

RELEVANT LINKS:

VIII. REFERENCE CHECKS & RELEASE OF INFORMATION ON CURRENT & FORMER EMPLOYEES

[Minnesota Statutes 13.43](#)

Overview: The Minnesota Government Data Practices Act governs what is public information on employees, including former employees, and what is private information. Public information can be released to anyone; private information cannot be released without the permission of the employee (data subject). Before giving out any private data a city should require the former employee to sign a release. Some documents contain a mixture of public and private information so cities need to be careful to eliminate any private data before giving information to the public if no release has been signed.

A. What is Public / Private?

[Minnesota Statutes 13.43](#)

Personnel data under the Minnesota Government Data Practices Act is private unless specifically mentioned as public. Therefore, cities should be cautious when releasing personnel data. The items that are specifically mentioned as public personnel data are:

[Fact Sheet #9 - Public Personnel Data](#)

- Name.
- City and county of residence.
- Actual gross salary.
- Salary range.
- Contract fees.
- Job title.
- Bargaining unit.
- Education and training background.
- Previous work experience.
- Date of first and last employment.
- Work location.
- Work telephone number.
- Badge number.
- Honors and awards received.
- Actual gross pension.
- Job description.
- Value/nature of employer paid benefits.
- Basis for and amount of any compensation in addition to salary (including expense reimbursement).

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- Payroll time sheets or other data used to account for an employee’s time (as long as the data doesn’t reveal the employee’s reason for using sick or other medical leave or other data which are not public).
- Existence and status of any complaints or charges against the employee, whether or not any disciplinary action is taken (see “Release of Disciplinary Information” section below).
- Final disposition of any disciplinary action, the reasons for the action and data documenting the basis for the action, excluding data that would identify confidential sources who are employees of the public body (see “Release of Disciplinary Information” section below).
- Terms of any agreement settling any dispute arising out of an employment relationship.

All personnel data relating to an individual employed as, or an applicant for employment as, an undercover law enforcement officer is private data. Once the individual is no longer assigned to an undercover position, the same data that is public on other employees becomes public unless the city determines that revealing the data would threaten the personal safety of the officer or jeopardize an active investigation.

[Minnesota Statutes 176.138](#)

The city must treat medical data that it receives in association with a workers’ compensation claim as private data.

1. Release of Disciplinary Information

[Minnesota Statutes 13.43](#)

The Minnesota Government Data Practices Act discusses two scenarios in which disciplinary situations become public information. The first is when a complaint or a charge is filed against an employee. The second is with regard to the final disposition of disciplinary action. Both of these situations are discussed below.

a. Existence and Status of Complaints and Charges

The Minnesota Government Data Practices Act specifies that the existence and status of any complaints or charges against an employee, whether or not any disciplinary action is taken, are public information. Although the terms “complaint” and “charge” are not defined in the statute, it is pretty clear that they do cover certain formal situations. For example, if a complaint is filed with the city about how a police officer handled a particular arrest, that is probably the type of complaint that is intended to be covered by the statute. It is likely that a situation where an employee is charged with sexual harassment is intended to be covered by the statute as well.

It is less clear whether the statute was intended to cover less formal situations, such as when co-workers make complaints about an employee coming in late, taking long lunch hours or other violations of work rules. As a general rule, if the city considers the complaint or charge to fall under its guidelines for requiring an investigation, it should probably be prepared to release information on the existence and status of the complaint or charge if asked to do so. It is unlikely the city will receive a request for information in less formal situations, but if it does, the city should consult with an attorney before deciding whether to release the information.

RELEVANT LINKS:

When the city does receive a request for information regarding a specific complaint or charge, the city can give out *only* the fact that a complaint has been made and its status (e.g., “under investigation” or “investigation completed”). No other information about the complaint or charge is public unless and until disciplinary action is actually taken. The city cannot release information on what the complaint or charge is about (i.e., the nature of the complaint or charge), who filed the complaint or charge, or any information about any evidence or the investigation. If no disciplinary action is ultimately taken on the complaint or charge, no additional information beyond the existence and status of the complaint can be made public.

Specific exceptions. There are two exceptions specifically noted in the statute to the general rule that the city cannot give out any information about a complaint or charge unless and until disciplinary action is taken against an employee:

- An individual who makes a complaint against an employee must be given access to the statement she provided when making the complaint.
- The city may display a photograph of a current or former employee to a prospective witness as part of an investigation of any complaint or charge against that employee.

The above exceptions may require a legal interpretation so the city should proceed cautiously before giving out information about a complaint or charge under one of the above-listed exceptions

b. Confidential Data and Harassment Data

[Minnesota Statutes 13.02](#)

While most personnel data are available to the employee who is the subject of the data, there are a few situations where it is not. Information that is classified as “confidential” by the Data Practices Act is not available to the employee who is the subject of the data.

[Minnesota Statutes 13.39](#)

One situation in which this can occur is when a city is conducting an investigation to prepare to defend itself in a civil legal action (e.g., the city is conducting an investigation because a police officer is alleged to have used excessive force in restraining a suspect and the suspect is threatening to sue the city).

During the investigation, the employee accused of using excessive force is not allowed access to the investigation files. The employee may be allowed access to the files after the investigation is complete and the investigation is classified as “inactive.” The city, however, should be working closely with its attorney in this situation and should not give out any information unless the attorney advises it to do so.

[Minnesota Statutes 13.43](#)

An employee also cannot access data that would identify the complainant or another witness in a sexual harassment complaint if the city determines that it would threaten the personal safety of the complainant or witness or subject them to harassment.

The city, however, must give the employee accused of harassment the identity of the complainant and witnesses once this information is needed for the employee to prepare a defense for any disciplinary proceedings.

RELEVANT LINKS:

c. Final Disposition of Disciplinary Action

The Minnesota Government Data Practices Act specifies that the final disposition of disciplinary action is public data. The specific reasons for the action and data documenting the basis of the action are also public data. Data that would identify confidential sources who are employees of the public body is not public information. Also, since there may be private data that is contained in some of the documentation, the city should review all of the supporting documentation before releasing it. For example, if the city discharges an employee because the employee is physically unable to perform the duties of the position, any detailed or specific medical information about the employee's physical condition is probably not public data and should not be released without the employee's permission. Some organizations (governmental authorities, unions, etc.) may have the right to access certain types of otherwise private data without a release under specific circumstances. For more information, see "Required Cooperation" section below.

Final disposition occurs when the city has made its final decision about the disciplinary action, after an arbitration proceeding for unionized employees, or when an employee resigns after a final decision by the city. The fact that an employee could take the disciplinary action to court does not delay the final disposition.

[Information Policy Analysis Division](#)
[Web Site: Advisory Opinion 04-002](#)

The Department of Administration, Information Policy Analysis Division (IPAD) recently issued an advisory opinion stating that data relating to a disciplinary proceeding, including the arbitration decision, involving an employee who initially was served with a notice of termination but who grieved the action and later was reinstated is private data. The IPAD reasoned that since no discipline is ultimately imposed, there is no basis for releasing any data related to the proceeding. Accordingly, under the IPAD opinion, the only data the city can release is the employee's name, the fact that a complaint or charge exists, and that the matter is closed (the city investigated and there was no disciplinary action). Advisory opinions are not legally binding, but they do serve to give cities guidance and there are some legal protections for cities that follow this advice.

When an investigation results in no disciplinary action being taken, there is no "final disposition." In such a situation, documents from the investigation do not become public.

B. Other Legal Issues**1. Authorization to Release Records**

[Sample Consent Form](#)

Before releasing any private data on a former or current employee to anyone other than the employee, the city should require the former employee to sign an authorization form. (A sample authorization form is available by following the link in the left column.) The authorization form should include:

- What information is to be released.
- Who it is to be released to.

RELEVANT LINKS:

- When the release form expires.
- An acknowledgement that the employee understands some of the data is private and not available to the public (such as performance evaluation forms and ratings).
- A release that relieves the city of any liability for releasing the information.
- The date on which the form is signed.

Often, the employing organization will have its own authorization form and present it to the city already signed by the employee. The city should carefully examine the form and make sure that it covers the specific points outlined above before releasing any private data on the employee. Public data can be released without the employee's consent. For more information, see "What is Public/Private" section above.

2. Agreements Limiting Disclosure

Discipline

The city cannot enter into an agreement with an employee that would limit the disclosure of personnel data or the discussion of information or opinions related to personnel data. For more information, see the "Discipline" section, and specifically the "Termination Agreements" subsection.

3. Releasing Information for Employee Protection

Minnesota Statutes 13.43, subdivision 11

If the city reasonably believes that it is necessary to release personnel data in order to protect an employee from harm to himself or to others, the city can release the data to:

Minnesota Statutes 253B.07

- The person who might be harmed and his/her attorney if needed to obtain a restraining order; or
- A screening team evaluating an employee under MN Statutes 253B.07 (e.g., a team screening the individual for commitment proceedings for mental health reasons); or
- A court, law enforcement agency or prosecuting attorney.

C. Required Sharing of Information

1. Background Check Information for Police Officers

Minnesota Statutes 626.87

The city is required by law to give out employment information on a current or former employee who is the subject of a background investigation because the employee is applying for a job as a police officer or a job leading to employment as a police officer. The city can require that the hiring agency make the request in writing and can require the request be signed by the individual authorized to conduct the background investigation on behalf of the hiring agency. The city can also require that the hiring agency provide an original authorization and release signed by the current or former employee.

If the city refuses to disclose the employment information, the hiring agency can request that the district court issue an order directing the disclosure of the information. Failure to comply subjects the person who fails to comply to civil or criminal contempt of court.

RELEVANT LINKS:

As long as the city is not found to be guilty of fraud or malice, it is immune from civil liability for releasing information under this requirement.

[Minnesota Statutes 13.43, subdivision 15](#)

2. Providing Information to Law Enforcement Agencies

Private personnel data or confidential data on employees may be given to a law enforcement agency for the purpose of reporting a crime committed by an employee, or to assist law enforcement in the investigation of a crime committed by an employee.

[Minnesota Statutes 13.43, subdivision 13](#)

[Minnesota Statutes 363A.35](#)

[Minnesota Statutes 13.43, subdivision 2a](#)

3. State Agencies

The Minnesota Government Data Practices Act (MGDPA) specifies that private personnel data must be shared with the Department of Economic Security for purposes of administering the unemployment benefits program and with statewide pension plans for the purpose of administering those plans. In addition, the Minnesota Human Rights Act specifically provides that the MGDPA is not violated when a public entity releases private or confidential data pursuant to a subpoena issued by the commissioner of the Department of Human Rights.

[Minnesota Statutes 13.43, subdivision 6](#)

4. Unions

Personnel data can be given to employee unions if the city determines it is needed for certain reasons specified in the statute. As it pertains to disciplinary action, the union may need information about a disciplinary situation in order to defend the employee in a grievance. If there is any doubt about whether it is appropriate to give information to a union, the best practice is simply for the city to ask the employee for permission and then document their response.

The Bureau of Mediation Services (BMS) has the authority to order or authorize the release of information to BMS or to the employee union.