



Advisory Opinion 16-001

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 December 17, 2015, the Information Policy Analysis Division (IPAD) received an advisory opinion request from Maggie Wallner, attorney for Independent School District 911, Cambridge-Isanti (the District). In her letter, Ms. Wallner asked the Commissioner to issue an advisory opinion regarding classification of certain data that the District maintains. The Commissioner asked for additional information, which Ms. Wallner provided on January 5, 2016.

The Commissioner also wrote to Karen Kurth, attorney for the data subject, Mr. X, and offered her an opportunity to submit comments on Mr. X's behalf. Ms. Kurth replied on January 19, 2016.

Ms. Wallner provided a summary of the facts. On December 17, 2015, she wrote:

On or about October 5, 2015, the School District received complaints regarding Mr. "X", an employee (paraprofessional, assistant coach) and a member of the School Board. After an investigation was completed, the School District informed Mr. X that the complaints were substantiated and that there would be a recommendation to the School Board that his employment be terminated. Mr. X was also offered an opportunity to resign and he did so on November 13, 2015. No disciplinary action was taken; therefore, the only public data regarding the complaints against Mr. X in his status as a former employee is the existence and status of the complaints. Minn. Stat. [section] 13.43, Subd. 2(a).

On January 5, 2016, Ms. Wallner wrote:

[T]here is nothing to indicate that the allegations regarding Mr. "X" and/or the information provided in the course of the investigation was based solely on the fact that he is a member of the School Board; rather, both were reasons for the report, the investigation and for providing information to the School Board. In other words, the information was provided to the School District and eventually to the School Board because Mr. "X" was an employee *and* because he is a School Board member. This is not a situation where it is clear that "but for" Mr. "X's" status as an employee, the School Board would not have been provided the information.

As stated in the School District's request for an opinion, Exhibit A to the School Board's Resolution is not public data under Minnesota Statutes, [section] 13.43 as it relates to Mr. "X's" status as a former employee. However, we assume that Exhibit A is public government data as it relates to Mr. "X's" status as a School Board member, *unless*, the

classification under Minnesota Statutes [section] 13.43 (private personnel data) takes precedence over the otherwise public government data.

Issue:

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

Pursuant to Minnesota Statutes, Chapter 13, what is the classification of the data in the Notice of Proposed Removal, required under Minnesota Statutes, section 123B.09, that Independent School District 911, Cambridge-Isanti, sent to a School Board member who is also a former employee of the District?

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 current and former employees, volunteers, and independent subcontractors. Subdivisions 2 and 3, classify some personnel data as public and subdivision 4 classifies all other personnel data as private.

The existence and status of a complaint against an employee are public data. If there is a final disposition of disciplinary action against an employee, then the data documenting disposition, the specific reasons for the discipline and the basis for the discipline become public. (See section 13.43, subd. 2(a)(4) and (5).)

In previously-issued advisory opinions, the Commissioner has consistently opined that the classification of data about elected officials depends upon whether the entity considers the elected official to be an employee. (See Advisory Opinions 03-011 and 12-018.) If so, the data are classified pursuant to section 13.43. If not, the data are public pursuant to the general presumption in section 13.03, subdivision 1. (Minnesota Statutes, section 13.601, classifies correspondence between elected officials and the public, but that provision is not relevant here.)

Ms. Wallner wrote that the District does not consider school board members to be employees of the school district.

On behalf of the data subject, Ms. Kurth also argued that the data about Mr. X as a school board member are presumptively public.

Regarding members of a school board, Minnesota Statutes, section 123B.09, subdivision 9, provides:

The board may remove, for proper cause, any member or officer of the board and fill the vacancy; but such removal must be by a concurrent vote of at least four members, at a meeting of whose time, place, and object the charged member has been duly notified, with the reasons for such proposed removal and after an opportunity to be heard in defense against the removal.

Here, the data in the Notice of Proposed Removal, required by section 123B.09, relate to Mr. X as a school board member and not as a former employee of the District. Because the District has determined that its board members are not employees for purposes of the Chapter 13, data about board members are presumptively public, and therefore, the data in the Notice are public.

The data related to the complaint against Mr. X as a District employee and maintained by the District, however, are classified pursuant to section 13.43. There was no final disposition of disciplinary action. Therefore, the only public *personnel* data related to the complaint against Mr. X, are the existence and status of the complaint (i.e., a complaint exists and the status is closed/resolved). Though this seems like it is an unusual result, it is nonetheless, the result dictated by the statutes.

Opinion:

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

The data in the Notice of Proposed Removal, required under Minnesota Statutes, section 123B.09, that Independent School District 911, Cambridge-Isanti, sent to a School Board member who is also a former employee of the District, are public.



Matthew Massman
Commissioner
February 18, 2016