Data Practices 101
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Data Practices Act

- Regulates collection, creation, storage, maintenance, dissemination, and access to government data
- Applies to planning commissions, advisory boards, HRA, EDA, etc.

What is 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.

M.S. § 13.02 subd. 7.
Data Practices Act

Presumes government data are public unless federal law, state law, or temporary classification says otherwise.

M.S. § 13.01 subd. 3.

Types of data & who has access

- 3 classifications, with subcategories:
  - Data on individuals
    - Public, private, and confidential
  - Data not on individuals
    - Public, non-public, protected non-public
  - Data on decedents
    - Public, private, confidential
- Who can access data depends on data’s classification

Changing classifications

- Data can change classifications in certain circumstances
- From one entity to another, data keeps its original classification for agency with data
- Classification determined at time of request
More requirements

• Data Practices Act also requires:
  • Public document
  • Designations
    • Responsible authority
    • (and designee?)
  • Compliance Official

MGDPA Responsible authority powers

• Implement rules
• Good faith attempts to resolve administrative controversies
• Prescribe necessary changes to administration of city programs, procedures, and forms to comply with administrative actions necessary to comply with general requirements

MGDPA Responsible authority duties

• Classifying, maintaining, and disseminating data
• Not as simple as it may sound...
Compliance official

- Designated employee
- Answers questions or concerns regarding data practices issues/problems
- Can be same as responsible authority

Data Requests

- Cannot require a person to give a reason why they want the information
- Cannot require identification (unless need to verify they are the subject or it "facilitates access" to the data)

Response times

- At time of request, if possible; otherwise as soon as reasonably possible
  - No definition so some discretion
- If subject of data requests, you must respond immediately if possible
  - If not possible, must respond within 10 business days
Unreasonable or harassing requests

• No duty to provide information if request is unreasonable or made to harass city staff
• Statute does not draw line
• DPO concludes must be extremely burdensome or harassing before no response

Denying a request

• Must inform requestor
  • Orally at the time of request; or in writing as soon as possible
• Must include the specific reason for denial
  • State statute
  • Temporary classification
  • Federal law

Data Request Costs

• No fee to view data
• Copies (100 or fewer pages)
  • $0.25/page single-sided B&W
  • $0.50/page double-sided B&W
• Other requests (more than 100 pages B&W, photos, DVDs, etc.)
  • Actual costs
Creating and formatting data

- No obligation to
  - Create data
  - Change format of data
  - Manipulate data

Quick quiz

- Requestor wants a list of dates of meetings when a new project was discussed. How do you respond?
- Requestor wants a list of dates that new project has been discussed around the city office. How do you respond?

Law enforcement data

- Special provisions for law enforcement data
- Several data classifications
- Complicated area
Comprehensive law-enforcement data – in general

<table>
<thead>
<tr>
<th>Public</th>
<th>Private / Confidential / Prominent</th>
<th>Non-Public</th>
<th>Mixed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrest data</td>
<td>Child-abuse data</td>
<td>Audio recording of 911 call</td>
<td></td>
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<tr>
<td>Request for service data</td>
<td>Vulnerable-ward data</td>
<td>Domestic-abuse data</td>
<td></td>
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<tr>
<td>Response or incident data</td>
<td>Property data</td>
<td>Criminal-investigation data</td>
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<td>Booking photographs</td>
<td>Reward-program data</td>
<td>Data in arrest warrant indices</td>
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<td>Data in missing children bulletins</td>
<td>Name-change data</td>
<td>Data in registered criminal predatory offenders</td>
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<tr>
<td></td>
<td>Reward-program data</td>
<td>Deliberative-processes data</td>
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</tbody>
</table>

Electronic data

- MGDPA does not specifically address electronic data
- MGDPA applies to all data regardless of physical form, storage media, or location
- Applies to email, text messages, backup media, videotapes, etc.
- Maintained, classified, accessed like other government data

Electronic data

- Telecommuting can create government data not stored at city hall
- Still considered government data regardless of its location
- Consider technology policy regulating use and storage of government data on personal computers
Email

• Issues with use, storage, and retention
• Classification of email
  • Depends on its purpose and content
  • Could contain both public and not-public data

Technology policies

• Technology policy should cover use of email for city business
  • If used for official business, data is subject to MGDPA
  • Content of email determines its classification
  • Should also cover retention of email

Email: Data? Record? Both?

• If email is government data, DPA applies
• If email is government record, covered by records-retention schedule
• May be government data but not government record SO you can dispose of it
What do you think?

- Duluth Airport Authority Board requests advisory opinion
- MGDPA request; Text messages, emails, etc. between board members, airport employees, and airline representatives
- Board members’ personal cellphones, computers, and home addresses
- Government data?

Personnel Data

- Government data maintained because individual is or was an employee of a city, applicant for employment, volunteer, or independent contractor
- General presumption reversed
- Presumed private except for personnel data specified as public

What do you think?

- Is a public employee’s work email address public data?
- Under the DPA, a public employee’s “work location” is public data
Disciplinary Data

- While entity is investigating, existence and status of complaint or charge about an employee is public
- All other related data are private during the investigation

Disciplinary Data, cont.

- If no discipline follows investigation
  - No additional data become public and all related data remain private
- If there is discipline and final disposition
  - Specific reasons for the disciplinary action and data that document the action are public

Final Disposition

- Government entity makes its final decision about discipline
- Final disposition includes resignation if after final decision
- Final Disposition when there is a collective bargaining agreement
  - Conclusion of arbitration proceedings, or
  - Failure of employee to elect arbitration
Final Disposition, cont.

• Disciplinary action is not public if:
  • Arbitrator sustains employees grievance, and
  • Reverses all aspects of discipline

What do you think?

• City decides to terminate employee following an investigation (no collective bargaining agreement). The city makes public the existence and status of the complaint and reasons for disciplinary action. Did the city comply with data practices requirements?
  • Yes?
  • No?

What do you think?

• What if the employee resigns before the decision to terminate/ Can the City release data about the investigation?
  • Yes?
  • No?
What do you think?

• What if the employee resigns after the decision to terminate? Can the city release the reasons for discipline/termination?
  • Yes?
  • No?

What do you think?

• Following an investigation, City decides to suspend an employee subject to a collective bargaining agreement. The city releases specific reasons for the suspension. Did the city comply with data practices requirements?
  • Yes?
  • No?

What do you think?

• What if employee resigns after the decision to suspend and chooses not to grieve the suspension? Can the City release the specific reasons for discipline?
  • Yes?
  • No?
Elected Officials

• Is data on elected officials personnel data?
  • Government-entity should make a determination
  • If not considered employees, presumptively public data
  • If considered employees, presumptively private data

Penalties

• Civil
• Criminal
• Administrative
• Protection from penalties if act in compliance with advisory opinion

What do you think?

Person complains about junk on neighbor's property. Neighbor requests name of person who complained. Must you provide it?

Yes/No
Under the data practices act, emails are classified as:

a. Always public
b. Always private
c. Classification depends upon the content of the email
d. Emails are not government data

City receives a data request for all of a particular employee's emails during particular dates. During the relevant time frame, the employee sent an email to her mother asking what she will be bringing to a Fourth of July picnic. Must the city provide this email?

Yes/No

Person requests that the city mail August 3, 2013 city council minutes to them. You should:

a. Refuse to mail because cannot ask for identity of requester.
b. Request name and address of requester for purpose of mailing.
c. Require the requester to identify the reason why they want the minutes before responding to the request.
Citizen requests email addresses of all persons who signed up to receive email notification of snow emergencies. Must you provide the email addresses?

Yes/No

You draft a city report on your home computer and save it there. The draft is:

a. Subject to a data request
b. Subject to a discovery request
c. A potential headache for you and the city’s responsible authority
d. All of the above

Where to go for assistance

• City attorney
• LMC Research: (651) 281-1200 or (800) 925-1122 research@lmc.org
• DPO: 800-657-3721 or info.dpo@state.mn.us