms. Stark, including the incomplete draft of the investigation report, are public. [Citations omitted.]

The Commissioner agrees with the City's analysis. It is clear that the investigation report is in draft form and is not final. So, while the investigation was complete, the complaint or charge was still pending when Ms. Stark resigned. Therefore, all data related to the complaint become public pursuant to section 13.43, subd. 2(e) and (f)(1).

Moreover, section 13.43, subd. 2(f)(2), provides that when a local public official releases potential legal claims related to the complaint or charge, all data related to the complaint or charge become public. The City provided the Commissioner with a copy of Ms. Stark's resignation agreement.

The agreement states:

> Release of All Claims. In consideration of the amount paid pursuant to Paragraph 2 of this Agreement, Ms. Stark, on behalf of herself and her heirs, successors, or assigns, hereby releases, acquits, and forever discharges the City ... from any and all liability for any and all damages, actions, or claims... that arise out of or relate to any action, decision, event, fact, or circumstance occurring before Ms. Stark signs this Agreement. Ms. Stark understands and agrees that by signing this Agreement she is waiving and releasing any and all claims, complaints, causes of action, and demands of any kind that are based on any contractual provision or federal or state law, including but not limited to any constitution, statute, regulation, rule, or common law. [Emphasis omitted.]

All data related to the complaint about Ms. Stark became public data when Ms. Stark resigned while the complaint was pending. The data are also public because Ms. Stark released the City from all claims related to the complaint. Therefore, the data in the draft investigation report are public, except for data otherwise classified as not public (e.g., private personnel data about other employees).

Issue 3. *If the data in the draft report are classified as public, can the City agree to the data subject's proposed redactions prior to the release of the report?*

Section 13.43, subdivision 10(a), provides:

> A government entity may not enter into an agreement settling a dispute arising out of the employment relationship with the purpose or effect of limiting access to or disclosure of personnel data or limiting the discussion of information or opinions related to personnel data. An agreement or portion of an agreement that violates this paragraph is void and unenforceable.

Therefore, the City may not enter into an agreement to redact or otherwise restrict access to the public data in the report.

Opinion:

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

1. Pursuant to Minnesota Statutes, Chapter 13, the data in a draft investigation report prepared by the City of Hastings about a local public official, as designated by Minnesota Statutes section 13.43, subdivision 2(e)(4), are government data.

2. The data in the draft investigation report are classified as public (unless otherwise classified as not public) because Ms. Stark resigned while the complaint was pending and because she released all claims arising out of the conduct that is the subject of the complaint.

3. Because the data are public, the City may not agree to redact or otherwise restrict access to draft investigation report, pursuant to Minnesota Statutes, section 13.43, subdivision 10.

Matthew Massman
Commissioner
November 10, 2015