



MCIT

Minnesota Counties Intergovernmental Trust
VIRTUAL RISK MANAGEMENT WORKSHOP

The Devil Is in the Details of the Minnesota Government Data Practices Act

PRESENTED BY:



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The information contained in this document is intended for general information purposes only and does not constitute legal or coverage advice on any specific matter.

Overview

- FUN! Quiz format to discuss nuanced questions
- Hypotheticals based on Data Practices Office Advisory Opinions
- Best practices



Hypothetical 1: Standing Requests

A criminal defense law firm makes a standing request for public inmate roster information.

Is this a valid request?

- A. No, there is no such thing as a “standing request.”
- B. Yes, but the county can periodically confirm that the requestor still wants the information, and all other MGDPA guidelines apply.

Best Practice for Standing Requests

- Develop a procedure for handling standing requests
 - Charging
 - Method of production
 - Process to handle during an absence or staff turnover
- Ensure employees know to elevate standing requests to appropriate individuals

Questions

Submit questions using the chat feature



Hypothetical 2: Social Media and Elected Official

- An SWCD supervisor created a Facebook page: Conservation First!
- Supervisor posts personal views about issues to that page
- Facebook page is not authorized by nor has any involvement from the SWCD
- SWCD received a data and/or information request for the Facebook page



Must the SWCD release the data?

- A. Yes, if the data relates to the SWCD supervisor's elected role.
- B. No, because the Facebook page is not in the possession of nor maintained by the SWCD. The Facebook page is not government data.

Key Factors

- Data associated with this Facebook page was not collected, created, received, maintained nor disseminated by the government entity
- Governing board did not authorize or approve the Facebook page
- Neither state law nor local government unit's policy required participation

Advisory Opinion 19-001

Bonus Consideration

Although not government data, may have First Amendment implications.

Questions

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Hypothetical 3: Mobile Device Use

- County received a data request for the employment-related cell phone call and text records for an employee
- The employee utilized a personal cell phone for calls received while working remotely
- County does not collect or maintain the cell phone records



Must the county release the cell phone records pursuant to the request?

- A. No, because the employee uses a personal device, and the records are not government data
- B. No, because the county does not have the personal cell phone records of calls/texts for work in its possession, it does not have any responsive data even if the cell phone record may be government data
- C. Yes, because the cell phone records were used for work, so the county should look for data on the personal phone that may be responsive to the MGDPA request

Key Factors

- County policy that included such data as “government data”
- Used in course and scope employment

Advisory opinion 19-003

Bonus Consideration

If employee refuses voluntarily to produce phone/data, consult with legal counsel, as may implicate Fourth Amendment

Best Practice

- When reviewing requests for data on platforms or personally owned devices:
 - Is the communication part of employee’s/elected official’s duties?
 - Is the communication authorized or required by the public entity?
 - Is there a policy governing the communication?
- Have a policy and procedure for addressing government data on personally owned devices

Questions

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Personnel Data

- Defined by Minnesota Statutes, Section 13.43
- Government data on individuals maintained because individual ...
 - Was/is an employee or an applicant for employment
 - Performs services on a voluntary basis
 - Acts as an independent contractor
- ...With a government entity



Public Personnel Data

- Name
- ID number (cannot be Social Security number)
- Actual gross salary
- Salary range
- Terms and conditions of employment relationship
- Contract fees
- Actual gross pension
- Value/nature of fringe benefits
- Basis for/amount of added remuneration (expense reimbursement)

Public Personnel Data

- Job title/description
- Bargaining unit
- Education and training background
- Previous work experience
- First and last date of employment
- Existence/status of complaints (regardless of disciplinary action)

Public Personnel Data

- Work location
- Work telephone number
- Badge number
- Work-related continuing education
- Honors and awards received
- Payroll sheets (except to the extent that release would show reasons for use of sick or medical leave or other not public data)

Public Personnel Data

- Terms of any agreement settling any dispute arising out of an employment relationship
 - Includes a buyout (§123B.143, subd. 2 (a))
 - Must include specific reasons if involve the payment of more than \$10,000 of public money
- Final disposition of any disciplinary actions
 - Specific reasons for the action
 - Data documenting the basis of the action
 - Does not include data that would identify confidential sources who are employees of the public body

“Public Officials”

Counties with a Population more than 5,000

- Managers
- Chiefs
- Heads or directors of departments, divisions, bureaus or boards; or any equivalent position

All Political Subdivisions

- Chief administrative officer or individual acting in an equivalent position

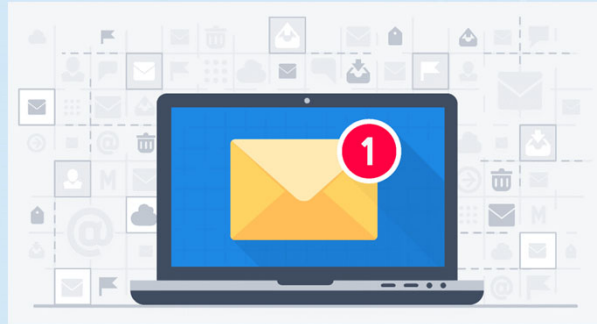
Final Disposition: “Public Officials”

Data related to complaint or charge becomes public when:

- Complaint or charge results in disciplinary action;
- “Public official” resigns or is terminated from employment while the complaint or charge is pending; or
- 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

Hypothetical 4: E-mail Contacts

A citizen requests an e-mail attachment that includes an employee's list of e-mail contacts



Does the government entity have to produce the e-mail contact list?

- A. No, it is the employee's personal data or private personnel data
- B. Yes, contact names are public data
- C. Perhaps, the government entity needs to review the contact list and reasons it was collected. If it is government data, possible entity will need to redact private data and release public data.

Key Factors

- Chapter 13 classifies data rather than the entire record or document
- Need to review documents for:
 - Personal vs. government data
 - Whether data is about employee or rather incidental and facilitates his/her job
- *Advisory Opinion 20-003*

Best Practice

When reviewing an MGDPA request, look at the *content* of the data, *not* the *form* to determine the needed response.

Questions

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Hypothetical 5: Employee Investigation Report



- The SWCD did an employment investigation into allegations of theft
- As part of investigation, it provided the report to the county sheriff's office to conduct a criminal investigation
- The employee:
 - Resigned from SWCD position
 - Pled guilty to criminal charges

A data request is made to the county for the SWCD's report. The SWCD maintains it is private personnel data. Does the county have to release the SWCD's report?

- Yes, the document is inactive investigative data and, therefore, public
- No, the document is private personnel data
- Yes, the document is public personnel data; the SWCD's determination was inaccurate

Key Factors

- Data that move from one government entity to another are commonly referred to as "traveling data."
- Minnesota Statutes, Section 13.03, Subdivision 4 provides, in relevant part:
 - a) The classification of a government entity's data shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving entity.
 - b) To the extent that government data are disseminated to a government entity by another government entity, the data disseminated shall have the same classification at the entity receiving them as they had at the entity providing them.

Key Factors

- Is there a specific statute that governs the data in your hands?
- This scenario: Minnesota Statutes, Section 13.82 applied to the county, and Section 13.43 applied to the SWCD

Advisory Opinion 19-011

Questions

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Hypothetical 6: Employee Investigation Report 2

- SWCD employee was subject to an employment investigation
- SWCD took disciplinary action against the employee, which qualifies as a final disposition
- The SWCD has referred to county for potential criminal charges
- The county has *not yet* made a charging decision



The SWCD receives a request for the investigation report. May the SWCD release it?

- A. No, when there is an active criminal investigation, the data remains private
- B. Yes, because a final disposition of discipline occurred, the report is public
- C. Yes, a final disposition of discipline occurred, so at least the portions of the report supporting discipline are public; however, SWCD should review report to ensure that it does not contain other data classified as private

Key Facts

- As previous example, classification of data in *your* entity's hands
- Minnesota Statutes, Section 13.43 applies to SWCD
- Minnesota Statutes, Section 13.82 applies to county

Advisory Opinion 18-017

Best Practice

- For "traveling data" review:
 - Is there a specific classification of data in your organization's hands?
 - If no, what is the data in the disseminating entity?
- Remember: The same data in different hands could have different classifications
- Inform other agency of request

Questions

Submit questions using the chat feature



Hypothetical 7: Retirement and Investigation Report

- County received a complaint against the sheriff
- County conducted an investigation
- Sheriff issued a subsequent notice of retirement while the investigation was pending
- Local news station requested the investigation report



May the county release the report?

- A. No, the sheriff retired; therefore, the data remain private personnel data.
- B. Yes, the sheriff retired but was a public official and, hence, the report is public. Report should be reviewed for other not public data.
- C. Yes, the sheriff was an elected official. As such, he was not an employee. The report is public but should be reviewed for other not public data.

Key Factors

- The elected official was considered an employee
- The sheriff was also a “public official”
- Term “resign” is broad enough to include a retirement

Advisory Opinion 18-008

Questions

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Hypothetical 8: Investigative Data on a Complaint You Make

- Employee X filed a complaint against Employee Y
- An employment investigation was conducted
- Y was disciplined
- Y appealed the discipline
- Arbitration reversed the discipline based on X's complaint but upheld lower-level discipline on another issue

X made a data request for the outcome of his/her complaint. To what data is X entitled?

- A. Because any discipline was upheld, X is entitled to all data on the incident and complaint
- B. No data because part of discipline was reversed
- C. X is entitled only to the status and existence of the complaint he/she made

Key Factors

- X is treated the same as a member of the public
- X was requesting resolution based upon his/her complaint only
- Discipline based on X's complaint was overturned

Advisory Opinion 17-009

Best Practices

- When reviewing requests for employment data know:
 - Who the subject of the data is
 - Status under the MGDPA
- Review data for other nonpublic data or data on other individuals

Discussion

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Essentials of Risk Management for Motor Vehicles

Oct. 22 at 10:30 a.m.

Benefits and Tips for Creating a Positive Safety Culture

Oct. 22 at 1 p.m.

Hot Topics in Risk Management

Oct. 23 at 10:30 a.m.

Trending Topics in Employment

Oct. 23 at 1 p.m.

Discussion

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