

Government Contractors and the Data Practices Act

Legislative Commission on Data Practices

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Major Principles of Current Law (including 2014 amendments)

- When a government entity enters into a contract with a private person to perform any of the government entity's functions, the private person is subject to the data practices act for purposes of that contract. The government entity is required to include a notice in the contract clarifying that the data practices act applies, though failure to include the notice does not exempt the contract from the law's application.

Subd. 11. Privatization.

(a) If a government entity enters into a contract with a private person to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity. All contracts entered into by a government entity must include a notice that the requirements of this subdivision apply to the contract. Failure to include the notice in the contract does not invalidate the application of this subdivision. The remedies in section 13.08 apply to the private person under this subdivision.

(b) This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.

- Contracts involving health care-related services are subject to these contracting requirements, effective June 30, 2015. A report to the legislature on these issues is required by December 21, 2014.

13.387 HEALTH CARE CONTRACT DATA.

The provisions of section 13.05, subdivision 11, apply to health plan companies, managed care organizations, county-based purchasing plans, third-party administrators, providers, or other vendors, or their parent or subsidiary, contracting with a government entity for health care related services. This section is effective June 30, 2015.

Sec. 11. HEALTH CARE STUDY.

The commissioner of human services, in consultation with interested stakeholders and other state agencies, shall study public policy issues related to application of Minnesota Statutes, section 13.05, subdivision 11, to the entities listed in section 3 and the economic impact on the health care market. The commissioner shall submit a report to the chairs and ranking minority members of the committees of the legislature with jurisdiction over health and human services policy and finance and data practices by December 21, 2014.

Helmsberger v. Johnson Controls, Inc. (AKA The “Timberjay” Case)

Factual background. In 2013 the Minnesota Supreme Court issued a decision applying an earlier version of section 13.05, subdivision 11, to a dispute over a newspaper’s access to a subcontract related to a school construction project.

The St. Louis County School District had entered a contract with Johnson Controls, Inc., for a variety of school construction projects. Johnson Controls entered into a subcontract with Architectural Resources, Inc., to provide architectural consulting services. The newspaper sought access to the subcontract.

The contract between the school district and the general contractor failed to include the data practices terms required by existing statute, which would have specified that the general contractor was subject to the data practices act. As a result, the contractor and subcontractor refused to provide access to the requested contract documents.

Supreme Court decision. Based on the language of the statute as it existed at the time, the Supreme Court held that the general contractor was not subject to the data practices act because the required terms were not in the contract, therefore the newspaper was denied access to the subcontract.¹

A concurring decision held that subdivision 11 was more than a notice provision, but that the construction activities being performed under the contract did not qualify as a “government function” for purposes of application of the data practices act.²

There were no dissenting opinions filed in the case.

Legislative Response to the “Timberjay” Case

At the 2014 session, the legislature enacted changes to the government contracting statute, in response to the Supreme Court’s analysis in the Timberjay case. These changes included clarifying that the data practices act applies to a private person regardless of whether the terms of the contract include the required notice.

The legislation effectively overrules the Supreme Court’s decision as it applies to future contracts; its application to contracts enacted under the prior version of the law is not specified.

The legislature also enacted the language related to contracts for health care related services. (See page 1 of this document to review those provisions).

¹ *Johnson Controls, Inc.*, 839 N.W2d. at 531 (emphasis added). The court reasoned that “[b]y its plain and unambiguous terms, the law requiring that the terms be included “*is simply a notice provision* that address the contractual terms that a government entity must include when contracting with a private business to perform a government function.

² *Id.* at 535-36.

Old version of Section 13.05, subdivision 11 (prior to 2014 session amendments):

Section 13.05, subdivision 11. Privatization.

(a) If a government entity enters into a contract with a private person to perform any of its functions, the government entity shall include in the contract terms that make it clear that all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and that the private person must comply with those requirements as if it were a government entity. The remedies in section 13.08 apply to the private person under this subdivision.

(b) This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.

Section 13.05, subdivision 11, illustrating 2014 amendments (Laws 2014, Ch. 293, § 2):

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(b) This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.