

Data Practices in Minnesota



Information Policy Analysis Division

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Outline for this presentation

- Minnesota data practices laws
- Classification of government data
- Government entity responsibilities
- Rights of access to government data
- Data subject rights
- Government data requests & responses
- Specific provisions of the Data Practices Act

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Why is data practices important?

- Our jobs depend on the data we collect, create, use, and maintain
- The Data Practices Act requires government entities to:
 - Protect the rights of data subjects
 - Provide appropriate access to government data

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The three laws of data practices

- The Official Records Act
 - Minnesota Statutes, section 15.17
- The Records Management Statute
 - Minnesota Statutes, section 138.17
- The Data Practices Act
 - Minnesota Statutes, Chapter 13 and Minnesota Rules, Chapter 1205

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The Official Records Act

Minnesota Statutes, section 15.17

- Requires government entities to make and preserve records to document official activities
- Records must be passed on to successors in office
- Official records can be stored in any media

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Records Management Statute

Minnesota Statutes, section 138.17

- Requires government entities to follow a process when disposing of government records that are no longer needed, which includes:
 - Establishing records retention schedules
 - Preserving records at the State Archives

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The Data Practices Act

MN Statutes, Chapter 13 and MN Rules, Chapter 1205

- 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

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Definition of government data

- “Government data” means all data collected, created, received, maintained, or disseminated by any government entity regardless of its physical form, storage media, or conditions of use.
 - Minnesota Statutes, section 13.02, subdivision 7

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Classification of government data

Data category	Classification	Meaning of classification
Data on individuals/ Data not on individuals	Public/ Public	Available to anyone for any reason
Data on individuals/ Data not on individuals	Private/ Nonpublic	Available to: <ul style="list-style-type: none"> ● Data subject ● Entity individuals whose work requires access or other entities authorized by law ● Persons authorized by data subject
Data on individuals/ Data not on individuals	Confidential/ Protected Nonpublic	<ul style="list-style-type: none"> ● Available to entity individuals whose work requires access or other entities authorized by law ● Not available to the data subject

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Classification of government data

Data on decedents

- Subset of data on individuals
 - Classifications of public, private, and confidential
- Not public data on human beings remain classified after death
 - Minnesota Statutes, section 13.10

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Government entity responsibilities

- Identify the responsible authority
- Designate a data practices compliance official (DPCO)
- Establish an inventory for data on individuals
- Establish required policies on data access data subject rights

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Data requestors are either:

Members of the Public	Data Subjects
Generally – Minnesota Statutes, section 13.03	Generally – Minnesota Statutes, section 13.04

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Access to government data

- Members of the public and data subjects have rights to access certain data
- Data must be easily accessible
- Access to some data must be denied
- Upon request, data must be explained
- Access to data is not required if data do not exist

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Requests for government data

Responses to a member of the public

1. Data are public – data are classified such that a member of the public can have access
 - Provide data to requestor
2. Data are classified as not public
 - Data cannot be released – provide statutory citation denying access
3. Requested data do not exist at the entity
 - Entity not required to create data

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Requests for government data

Responses to a data subject

1. Data are classified as public or private
 - Provide public data and private data about the subject
2. Data are classified as confidential or are not about the data subject
 - Data cannot be released – provide statutory citation denying access
3. Requested data do not exist at the entity
 - Entity not required to create data

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Requests for government data

Questions to ask when responding

- Is it a request for data or a question?
- Is the request for government data?
- Is the request clear?
- Was the request made to the correct person?
- Is the request from a member of the public or the data subject?
- Is the request for inspection or copies?

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Response to data requests

Time to respond

- Member of the public
 - Appropriate and prompt
 - Reasonable amount of time
- Data subject
 - Immediately, if possible, or within 10 business days

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Time frame for inspection & copies

Member of the Public vs. Data Subject

	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

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Response to data requests

Costs

- Inspection – no cost
- Copies – cost depends on request
 - Public requestor
 - 25¢ per page – 100 or fewer copies of black & white, letter/legal size paper
 - Actual cost – all other copies
 - Data subject requestor
 - Actual cost

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Cost for inspection & copies

Member of the Public vs. Data Subject

	Member of the Public	Data Subject
Inspection of Data	No charge or fee allowed	No charge or fee allowed
Copies of Data	<ul style="list-style-type: none"> ❖ 25¢ per page <ul style="list-style-type: none"> ❖ 100 or fewer, black & white, legal/letter size paper copies ❖ Actual cost <ul style="list-style-type: none"> ❖ All other copies ❖ No charge to separate public & not public data 	<ul style="list-style-type: none"> ❖ Actual cost <ul style="list-style-type: none"> ❖ No charge to search for & retrieve data ❖ No charge to separate public & not public data ❖ No charge to redact private or confidential data about others

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Additional rights of individuals

Data subjects

- Limits on the government's collection and storage of data on individuals
- Right to certain information prior to the collection of private or confidential data
- Right to consent to the new use of data
- Right to challenge the accuracy and/or completeness of data
- Expectation in the security of data

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Additional rights of individuals

Parents, guardians, and minors

- Parent or guardian of the minor may access data about the minor
- Minors may consent to release of data
- Minors may request to withhold data from a parent or guardian
 - Educational data exception

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Tennessee warning

Elements of the notice

- Purpose and intended use of data
- Whether the individual may refuse or is legally required to provide the data
- Known consequences from supplying or refusing to supply the data
- Identity of other persons or entities with statutorily authorized access to the data

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Informed consent

- Permission for a new use or release of government data
- Informed consent is necessary for:
 - Individual asks the entity to release data
 - A new release of data by the entity
 - Different use of data than described in Tennessee
- Informed consent must be in writing and cannot be coerced

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Data protection & security

- Appropriate security safeguards and appropriate destruction of not public data
 - Minnesota Statutes, section 13.05, subdivision 5
- Disclosure of breach in security of data
 - Minnesota Statutes, section 13.055
- Protecting not public data

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Specific provisions of Chapter 13

General not public data

- Social Security numbers
 - Private (Minnesota Statutes, section 13.355)
- Security information
 - Private/nonpublic (Minnesota Statutes, section 13.37)
- Trade secret data
 - Private/nonpublic (Minnesota Statutes, section 13.37)

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Government data vs. personal data

- Personal data are outside scope of the Data Practices Act
- Government entity computer use policies
 - Entities might allow limited computer use for personal matters
 - Personal data are not government data
 - Not created in a person's capacity as a government employee

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Civil remedies & penalties

Minnesota Statutes, sections 13.08 & 13.09

- Civil suits against government entity or responsible authority allowed
- Penalties for willful violation
 - Misdemeanor
 - Suspension or dismissal

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Resources

Information Policy Analysis Division (IPAD)

- Commissioner of Administration's advisory opinions
- IPAD newsletter
- IPAD website and information materials
- IPAD email listserv
- Informal advice from IPAD

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More information & questions

- Information Policy Analysis Division
 - www.ipad.state.mn.us
 - 651.296.6733
 - info.ipad@state.mn.us
 - 201 Administration Building
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