



RISK MANAGEMENT INFORMATION
DATA PRACTICES FOR LAW ENFORCEMENT

**This information was originally developed in conjunction with the League of Minnesota Cities Insurance Trust's PATROL program (Police Accredited TRaining OnLine). For information on PATROL, contact Laura Honeck at patrol@lmc.org or 651-281-1280. For questions about the material in this memo, contact Tracie Chamberlin at tchamberlin@lmc.org or 651-281-1210.*

Definitions:

There are a handful of key terms used in the Minnesota Government Data Practices Act (the "Act") that must be understood to properly interpret the statute. These are:

"Government data" means all information "collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use."¹ Government data does not include "mental impressions."² "Mental impressions" is information that exists nowhere else except the human brain; it is information that has not been documented or memorialized in any medium.³

"Public data on individuals" means data which that is available to any member of the public upon request, without regard to their reason for seeking access to the data.⁴

"Private data on individuals" is information that is not available to the public. Private data is only available to the subject of the data, and those within the government entity whose job assignments reasonably require access to the information.⁵

"Confidential data on individuals" is information that is not available to the public or to the subject of the data. It is available *only* to individuals within the government entity whose job assignments reasonably require access to the data.⁶

Protected identities:

Under the Act, the identities of certain individuals are classified such that they will never be made public. Agencies cannot release data that would lead to the identification of:

¹ Minn. Stat. § 13.02, subd. 7 (2010).

² *Keezer v. Spickard*, 493 N.W.2d 614, 617-18 (Minn. Ct. App. 1992), *cited with approval in Navarre v. So. Washington Co. Schools*, 652 N.W.2d 9, 25 (Minn. 2002).

³ *Keezer*, 493 N.W.2d at 618.

⁴ Minn. Stat. § 13.02, subd. 15 (2010); Minn. Rules, 1205.0300, subp. 2.

⁵ Minn. Stat. § 13.02, subd. 12 (2010); Minn. Rules, 1205.0400, subp. 2.

⁶ Minn. Stat. 13.02, subd. 3 (2010); Minn. Rules, 1205.0600, subp. 2.

This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.

- Individuals who make complaints that others are using real property in violation of state or local laws are confidential.⁷ The purpose of this statute is to provide neighbors with protection against the fear of retribution for making complaints.⁸
- Undercover law enforcement officers.⁹
- A victim or alleged victim of criminal sexual conduct.¹⁰
- A minor who has engaged in a sexual performance or pornographic work.¹¹
- A paid or unpaid informant, provided the agency determines that revealing the informant's identity would threaten their personal safety.¹²
- A victim or witness to a crime, provided:
 - o The victim or witness specifically requests not to be publicly identified; and
 - o The agency determines that revealing the individual's identity would threaten their personal safety or property.¹³
- A person who placed a call to a 911 system, or a person whose telephone line was used to place a 911 call, if:
 - o The purpose of the call was to obtain help in a mental health emergency; or
 - o The agency determines that revealing their identity would threaten the personal safety or property of any person.¹⁴
- A juvenile witness, provided the agency determines the subject matter of the investigation is such that the juvenile's identity should be protected.¹⁵
- A mandated reporter¹⁶ of: (1) governmental theft, embezzlement, or misuse of public funds or property;¹⁷ (2) maltreatment of minors;¹⁸ or (3) maltreatment of vulnerable adults.¹⁹

⁷ Minn. Stat. § 13.44, subd. 1 (2010).

⁸ Minn. Dept. Admin. Advisory Opn. 00-036 (Sept. 8, 2000); *see also* Minn. Dept. Admin. Advisory Opn. 08-003 (Apr. 1, 2008) (agencies may withhold entire data set if release of any portion would lead to the identification of a complainant).

⁹ Minn. Stat. § 13.82, subd. 17(a) (2010).

¹⁰ *Id.* at subd. 17(b).

¹¹ *Id.*; Minn. Stat. § 617.246, subd. 2 (2010) (use of minors in pornography or sexual performances).

¹² *Id.* at subd. 17(c).

¹³ *Id.* at subd. 17(d).

¹⁴ *Id.* at subd. 17(f).

¹⁵ *Id.* at subd. 17 (g).

¹⁶ *Id.* at subd. 17 (h).

¹⁷ Minn. Stat. § 609.456 (2010).

¹⁸ Minn. Stat. § 626.556 (2010).

¹⁹ Minn. Stat. § 626.557 (2010).

Arrest data:

Under the Act, an “arrest data” includes information about any action taken to “cite, arrest, incarcerate, or otherwise deprive an adult individual of liberty.”²⁰ Arrest data is “public at all times in the originating agency.”²¹ Arrest data includes:

- The name, age, sex, and last known address of an **adult** person;
- The age and sex of any **juvenile**;
- The date, time, and place of the arrest;
- The charge or basis for the action, such as a warrant;
- The identities of the agencies and officers making the arrest;
- Whether and where the individual is being held; and
- The ICR or report number.²²

Request for service data and response or incident data:

Some of the information collected about virtually all calls for service and agency-initiated activities are public under the Act.²³ This is true even if the call for service or agency-initiated activity sets the stage for the later investigation and the collection of confidential criminal investigative data.²⁴ Public information includes the type of call, the date, time and place, who responded, whether resistance was encountered, whether there was a pursuit, and whether any weapons were used.²⁵

Criminal investigative data:

Investigative information an agency collects or creates “to prepare a case against a person, whether known or unknown” for the commission of a crime is confidential while the investigation is active.²⁶ Investigative data loses its confidential status, and will become public when:

- The agency or prosecutor decides not to pursue the case; however, the data will become confidential again if there is a decision to renew the investigation;
- The statute of limitations has expired or 30 years have passed since the offense (whichever comes earliest); or
- The suspect’s appeal rights have been exhausted or have expired; or
- The information in question has been presented in court.²⁷

²⁰ Minn. Stat. § 13.82, subd. 2 (2010).

²¹ *Id.*

²² *Id.*

²³ *Id.* at subds. 3 and 6.

²⁴ *See Id.* at subd. 7 (excepting arrest data, request for service data, and response or incident data from protections available for criminal investigative data).

²⁵ Minn. Stat. § 13.82, subds. 3 and 6 (2010).

²⁶ *Id.* at subd. 7.

Inactive investigative data is public unless releasing it would hamper an ongoing investigation or reveal protected identities.²⁸ Law enforcement agencies may share investigative data with an individual, other agencies, or with the public to aid in the law enforcement process or promote public safety.²⁹

Exchanging information with other agencies:

Law enforcement agencies may exchange information so long as the exchange satisfies certain statutory criteria.³⁰ The requested information must be “pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation”³¹

Undercover officers:

Data about undercover officers is addressed in two places in the Act. First, it is one of the categories of law enforcement data that qualifies for protection.³² Second, it is addressed under the section of the Act covering personnel data.³³ All data maintained by a law enforcement employer about an officer employed as an undercover officer, including the officer’s name and identifying information, is private.³⁴ Once an officer is no longer assigned to an undercover position, any personnel data that would otherwise be public becomes public again – unless the agency determines that releasing the data would threaten the officer’s personal safety or impair an ongoing investigation.³⁵

The statute does not provide a clear definition of what it means to be “employed as an undercover officer.” There is some authority from the Minnesota Department of Administration discussing intermittent assignments to undercover duties.³⁶ According to that authority, data on officers who are on temporary undercover assignments is private while they are on the actual assignment. But once the officer returns to normal duties, their identities and other information are public – unless the agency determines that releasing it would threaten their identity or hinder an ongoing investigation.³⁷

Tracie Chamberlin 030110

²⁷ *Id.* at subd. 7(a) – (c).

²⁸ *Id.* at subd. 7.

²⁹ *Id.* at subd. 15.

³⁰ *Id.* at subd. 24

³¹ *Id.*

³² *Id.* at, subd. 17 (a).

³³ Minn. Stat. § 13.43, subd. 5 (2010).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Minn. Dept. Admin. Advisory Opn. 01-070 (Sept. 4, 2001).

³⁷ *Id.*