



Attorney General CLE: Data Practices and Open Meeting Law Update 2024

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Agenda

- Data Practices & Open Meeting Law Overview
- 2023-2024 Legislative Updates
- Case Law Updates
- Advisory Opinion Updates



Data Practices and OML Overview

Data Practices Act Overview

- Minnesota Statutes Chapter 13
 - Presumes all government data are public
 - Classifies some government data as not public
 - Provides for access rights to both members of the public and government
 - Creates obligations for government entities on collecting, maintaining, and correcting data

Data Practices Act Overview, cont.

- Applies to statewide agencies, statewide systems, or political subdivisions
- Does not apply to the legislative or judicial branches
 - Minn. Stat. §13.07a, Minn. Stat. §13.90
- Does not apply to townships outside the metro area
 - Minn. Stat. §13.02 subd. 11; Minn Stat. §473.121 subd. 2

Data Practices Act Overview, cont.

Government Data

“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)



Data Practices Act Overview, cont.

- **Official Records Act** (Minn. Stat., section 15.17)
 - Make and preserve all records necessary to a full and accurate knowledge of official activities
- **Records Management Statute** (Minn. Stat., section 138.17)
 - Records retention schedules and records disposition panel
 - MN State Archives website:
<https://www.mnhs.org/preservation/state-archives>



Data Practices Act Overview, cont.

Classification	Meaning of classification	Examples
Public	Available to anyone for any reason	Employee name & salary
Private/ Nonpublic	Available to: <ul style="list-style-type: none">• Data subject• Those in the entity whose work assignment requires access• Entities authorized by law• Those authorized by data subject	Employee home address & home phone number
Confidential /Protected nonpublic	Available to: <ul style="list-style-type: none">• Those in the entity whose work assignment requires access• Entities authorized by law Not available to the data subject	Data collected as part of an active civil legal action

Data Practices Act Overview, cont.

- **Respond to data requests**
Minn. Stat. sec. 13.03 subd. 3; Minn. Stat. 13.04 subd. 3
- **Responsible Authority and Data Practices Compliance Official**
Minn Stat. sec. 13.02 subd. 16; 13.05 subd. 13
- **Data Inventory, Policies, and Procedures**
Minn. Stat. sec. 13.025; 13.03
- **Limits on collecting data**
Minn. Stat. sec. 13.05 subd. 3
- **Protect data**
Minn. Stat. sec. 13.05 subd. 5
- **Provide notice when collecting not public data from individuals**
Minn. Stat. sec. 13.04 subd. 2

Open Meeting Law Overview

- With limited exceptions, all meetings of public bodies must be open to the public
 - The public can attend open meetings
- Minnesota Supreme Court stated three purposes for the OML:
 - To prohibit actions taken at secret meetings
 - To assure the public's right to be informed
 - To give the public an opportunity to present its views to the public body
 - BUT the OML does not require public bodies to reserve time for public comment

Open Meeting Law Overview, Cont.

- Gatherings subject to the law
 - The “quorum rule” (*Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983).)
 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
- Gatherings not subject to the law
 - Gatherings of less than a quorum of members
 - Chance or social
 - Training/team building activities so long as business is not discussed
- Keep in mind – public perception!

Open Meeting Law Overview, Cont.

- **Notice requirements**

Minn Stat. sec. 13D.04

- **Closed meetings in limited circumstances**

Minn Stat. sec. 13D.05, subds. 2 and 3; Minn. Stat. sec. 13D.03

- **Meetings using remote technology**

Minn. Stat. sec. 13D.015; Minn. Stat. sec. 13D.02; Minn. Stat. sec. 13D.021



Legislative Update

2023-2024 Legislative Highlights

Political Subdivision Licensing Data

- Minn. Stat. § 13.204; Laws of Minnesota 2023 ch. 52, art. 19, sec. 74
 - Classifies tax returns and bank statements at political subdivisions as private or nonpublic, if submitted by a person seeking to obtain a license
 - Destroy data 90 days after the political subdivision's final decision on the license application

2023-2024 Legislative Highlights, cont.

School Directory Information

- Minn. Stat. § 13.32, subd. 5; Laws of Minnesota 2023, ch. 52, art. 19, sec. 76
 - Prohibits schools from designating a student's home addresses, telephone numbers, email addresses, or other personal contact information as directory information
 - Does not apply to post-secondary institutions
 - Silent on parent directory information

2023-2024 Legislative Highlights, cont.

Educational Data

- Minn. Stat. § 13.32, subd. 3; Laws of Minnesota 2023, chapter 52, article 19, section 75; Laws of Minnesota 2023, chapter 55, article 4, section 1
 - Schools may disclose student's private personal contact data to a library for purposes of issuing a library card
 - Schools may disclose private educational data to Tribal Nations about tribally-enrolled or descendant students to support educational attainment

2023-2024 Legislative Highlights, cont.

Educational Data

- Minn. Stat. § 13.32, subd. 5; Laws of Minnesota 2024, chapter 109, article 2, section 1
- Permitted sharing of personal contact and directory information of students receiving specific special education services to the Department of Employment and Economic Development

2023-2024 Legislative Highlights, cont.

Body Camera Data

- Minn. Stat. § 13.825, subd. 2 & 3; Laws of Minnesota 2023, chapter 52, article 10, sections 1-2
 - New data access and retention requirements for BWC data documenting deadly use of force by an officer
 - Family access to BWC data within five days of request
 - Must disclose to the public 14 days after incident
 - May deny/withhold access if there's a compelling reason why inspection would interfere with active investigation
 - Permanent retention

2023-2024 Legislative Highlights, cont.

Body Camera Policies

- Minn. Stat. § 626.8473, subd. 3, Laws of Minnesota 2023, chapter 52, article 10, section 19
 - New provisions must be incorporated into agency's policy for body worn cameras
 - Prohibition on altering, erasing, or destroying body camera data or related metadata prior to expiration of applicable retention periods
 - Body cameras must be worn at or above mid-line of waist in a position to maximize recording
 - Mandate that officers comply with written policies
 - Implement compliance with section 13.825's requirements for next of kin access and public disclosure

2023-2024 Legislative Highlights, cont.

POST Board Sharing

- Minn. Stat. § 626.8457, subd. 4
 - Chief law enforcement officer, city, county, or other public official must cooperate with Board's licensing investigations and any data requests
 - Must provide public and private data about alleged misconduct to Board upon request
 - May provide confidential data (*i.e.*, active criminal or civil investigative data) when Board specifies data are necessary to conduct investigation
 - Agencies may withhold data in certain situations

2023-2024 Legislative Highlights, cont.

Law Enforcement/Data Sharing

- Minn. Stat. § 626.5534; Laws of Minnesota 2024, chapter 123, article 3, section 6
 - Mandatory data sharing with the BCA for officer use of force investigations
- Minn. Stat. § 13.02 subd. 3a, §192.67; Laws of Minnesota 2024, chapter 100, sections 1 and section 7
 - Mandatory sharing of confidential or private data with National Guard's Office of the State Judge Advocate. Adds the National Guard to the definition of "criminal justice agencies."

2023-2024 Legislative Highlights, cont.

Law Enforcement/Traffic Safety Cam Data

- Minn. Stat. §§ 13.6905, 13.824, 169.147; Laws of Minnesota 2024, chapter 123, article 3, section 6
- Creates pilot traffic safety camera programs in Minneapolis and Mendota Heights. Classifies camera data as private data on individuals, unless part of an active criminal investigation and classified under Minn. Stat. § 13.82. Creates destruction requirements.

2023-2024 Legislative Highlights, cont.

Data Challenge Appeals

- Minn. Stat. § 13.04, subd. 4; Laws of Minnesota 2023, chapter 62, article 2, section 33
 - Entities must inform data subjects of right to appeal challenge determination
 - Commissioner may dismiss appeal if it is not timely, data was presented as evidence in court, or appellant is not the data subject

2023-2024 Legislative Highlights, cont.

Open Meeting Law/Advisory Opinions

- Minn. Stat. § 13.072; Laws of Minnesota 2023, chapter 52, article 19, section 73
 - \$200 fee for OML opinion removed
 - Opinions must be issued within 50 days
- Minn. Stat. § 13D.02, subd. 1, Laws of Minnesota 2023, chapter 62, article 3, section 1
 - Local public body members attending meetings remotely from a location that is not publicly accessible for medical reasons no longer just if Chapter 12 emergency

2023-2024 Legislative Highlights, cont.

Personnel Data

- Minn. Stat. § 13.43, subd. 6, Laws of Minnesota 2023, chapter 53, article 11, section 1
- Government entities are authorized to disclose data to the Public Employment Relations Board
 - Required to disclose data to labor organizations to the extent necessary to conduct elections, investigate and process grievances, and implement Chapters 179 and 179A
 - Clarifies that specific data elements about employees as well as employee communications with labor organizations are private data

2023-2024 Legislative Highlights, cont.

Personnel Data, cont.

Minn. Stat. § 13.43, subd. 6; Laws of Minnesota 2024 chapter 127, article 8, section 1

- Government entities must share personnel data with labor organizations and the Public Employee Relations Board to the extent necessary to conduct elections, investigate and process grievances, and implement the provisions of chapters 179 and 179A **regardless of the classification of the data**
- Minn. Stat. § 179A.13, subd. 2; Laws of Minnesota 2024 chapter 127, article 8, section 17
 - Upon request from an exclusive representative of the labor organization, public employers must provide information by certain deadlines

2023-2024 Legislative Highlights, cont.

Data Sharing with Cannabis Management

- Minn. Stat. § 324.15; Laws of Minnesota 2024, chapter 121, article 2, section 68
- Discretionary sharing for state agencies – may share civil investigative data with the Office of Cannabis Management for licensing investigations

2023-2024 Legislative Highlights, cont.

Judicial Personal Information

- Minn. Stat. §§ 13.991, 480.40; Laws of Minnesota 2024, chapter 123, article 12
- Classifies personal information on judicial branch and administrative court employees as private data.
 - Prohibits knowingly disseminating judicial officials' personal information online
 - Creates mechanisms for requesting removal of publicly posted information

2023-2024 Legislative Highlights, cont.

Judicial Personal Information, cont.

- Minn. Stat. §§ 13.991, 480.40; Laws of Minnesota 2024, chapter 123, article 12
 - Penalties and remedies under the Data Practices Act are only available if the judicial employee provided the government entity with written notification

2023-2024 Legislative Highlights, cont.

Health Records

- Minn. Stat. §144.2925, 144.293; Laws of Minnesota 2024, chapter 127, article 66, section 7
- Requires authorization in Minnesota law to release patient health records
 - Clarifies that the Minnesota Health Records Act is more stringent than federal law regarding disclosure of individually identifiable health information

2023-2024 Legislative Highlights, cont.

Administrative Court Data

- Minn. Stat. § 13.95; Laws of Minnesota 2024, chapter 123, article 17, section 1
 - Work product data created by the administrative courts is confidential or protected nonpublic data
 - Health data in administrative court files are private data on individuals

2023-2024 Legislative Highlights, cont.

Safe at Home Data

- Minn. Stat. § 13.045; Laws of Minnesota 2024, chapter 123, article 15, section 5
 - Identity and location data on Safe at Home participants not already classified as not public are now private

2023-2024 Legislative Highlights, cont.

Cybersecurity Reporting

- Minn. Stat. § 16E.36; Laws of Minnesota 2024, chapter 127, article 66, section 7
 - Requires public agencies and government contractors to report cybersecurity incidents to the Minnesota Department of Information and Technology Services (MNIT)

Reporting begins December 1, 2024

<https://mn.gov/mnit/about-mnit/security/cir/>

2023-2024 Legislative Highlights, cont.

Legislative Assistance

- Consult with us on your legislative proposals!
- Minn. Stat. § 13.605 protected nonpublic classification for proposals from state agencies



Case Law Update

- *1300 Nicollet, LLC v. County of Hennepin*, 990 NW 2d 422 (Minn. 2023)
 - 13.03, subd. 6 balancing test
- *Benda for Common-Sense v. Anderson*, 999 N.W.2d 893 (Minn.App. 2023)
 - 13.08, RA is the proper defendant in action to compel compliance



Advisory Opinion Update

2022-2024

Advisory Opinion Authority

Sec. 13.072

- Commissioner's authority is permissive
- Government requester – any question related to data practices or OML
- Member of the public – disagrees with an entity's determination on public access or rights as data subject.
- Effect – nonbinding, deference by court or other tribunal

Advisory Opinions FY24

- 58 advisory opinion requests
- 4 opinions issued in FY24 (2 in FY25)
- 30% of requests did not raise a violation
- All requesters receive technical assistance and information

Advisory Opinion Highlights

Data Practices

- 23-001 – Data subject request timeliness, sec. 13.04
- 23-002 – Data inventory, sec. 13.025
- 24-001 – Response to data challenge appeals, sec. 13.04

Advisory Opinion Highlights

Data Practices, cont.

- 24-002 – Data access policies, sec. 13.025
- 24-003 – Elected official correspondence, sec. 13.601
- 24-004 – Anonymous public requests, sec. 13.05

Advisory Opinion Highlights

Open Meeting Law

- 22-008 – Closed meeting to review applicant information
- 22-009 – Closed meeting recording, special meeting notice
- 23-003 – Special meeting notice
- 23-004 – Combo DP/OML

Who We Are & What We Do

- Data Practices Office

- Informal advice/technical assistance

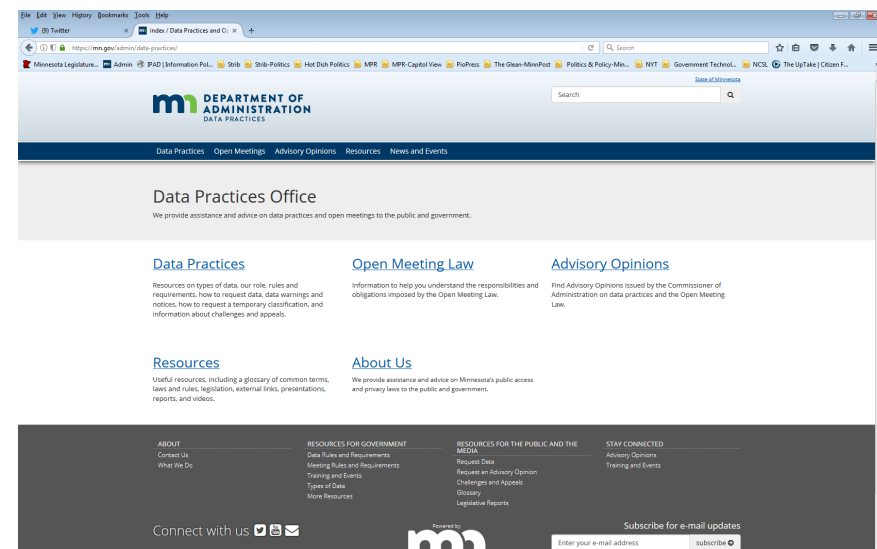
- Commissioner of Administration advisory opinions

- Website and info pages: <https://mn.gov/admin/data-practices/>

- Listserv and newsletters

- Legislative assistance

- Training



Questions?

Data Practices Office

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<https://mn.gov/admin/data-practices/>

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