Avoid Bad Headlines: Tips to Comply with the Minnesota Government Data Practices Act

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Fundamentals
Minnesota Government Data Practices Act (MGDPA)

The Minnesota Government Data Practices Act
A series of laws that govern:
• The public’s right to access government data
• The government’s obligation to produce, secure such data
What Is “Data”?  

Definition:  
“All data collected, created, received, maintained or disseminated by any government entity …  
… regardless of physical form, storage media or conditions of use.”  

(Minn. Stat. § 13.02, subd. 7)

Examples of Data

- Personnel records and applications for employment  
- Policy and procedure manuals  
- Notice of meetings and minutes  
- Written correspondence, e-mail, voice mail  
- Contracts, agreements, joint powers  
- Financial information: payroll details, budgets, expenditures  
- Project or program applications and records  
- Resource or reference materials
Commissioner/Employee-owned Devices

• Government data is not defined:
  o by where it is stored,
  o in what format it is kept; or
  o how it is used

• If requested, responsive government data stored on a commissioner’s or employee’s dual-use device must be produced

HYPOTHETICAL
Responsible Authority and Data Compliance Officer

Minnesota Government Data Practices Act

Duties of Responsible Authority and Compliance Officer

**Responsible Authority**
- Day-to-day administration of MGDPA
- Develops and manages policies, procedures to comply with MGDPA
- Creates security, data safeguard procedures
- Establishes inventory of not-public data

**Compliance Officer**
- Appointed by RA to respond to public questions or concerns about data access
Data Classification and Why It Matters

Minnesota Government Data Practices Act

Access to Data

Public Data

Anyone who requests it

Private or Nonpublic Data

Data subject, government employee or official whose job duties reasonably require access, or entities authorized by law

Confidential or Protected Nonpublic

Government employee or official whose job duties reasonably require access, or entities authorized by law
Data Is Presumed to Be Public

- Generally, there is a presumption that government data is public data, unless otherwise classified by state or federal statute.
- Example of exception (presumed private unless otherwise classified):
  - Personnel data
  - Health and Human Services data

Classifying Data

- Data may have different classifications in the hands of different agencies.
- What is the classification …
  - … when it is in the hands of your entity?
  - … at the time of the request?
Data Classifications May Change with Triggering Events

Examples:

- Sealed bids:
  - Are nonpublic data
  - Name of the bidder and dollar amount become public once bids are opened (§13.591, subd. 3)

- Names of employment applicants:
  - Are initially private data
  - Become public data when certified as eligible for appointment to a vacancy or when applicants are considered by the appointing authority to be finalists for a position in public employment. (§13.43, subd. 3)

Why Does Classification Matter

- Sharing not-public data
  - May expose government entity to liability
  - May subject employee to discipline

- Hot-button issue in media and political arena
Hypothetical

• Silver County Commissioner Sydney asks you, a Gold County Commissioner, if Silver County employee Carol applied for the county administrator position at your entity.
• Carol has been selected for an initial interview.

What Is the Proper Response?

a) “Yes.” Carol’s name is public data.
b) “No.” Carol’s name is private data and Commissioner Sydney is not entitled to it.
c) Refer Sydney to the entity’s responsible authority.
Requests for Data
MGDPA Compliance: Avoiding the Headlines

Data Requests

• All requests should be directed to the responsible authority or designee
• Entities are required to have procedures
  o Direct requestor to those procedures or forms
  o Charge only what is allowable by law, can require prepayment
Requests to Release Documents Containing Private Data

- A data request may be for information that includes both public and private data
- If reasonable, private data must be redacted and public data provided
- Cannot charge for redacting documents

No Obligation to Create Data

If the information does not exist, the requestor must be informed of that fact
Data Practices Compliance

Hot Topics

Notice of Data Breach

• Written notification to any individual who is the subject of private or confidential data that is reasonably believed to have been breached

• Must be sent upon discovery of breach
  o Later if law enforcement agency determines it will impede a criminal investigation

• More than 1,000 individuals: Must notify consumer reporting agencies
What Is a Data Breach?

• “Data breach” is any unauthorized acquisition of data by an unauthorized person
  o “Unauthorized acquisition”: A person obtained, accessed or viewed government data without informed consent of the subject of the data
  o With intent to use the data for a nongovernmental purpose
• An “unauthorized person” is anyone accessing data:
  o Without a work assignment that reasonably requires access
  o Regardless of assignment if an individual accesses for a purpose not described in an entity’s access policies
• (Minn. Stat. §13.055)

Personnel Data
Personnel Data

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

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 fringe benefits
- Basis for/amount added remuneration (expense reimbursement)
Public Personnel Data Continued

- 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 Continued

- 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: Employment Dispute Settlement

• Terms of any agreement settling any dispute arising out of an employment relationship
  o Includes a buyout (§ 123B.143, subd. 2 (a))
  o Must include specific reasons if it involves the payment of more than $10,000 of public money

Public Personnel Data: Final Disposition

• Final disposition of any disciplinary actions
  o Specific reasons for the action
  o Data documenting the basis of the action
  o Does not include data that would identify confidential sources who are employees of the public body
Final Disposition Continued

• Occurs when the government entity makes final decision about disciplinary action
• Final decision occurs:
  o Conclusion of arbitration; or
  o Failure to elect arbitration within time outlined in CBA
• A disciplinary action does not become public data if an arbitrator sustains a grievance and reverses all aspects of the disciplinary action

Final Disposition: “Public Officials”

• “Public official” includes:
  o Managers
  o Chiefs
  o Heads or directors of departments, divisions, bureaus or boards
  o Any equivalent position
Final Disposition: “Public Officials” Continued

• In a county with a population of more than 5,000, data related to complaint or charge becomes public when:
  o The complaint or charge results in disciplinary action or the “public official” resigns or is terminated from employment while the complaint or charge is pending; or
  o 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

• Does not authorize the release of data that are made not public under other law
Applicant Data: Public

- Veteran status
- Relevant test scores
- Rank on eligibility list
- Job history
- Education and training
- Work availability
- Name of “certified applicants” and “finalists”

Applicant Data

- “Certified applicant”: Been certified for appointment to a vacancy in the government
- “Finalist”: Selected to be interviewed by the appointing authority prior to selection
Employment References

- May only provide public data under MGDPA
- If an employee signs a release, may provide additional data
- Caution when asked for “informal” references

Personnel Data

Hypotheticals
Hypothetical 1

• Your auditor is under investigation for theft of county funds.
• A constituent catches you in the grocery story, and wants to know what you are going to do about that “thieving auditor.”
• How do you respond?

• While still under investigation, the auditor resigns, now how do you respond?
• Does your answer change if the alleged thief is a clerk in the auditor’s office?
Practice Point

Just because the data may be public, does not always mean sharing the data is wise.

Hypothetical 2

• A constituent calls you to complain about a social worker.
• You want access to the social worker’s employment/personnel file.
• Are you entitled to it?
Hypothetical 3

- A constituent mentions in passing that he received another individual's letter telling him that the other individual qualifies for certain health and human services benefits.
- Do you have any obligation?

Hypothetical 4

- The neighboring county administrator has applied for a job with your county.
- You want to use your informal network to find out the real scoop about the candidate.
- Can you do this?
- Should you do this?
Penalties and Coverage

Minnesota Government Data Practices Act

Penalties for Violating the MGDPA

- Civil liability: damages, costs, compliance, injunctive relief and attorney fees
  - If a willful violation, liable for exemplary damages of not less than $1,000 and not more than $15,000 for each violation
- Administrative remedy: civil penalty of up to $300 and reasonable attorney fees
- Criminal penalty: an intentional violation of the MGDPA is a misdemeanor
Penalties for Violating MGDPA Continued

- Employment consequences: a willful violation of the MGDPA constitutes just cause for suspension without pay or dismissal

WHEN IN DOUBT, DON’T GIVE IT OUT

- Consult with the responsible authority
- Consult with legal counsel
- Check resources
  - Department of Administration’s website: MN.gov/admin/data-practices/
  - MCIT website: MCIT.org/resource/ (choose “data practices” category)
- Obtain opinion from Department of Administration (in consultation with legal counsel)
Discussion
Ask Questions and Share Experiences