

OFFICE OF THE MINNESOTA ATTORNEY GENERAL POLICY AND PROCEDURE FOR DATA PRACTICES REQUESTS

The Minnesota Government Data Practices Act (MGDPA), Minn. Stat. ch. 13, is applicable to the Minnesota Attorney General's Office (Office). Minn. Stat. 13.02, subd. 17. The MGDPA requires all state agencies to establish procedures to ensure that the requests for government data are received and compiled in appropriate and prompt manner. Minn. Stat. § 13.03, subd. 2. This public document complies with Minn. Stat. § 13.025, subd. 2. A copy of this document may be obtained from James Van Buskirk, Manager, Consumer Services Division, Minnesota Attorney General's Office, 445 Minnesota Street, #1400, St. Paul, Minnesota 55101.

Responsible Authority. The responsible authority for constitutional offices is the constitutional officer. Minn. R. 1205.0200, subp. 13. As the responsible authority, the Attorney General may appoint one or more designees, and direct the designees to perform the detailed requirements of the MGDPA under the Attorney General's general supervision. Minn. Stat. § 13.03, subd. 2; Minn. R. 1205.1100. The Attorney General has appointed the Chief Deputy Attorney General, Solicitor General, and deputy attorneys general as responsible authority designees for all data held by the Office, and has authorized each of them to perform all of the requirements of the MGDPA. The Attorney General has appointed the Chief Deputy Attorney General as the responsible authority designee for administrative and budget data maintained by the Office. The Attorney General has appointed the Director of Human Resources as the responsible authority designee for personnel data maintained on employees of the Office.

In addition, the Attorney General has appointed each assistant attorney general as the responsible authority designee for the data contained in the files and systems in the attorney's charge. These responsible authority designees are authorized by the Attorney General to perform all requirements of the MGDPA with respect to the data in their files and systems except for the following: determining the accuracy or completeness of data which has been contested by the data subject (Minn. Stat. § 13.04, subd. 4); requesting approval for a new or different use or dissemination of data (Minn. Stat. § 13.05, subd. 4(c)); delegating summary data compilation to an individual outside the Office (Minn. Stat. § 13.05, subd. 7); transferring or disseminating private or confidential data on individuals to Interpol through the Interpol-United States National Central Bureau (Minn. Stat. § 13.05, subd. 10); and applying for temporary classification of data (Minn. Stat. § 13.06).

Compliance Official. (James Van Buskirk) The Data Practices Compliance Official is the designated employee of the Attorney General's Office to whom persons may direct questions or concerns regarding obtaining access to data or other data practices problems involving the Attorney General's Office.

Requests for Information About or References for Former or Current Staff Members. The Data Practices Act permits limited disclosure of personnel data. Release of private personnel data requires the written consent of the employee. To ensure that proper consent is obtained and relevant records are retained in employee personnel files, requests for verification of employment must be referred to the Director of Human Resources. Staff members asked to serve as or give references whether over the phone or in writing must first discuss the request

with and obtain approval from the section deputy. Any letter of recommendation that is sent must first be reviewed and approved by the section deputy and a copy must be provided to the Director of Human Resources. (Cross-referenced in Chapter 9, Page 2 of the Manual.)

Data Practices Requests. Requests for data should be submitted to the responsible authority or to the appropriate designee, if known, or to James Van Buskirk, Manager, Consumer Services Division, Minnesota Attorney General's Office, 445 Minnesota Street, #1400, St. Paul, Minnesota 55101. Access to data is limited to normal office hours. Minn. R. 1205.0300, subp. 3, and 1205.0400, subp. 4.

Access to Public Data. Unless federal law, state law, or temporary classification otherwise classifies the data, the data are public and will be disclosed to the requester. Minn. Stat. § 13.01, subd. 3. Access to public data will be provided without regard to the nature of the person's interest in the data. Minn. R. 1205.0300, subp. 2.

Unless necessary for the sole purpose of facilitating access to data, persons seeking data from the Attorney General's Office will not be required to identify themselves, state a reason for, or justify a request to gain access to public government data held by the Attorney General's Office. However, as discussed below in the section entitled *Access to Private Data*, the Attorney General's Office will require persons seeking access to private data to identify themselves or their representatives in order to ensure that the private data are released to appropriate persons.

Access to Private Data. Only the data subject and authorized parties will be allowed access to private data. Minn. R. 1205.0400, subp. 2. To ensure that an individual seeking access is the subject of private data or the authorized representative of the data subject, the Office may: 1) require the person seeking access to appear at the Office to gain access; 2) in lieu of a personal appearance, require the signature or notarized signature of any data subject unable to appear at the Office; or 3) require reasonable identification. Minn. R. 1205.0400, subp. 3.

Access to Private Data on Minors. Minors have the right to access private data about themselves. Minn. R. 1205.0500, subp. 2.A. The Office may presume that parents and guardians are entitled to gain access to private data about their minor children or wards unless provided with evidence of a state law, court order, or legally binding instrument relating to divorce, separation, or custody which provides to the contrary. Minn. R. 1205.0500, subp. 2.B.; Minn. Stat. § 13.02, subd. 8. Parents and guardians may be denied access to data on their minor children or wards if the child has requested in writing that such access be denied *and* the Office determines that denying access is in the best interests of the child. Minn. R. 1205.0500, subp. 3; Minn. Stat. § 13.02, subd. 8.

When the Office has collected private data from a minor and the minor's parent or guardian requests access to the data, the Office will determine whether the minor received notice of the right to request that such access be denied. Minn. R. 1205.0500, subp. 3.A. Absent a request from the minor that access be denied, the parent or guardian will be provided access to the data. Minn. R. 1205.0500, subp. 2.B. Should the minor request that access be denied, the Office will consider the five factors enumerated in Minn. R. 1205.0500, subp. 3.B. to determine whether the best interests of the minor support denying access.

Access to Confidential Data. Only authorized parties, and individuals within the Office whose work assignment reasonably requires access, will be allowed access to confidential data. Minn. R. 1205.0600, subp. 2.

Individual Access Rights. An individual who is the subject of government data has the right to:

- Upon request, to be informed whether the Office is maintaining public or private data about him/her and the classification of the data;
- Have access to public and private data about him/her at no cost to the individual (*see* section on costs, below);
- Upon request, be informed of the meaning of public or private data;
- Receive copies of data at actual cost (*see* section on costs, below);
- Challenge the accuracy and completeness of information maintained about him/her, including the right to be notified of his/her ability to appeal to the Commissioner of Administration any adverse decision regarding his/her challenge (*see* section on accuracy and completeness challenges, below).

Minn. Stat. §13.04, subds. 3 and 4.

After an individual has been shown private data and informed of its meaning, the data need not be disclosed to the individual for six months thereafter unless a dispute or action under Minn. Stat. § 13.04 is pending or additional data on the individual have been collected or created. Minn. Stat. § 13.04, subd. 3.

Summary Data. Summary data are statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual are ascertainable. Minn. Stat. § 13.02, subd. 19. Unless otherwise classified by law, summary data are public. Minn. Stat. § 13.05, subd. 7.

Upon written request, the Office will prepare summary data from private and confidential data. Minn. Stat. § 13.05, subd. 7; Minn. R. 1205.0700. The cost of preparing summary data must be paid before the summary data are prepared or supplied. *Id.* In some cases, the Office may allow a person outside the Office to compile summary data if the person sets forth in writing the purpose of the summary and agrees not to disclose private or confidential data, and the Office reasonably believes that access will not jeopardize the private or confidential nature of the data. Minn. Stat. § 13.05, subd. 7; Minn. R. 1205.0700, subp. 4.

Summary data may be prepared by redacting (“blacking out”) personal identifiers, cutting out portions of the records that contain personal identifiers, programming computers so that the

output does not contain personal identifiers, or by using other reasonable means. Minn. R. 1205.0700, subp. 6.

Copies in Electronic Form. The Attorney General's Office will provide, to any person making a request, a copy of any public data contained in computer storage medium in electronic format if the Attorney General's Office can reasonably make the copy or have a copy made. The Attorney General's Office will not provide data in an electronic format or program that is different from the format or program in which the data are maintained by the Attorney General's Office. The Attorney General's Office may require the requesting person to pay the actual cost of providing the copy in electronic format. Minn. Stat. § 13.03, subd. 3(e).

Explanation of the Meaning of Data. Upon request the Office will explain the meaning of data which may be unclear, contain acronyms, or are coded in some form.

Denial of Access to Data. If the requested data are not accessible under the law, the requester shall be informed orally at the time of the refusal to supply the data or in writing as soon thereafter as possible. The requester will be told the statute, federal law, or temporary classification upon which the denial is based. Minn. Stat. § 13.03, subd. 3.

If the request is for access to private or confidential data so that the requester may prepare summary data, and the Office determines that the requester's access to the data would compromise the private or confidential nature of the data, the requester will be informed, in writing, of the reasons supporting the Office's determination. Minn. R. 1205.0700, subp. 4.D.

Time Limits for Responses.

- ***Request by Data Subject.*** If the request is for data about the requester, the Office will respond within ten working days if immediate compliance is not possible. Minn. Stat. § 13.04, subd. 3.
- ***Request for Public Data by Other than Data Subject.*** If someone other than the subject of the data, submits a request the Office will comply with the request in an appropriate and prompt manner. Minn. Stat. § 13.03, subd. 2; Minn. R. 1205.0300, subp. 3.
- ***Request for Copies.*** If the request seeks copies of data, copies will be supplied as soon as reasonably possible, assuming an agreement about cost reimbursement has been reached. Minn. Stat. § 13.03, subd. 3.
- ***Requests for Summary Data.*** Requests for summary data will be acknowledged and the requester will be informed of the estimated costs, if any. If the summary data cannot be provided within ten days, the requester will be provided a time schedule for preparation of the summary data, including reasons for the time delay. *Minn. R. 1205.0700, subp. 4.*

Costs. The Office shall collect all necessary fees prior to releasing copies, unless other arrangements for payment have been agreed upon. The Office will not charge another governmental entity for copies that are usually provided as part of the normal course of business.

The Office may also choose not to charge for copies in other circumstances, such as when the copying costs are nominal. In the case of discovery requests, an assistant attorney general may establish other reasonable charges for the production of copies as provided under applicable rules of procedure. Checks for copies provided by the Office should be made out to “Minnesota Attorney General’s Office.”

- *Access Only.* The Office will not charge a person for costs associated with the inspection of data or separating public from not public data. Minn. Stat. § 13.03, subd. 3.
- *Copies of Data When Requester is Data Subject.* If the requester is the subject of the public or private data, the Office may charge for the actual cost of making, certifying, compiling, and transmitting copies of the data. The Office will not charge for the actual costs of searching for and retrieving the data. Minn. Stat. § 13.04, subd. 3. Minn. R. 1205.0400, subp. 5.
- *Copies of Data When Requester is Not Data Subject.* If the data are public and the requester is not the subject of the data, the Office may charge for the actual cost of searching for and retrieving the data, as well as the actual cost of making, certifying, compiling and transmitting copies of the data. Minn. Stat. § 13.03, subd. 3; Minn. R. 1205.0300, subp. 4.
- *Summary Data.* A person submitting a written request for summary data shall pay any costs incurred in the preparation or supplying of the summary data, in advance, unless other arrangements for payment have been agreed upon. Minn. R. 1205.0700, subp. 7. The cost will be based on labor, materials, and any special costs needed to produce the report. *Id.* Only reasonable copying costs will be charged when no preparation of the summary data is required except for copying. *Id.*
- *Calculation of Costs.* Copying and other costs must be reasonable and based on the actual cost of the materials, equipment, and labor used to prepare and transmit the copies. Minn. R. 1205.0300, subp. 4; and 1205.0400, subp. 5. Copying costs will be charged according to the Office’s schedule of standard copying charges. Minn. R. 1205.0300, subp. 4.C. This schedule is explained below.
- *Data with Commercial Value.* If a request for data involves the receipt of data which have commercial value and are an entire formula, pattern, compilation, program, device, method, technique, process, database, or system which has been developed with a significant expenditure of public funds by the Office, the Office may charge, in addition to the other costs allowed, a fee in keeping with the actual development costs of the information. The Office must be able to provide documentation to explain and justify the fee. Minn. Stat. § 13.03, subd. 3(d).
- *Remote Access to Data.* If a requester seeks remote access to data stored in electronic format, the requester may be charged a fee if the data or the access are enhanced at the request of the requester. Minn. Stat. § 13.03, subd. 3(b)

- *Schedule of Standard Copying Costs.* The Office shall collect all necessary fees prior to releasing copies, unless other arrangements for payment have been agreed upon.¹ The Office will not charge another governmental entity for copies usually provided as part of the normal course of business. Checks for copies provided by the Office should be made out to “Office of the Attorney General.”

The Office’s standard charge for making copies of data in response to data practices or discovery requests is 25 cents a page. This charge is based on the actual average labor and material cost of support staff making copies on office photocopiers.

Some data practices or discovery requests involve producing copies from computer, microfilm, or other machine-based recording systems. In those instances, the Office’s standard charge is the actual labor and material costs of producing copies from those systems. The Office’s standard charge for support staff labor is \$23.00 an hour, the actual average cost of that labor.

In addition to charging for the cost of copying, the Office’s policy is to charge for the cost of searching for and retrieving the data to be copied, as permitted under the Data Practices Act. *See* Minn. Stat. §§ 13.03, subd. 3 and 13.04, subd. 3 (providing that where the requester asks for copies of public data and the requester is not the subject of the data, the requester may be charged for the actual costs of searching for and retrieving the data to be copied). Effective July 1, 2017, the standard charges for searching for and retrieving data are as follows: Attorney time at a rate of \$131.00 an hour; legal assistant time at \$83.00 an hour; clerical time at \$23.00 an hour.

The Office’s policy is also to charge for any actual costs incurred mailing or electronically transmitting the copies requested. Questions about the mechanics of producing copies and charging for them should be referred to the section office manager. Payments should be made by check. Do *not* accept cash.

Discovery Requests for Not Public Data. Except in limited circumstances, the Office will not disclose “not public” data (i.e., private, confidential, nonpublic or protected nonpublic data) pursuant to a discovery request, subpoena *duces tecum*, or witness subpoena without prior *in camera* court review of the data and an order from the court that the data be disclosed. *See* Minn. Stat. § 13.03, subd. 6; Minn. R. 1205.0100, subp. 5. *See also Erickson v. MacArthur*, 414 N.W.2d 406 (Minn. 1987) (in action to compel disclosure of not public data in civil case, a trial court errs if it does not examine the data *in camera* to properly balance the competing interests at stake); *State v. Hummel*, 483 N.W.2d 68 (Minn. 1992) (upon moving to compel disclosure of not public data in a criminal case, defendant must make some plausible showing

¹ The responsible authority designee handling a data practices request for copies of data retains the discretion to reduce or waive the Office’s standard charges for copying in appropriate circumstances, such as when the copying costs are minimal. In cases of discovery requests, an attorney may establish other reasonable charges for the production of copies as provided under the applicable rules of procedure.

that data are both material and favorable to his defense before trial court need conduct *in camera* review to decide whether data should be disclosed).

The Office will disclose not public data without a court order pursuant to an administrative subpoena of the Equal Employment Opportunity Commission, or pursuant to a subpoena from the Minnesota Department of Human Rights. *See E.E.O.C. v. County of Hennepin*, 623 F. Supp. 29 (D. Minn. 1985) (Title VII preempts MGDPA; no court order necessary before releasing private personnel data to E.E.O.C.); Minn. Stat. § 363A.06, subd. 2 (a state agency, statewide system, or political subdivision does not violate any right under the MGDPA or other statute relating to the confidentiality of government data by disclosing data pursuant to a subpoena issued by the Commissioner of Human Rights). The Office will also disclose private data on an individual without a court order where the subject of the data has consented in writing to the disclosure. *See* Minn. Stat. § 13.05, subd. 4(d). The Office may disclose private or confidential data about employees to a law enforcement agency to report an alleged crime committed by an employee or to assist law enforcement in the investigation of a crime allegedly committed by an employee. *See* Minn. Stat. § 13.43, subd. 15.