

GOVERNMENT DATA PRACTICES AND OPEN MEETINGS: THE BASICS

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Who We Are and What We Do

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- Information Policy Analysis Division (IPAD)
 - ▣ Commissioner of Administration's advisory opinions
 - ▣ Website and information materials
 - ▣ Listserv
 - ▣ Newsletters
 - ▣ Legislative assistance
 - ▣ Informal advice



Information Policy
Analysis Division

In this presentation:

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- Overview of government data practices
- Handling data requests
- Advisory Opinion review
- Emerging issues in government data practices
- Overview of the Open Meeting Law

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Government Data Practices



Government Data Practices Act

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- The Minnesota Government Data Practices Act is found in Minnesota Statutes, Chapter 13
 - ▣ Presumes government data are public
 - ▣ Classifies data that are not public
 - ▣ Provides rights for the public and data subjects
 - ▣ Requires that data on individuals are accurate, complete, current, and secure
 - ▣ Defines government data

- Minnesota Rules, Chapter 1205

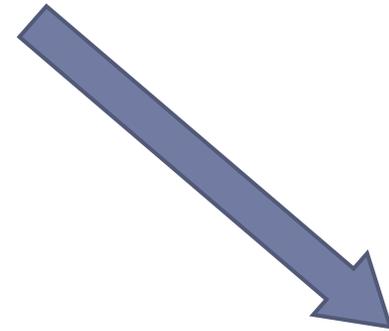
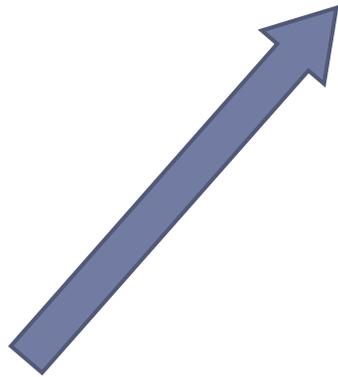
Related data practices laws

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- **The Official Records Act (Minn. Stat. §15.17)**
 - Government must make and preserve records that document official activities.

- **The Records Management Statute (Minn. Stat. §138.17)**
 - Requires a government entity to keep and destroy official records according to its records retention schedule.
 - Data maintained that should have been destroyed are subject to any data requests that the entity may receive.
 - For more information on record management, see the Minnesota Historical Society's State Archives.
 - http://www.mnhs.org/preserve/records/gov_services.htm

Data Practices Act: Administer Data



Official Records Act: Create and Maintain Data



Records Management Statute: Destroy Data





You make the call!

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You have three drafts of a report from last year including the final draft.

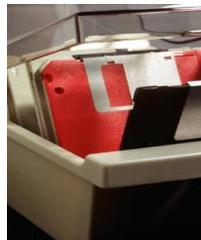
- ▣ What is the official record?
- ▣ Can you destroy the drafts?
- ▣ Are the drafts government data?

What are *government data*?

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Government data are “all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.”

(Minn. Stat. §13.02, subd. 7)



Maintaining government data

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- Data Practices Act does *not* require you to maintain data in a particular format or system of organization.

However...

- Data must be:
“easily accessible for convenient use.”
(Minn. Stat. § 13.03, subd. 1)



Classification of government data

Data Category	Classification	Meaning of Classification
Data on Individuals	Public	Available to anyone for any reason
Data Not on Individuals	Public	
Data on Individuals	Private	Available to: <ul style="list-style-type: none"> • Data subject • Those whose work requires access • Entities authorized by law • Those authorized by data subject
Data Not on Individuals	Nonpublic	
Data on Individuals	Confidential	Available to: <ul style="list-style-type: none"> • Those whose work requires access • Entities authorized by law Not available to data subject
Data Not on Individuals	Protected Nonpublic	

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Handling Data Requests

Policies and procedures

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- Review and update existing data practices policies and procedures
 - Establish procedures for proper response to public data requests (Minn. Stat. §13.03, subd. 2)
 - Prepare policies highlighting data subject rights and procedures for proper response to requests from data subjects (Minn. Stat. §13.05, subd. 8)
 - Sample policies and procedures on IPAD's website

Requests for data

Rights of the public & data subjects

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- Members of the public and data subjects can request data – to inspect or get copies
 - Written requests
 - Accepting requests

Responding to data requests

Member of the public (§13.03)

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- Guidelines for responding to requests
 - ▣ Clarify if not clear
 - ▣ Data do not exist
 - ▣ Data are not public
 - ▣ Data exist and are public
 - ▣ If asked, must explain (technical terminology, abbreviations, acronyms, etc.)

Responding to data requests

Data subject (§13.04)

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- Guidelines for responding to requests
 - Clarify if not clear
 - Data do not exist
 - Data are confidential or private about someone else
 - Data exist and are accessible
 - If asked, must explain (technical terminology, abbreviations, acronyms, etc.)
 - Verify identity
 - Six month “exception”



Requests for inspection & copies

	Member of the Public	Data Subject
Inspection of Data	As soon as reasonably possible	Immediately, if possible, or within 10 business days
Copies of Data	As soon as reasonably possible	Immediately, if possible, or within 10 business days



Copy costs

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Fees for	Data Subject	Public
Inspection of Data	<ul style="list-style-type: none">• No charge/fee	<ul style="list-style-type: none">• No charge/fee
Copies of Data	<ul style="list-style-type: none">• Maximum charge/fee is actual cost to make, compile, and transmit copies• No charge/fee to search for and retrieve data• No charge/fee to redact private data on others, confidential data, or other “not public” data	<ul style="list-style-type: none">• Maximum charge/fee is actual cost to search for and retrieve data, and to make, compile, and transmit copies• Exception: request for 100 paper copies or less – can only charge up to 25¢ per page• No charge/fee for separating public data from “not public” data

Requests outside the Data Practices Act

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Creating data

- ▣ No obligation to create data that do not exist
- ▣ Must tell requestor that data do not exist
- Data questions
 - ▣ Only *requests* for data are governed by Chapter 13



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Remedies, Penalties & Review

Remedies and Penalties



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- Remedies (Minn. Stat. §13.08)
 - ▣ Action for damages, costs, and attorneys fees
 - ▣ Willful violation = exemplary damages of \$1,000-\$15,000
 - ▣ Injunction or action to compel disclosure

- Administrative process (Minn. Stat. §13.085)
 - ▣ Administrative hearing within 2 years of alleged violation
 - ▣ \$300 civil penalty
 - ▣ Order to compel compliance
 - ▣ Attorneys fees

- Penalties (Minn. Stat. §13.09)
 - ▣ Willful violation = misdemeanor
 - ▣ Dismissal or suspension



You make the call!

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You receive the following data request:

“All data documenting salary, fringe benefits, education and training background, previous work experience, continuing education, and payroll timesheets for all employees for the last 10 years and any other related materials.”

What do you do?

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Advisory Opinions

Recent advisory opinion highlights

- **11-001 & 11-005:** Contractor is obligated to provide access to public government data it maintains if an entity is not legally responsible for maintaining the data pursuant to the contract. Pricing information in the contract can not be withheld as trade secret information.
- **11-002:** Data maintained by a government entity about a contractor's employees are public pursuant to the general presumption.
- **11-004:** Votes taken at an improperly noticed meeting under the OML are still valid, based on case law.

2011 Advisory opinions, cont.



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- **11-006:** An elected official and the sender of correspondence are the only data subjects of correspondence classified under §13.601.
- **11-008:** Confidential identity of property violation complainant revealed at a township board meeting was improper.
- **11-011:** Building plans and other construction documents may be properly classified as private security information under §13.37 provided that there is sufficiently detailed information and reasoned analysis behind the determination.

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Emerging issues in government data practices

Technology and government data

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- Technology and government data
 - ▣ Electronic records
 - ▣ Personal vs. Personnel data
 - Personal equipment
 - Stipends
 - Incidental use policy
 - Telecommuting
 - Retrieving data from personal accounts of devices
 - Official Records



Technology and government data, cont.

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▣ Contractors

- Website hosts, registration and pay sites, listserv providers



▣ Social media

- No “social media” classification – remember general presumption
- Employee photos are private; members of the public are not
- Think about records management issues

Government contractors

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- Data on employees of independent contractors are presumptively public
 - ▣ *Intl. Brotherhood of Elec. Workers, Loc. No. 292 v. City of St. Cloud and Design Electric Inc.*, 765 N.W.2d 64 (Minn. 2009).
 - ▣ Advisory opinion 11-002
- ▣ Government data maintained by private entities
 - ▣ Government entities retain responsibility for administration of government data

Elected and appointed officials

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- Data on elected or appointed officials
 - ▣ Minn. Stat. § § 13.43 and 13.601
 - ▣ Is the elected or appointed official an “employee”?



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Open Meeting Law

Minnesota Statutes, Chapter 13D



You make the call!

Open Meeting Law & Data Practices

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A parent requests a copy of the minutes from the last school board meeting.

- ▣ How long does the board have to respond?
- ▣ Can the board ask the parent why she wants the minutes?

Open meetings

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- With limited exceptions, all meetings of public bodies must be open to the public
 - ▣ The public has a *right to attend* open meetings
 - ▣ Law is silent on whether people can speak at a meeting
 - ▣ Members of the public ca tape/record meetings



You make the call!

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What is a meeting?



Meetings subject to the law

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- Meetings of public bodies listed in Minn. Stat. §13D.01, subd. 1
- The “quorum rule”
- Two parts to the rule
 1. Quorum (majority) or more of full public body, or quorum of any of the public body’s committees, subcommittees, etc – and
 2. Quorum (majority) discusses, decides, or receives information as a group on issues relating to its official business



You make the call!

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- ▣ The Board secretary sends out an email to all board members with information on an issue.
- ▣ A member *replies to all*, states that he is against the proposition, and details his reasons.
- ▣ Another member replies to all and argues for the proposition.

Is this a violation of the Open Meeting Law?

What happens if there is a data request for the emails?

Meetings *not* covered by the law

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- Meetings of less than a quorum of members
- Chance or social gatherings (banquets, parties, etc.)
 - *St. Cloud Newspapers v. District 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983).
- Trainings
- Special considerations
 - Use of email
 - Advisory Opinion 09-020
 - “Serial meetings”
 - *Moberg v. Independent School District No. 281*, 336 N.W.2d 510, 518 (Minn. 1983).

Types of meetings

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- Regularly scheduled meetings
- Special meetings
 - ▣ Any meeting not on the regular schedule
- Emergency meetings
 - ▣ Special meetings called because circumstances don't allow for a 3-day prior notice



You make the call!

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Your regularly scheduled board meeting is every first Tuesday of the month. On the last Monday of the month, a time-sensitive issue emerges and requires the boards to meet as soon as possible. The board posts a Wednesday meeting on the website.

Does this violate the Open Meeting Law?

Regular meeting notice

Minn. Stat. §13D.04, subd. 1

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- Keep a schedule of regular meetings on file at primary office
 - ▣ Exception – change in date, time, or place of regular meeting
 - ▣ *List any interactive television locations*
- Additional advance notice or posting the notice is not required

Special meeting notice

Minn. Stat. §13D.04, subd. 2

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- Three days before the meeting:
 - ▣ Post written notice on principal bulletin board or usual meeting room door
 - ▣ Provide notice to those who made a written request or publish notice in official newspaper
- Notice must include date, time, place, and meeting purpose
- Individual notice



Emergency meeting notice

Minn. Stat. §13D.04, subd. 3



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- Good faith effort to notify media who has requested notice
 - ▣ Posted or published notice not required
- Emergency is not defined – calling the meeting is discretionary
 - ▣ Example: dealing with the aftermath of a natural disaster such as a tornado or flood
- Minutes required if matters not directly related to the emergency are discussed

Recessed or continued meetings, notice

Minn. Stat. §13D.04, subd. 4

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- No additional notice, if:
 - ▣ Continued or recessed session of previous meeting;
 - ▣ Time and place of continued/recessed meeting established at previous meeting; and
 - ▣ Time and place of continued/recessed meeting is recorded in the previous meeting minutes.

Meetings and technology

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- Telephone or other electronic means
 - ▣ For statewide bodies (Minn. Stat. §13D.015)
 - ▣ For pandemic or other emergencies (Minn. Stat. §13D.021)
- Interactive television (Minn. Stat. §13D.02)





You make the call!

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True or False:

**Public bodies must
keep meeting minutes.**



Records of meetings

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- Public bodies are required to keep a journal of votes (Minn. Stat. §13D.01, subd. 4)
 - ▣ Journal must be accessible to the public (Minn. Stat. §13D.01, subd. 5)

- Members' materials are public (MN Stat. §13D.01, subd. 6)
 - ▣ One copy of printed materials relating to agenda items must be available to public if they have been:
 - Distributed to all members at the meeting;
 - Distributed to all members before the meeting; or
 - Available to all members at the meeting.

- Public bodies are not required to keep minutes

Closing meetings



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- Meetings can be closed only if required or permitted in the law
- All closed meetings, except those closed by attorney-client privilege, must be recorded and kept for 3 years
- No general “personnel exception” to close a meeting
- Statement on the record before closing a meeting:
 - ▣ Legal authority to close the meeting
 - ▣ Describe what will be discussed

Meetings *must* be closed to discuss:

Minn. Stat. §13D.05, subd. 2

- Alleged victims or reporters of:
 - ▣ criminal sexual conduct
 - ▣ domestic violence
 - ▣ maltreatment
- Active criminal investigations
- Law enforcement officer misconduct
- Certain not public data
- Medical records
- Preliminary consideration of allegations or charges about an employee

Meetings *may* be closed to discuss:

Minn. Stat. §13D.03 and §13D.05, subd. 3

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- Certain labor negotiations
- Employee performance evaluations
- Certain property transactions
 - ▣ Asking price for property
 - ▣ Review of appraisals
 - ▣ Offers or counteroffers for property
- Certain security matters

Other closed meetings

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- Meetings may also be closed if:
 - ▣ Required by another law
 - ▣ Permitted by the attorney-client privilege
 - Discuss pending lawsuit with legal counsel

Not public data at an open meeting

Minn. Stat. §13D.05, subd. 1

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- Not public data may be discussed if:
 - ▣ Disclosure relates to a matter within the scope of the body's authority, and
 - ▣ It is reasonably necessary to conduct the business before the public body
- Data retains classification
- Record of meeting is public

Penalties and remedies

Minn. Stat. §13D.06

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- Intentional violation
 - ▣ Personal liability - \$300 fine
- Three intentional violations
 - ▣ Forfeit office
- Reasonable costs, disbursements, attorneys fees
- No reversal of public body actions taken while in violation of the law
- Advisory opinions

Contact Information

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MN Department of Administration Information Policy Analysis Division (IPAD)

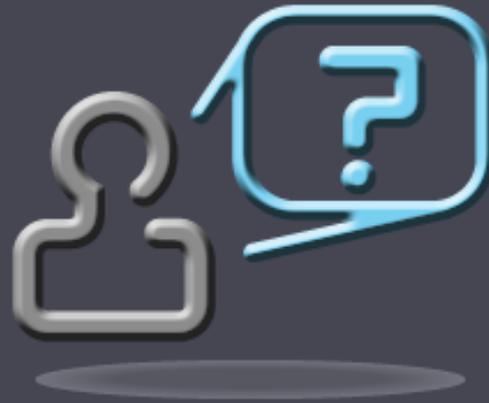
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Information Policy
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QUESTIONS?