

**Excerpts from Data Practices Advisory Opinions
relevant to “cloud data” (electronic file-sharing) discussion**

Advisory Opinion 95-008

Issue: When an employee, or former employee, or an agent, or former agent, of an entity subject to Minnesota Statutes Chapter 13 possesses work-related data outside of the workplace, are those data government data as defined in Section 13.02, subdivision 7?

Opinion: Data maintained by a current or former employee of a government entity subject to Minnesota Statutes Chapter 13, that were created or collected by that person acting as an agent of the government entity, **are government data pursuant to Chapter 13, regardless of where the data are maintained.**

Advisory Opinion 95-013

Issue: Are data contained in a school board member's telephone log, which pertain to school board business, public government data?

Discussion: Mr. Moilanen, as part of a larger data request on November 3, 1994, had asked the District to provide him with access to ...all data reflecting or pertaining to meetings held by and between employees, board members or representatives of the Hopkins School District and employees, officers, directors, agents, investors or representatives of the developments including, without limitation, all pertinent calendars, diaries or memos reflecting such meetings ...

The District said that it ... [o]ne of the board members does maintain a log of telephone calls received at that board member's residence, and the log does reflect one telephone message which was received from a representative of one of the developers ... The District described the telephone log as ...a personal telephone log kept of personal telephone messages maintained by the board member.

Opinion: Under the very narrow facts presented, including the fact that the District acknowledged the existence of the telephone log entry, the limited data at issue, i.e. the name and telephone number of an individual whose business might be affected by the board member's decisions, and perhaps the content of the telephone message, **the data contained in the particular entry in the school board member's telephone log appear to be government data ...**

Advisory Opinion 07-006

Issue: Pursuant to Minnesota Statutes, Chapter 13, what is the classification of data contained in audio tape recordings that two Middle Snake Tamarac Rivers Watershed District board managers made of board meetings?

Discussion: Minnesota Statutes, section 13.02, subdivision 7, defines government data as all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.

The term government entity is defined at section 13.02, subdivision 7a, as a state agency, statewide system, or political subdivision ... The District is a political subdivision. Thus, **any audio recordings of meetings of the District's governing board made by members of its governing board, including Mr. Elseth and Mr. Zutz, are government data**, and the responsibility of the District. Because it does not seem possible that audio recordings of board meetings could contain personal data, the Commissioner assumes all the data contained in the audio recordings are government data ...

The Commissioner's opinion is that the audio recordings Mr. Elseth and Mr. Zutz made of the board meetings are not official records and, therefore, are not subject to retention requirements. Based on the comments from Mr. Elseth and Mr. Zutz, it appears the data no longer exist. Although the District is not required to maintain the data for any specific period of time, if the audio recordings existed at the time Mr. Anderson made his request, and the District was in possession of them, the District was required to provide access to them.

Advisory Opinion 08-028

Issue: Did School District 846, Breckenridge, comply with Minnesota Statutes, Chapter 13, in responding to a request for the "audio recording that was recorded at the public [District] board meeting held on September 10, 2007?"

Discussion: The Commissioner has the following comments. **The fact that Mr. East used his own digital recorder does not, on its face, mean the recording is not government data.** ([Advisory Opinion 07-006](#).) There often are situations in which government employees use their own equipment (cars, computers, cell phones, pagers, etc.) for work related purposes. It is not

reasonable to conclude that in those situations, related data could not be considered government data.

The most important factor in determining whether the data are government data is if Mr. East was acting in his capacity as the District's superintendent when he made the recording. Although according to Ms. Hastings, Mr. East stated the recording was done for personal reasons, the Commissioner was not presented with any facts suggesting Mr. East made any kind of formal announcement that he was taking off his work hat and putting on his citizen hat.

Opinion: The District did not comply with Minnesota Statutes, Chapter 13, in responding to Mr. Fronning's request. **Because the superintendent of School District 846 was acting in his official capacity when he recorded a portion of the September 10, 2007, board meeting, the data in the audio recording are government data.** The data are classified as public.

Advisory Opinion 10-023

Issue: Has the City of North Saint Paul complied with Minnesota Statutes, Chapter 13, in denying access to data in an email?

Discussion: Before proceeding, **it is important to point out that although Mayor Kuehn composed the email on something other than City letterhead and sent it using his private email account, as long as he wrote the email in his capacity as Mayor, the data in the email are government data.** The City did not make any statements suggesting the content of the email is not related to Mayor Kuehn's duties as Mayor.

Advisory Opinion 12-019

Issue: Pursuant to Minnesota Statutes, Chapter 13, are text messages, emails, and letters between board members of the Duluth Airport Authority and employees or representatives of Monaco Air, government data, when sent to or from the Board Members' personal cellphones, computers, or home addresses?

Discussion: Pursuant to Minnesota Statutes, section 13.02, subdivision 7, '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.

In 2008, the Commissioner opined that when a superintendent used a personal data recorder to record portions of a school board meeting, he was acting in his official capacity and therefore, the recording was government data. The Commissioner stated, there often are situations in which government employees use their own equipment (cars, computers, cell phones, pagers, etc.) for work related purposes. It is not reasonable to conclude that in those situations, related data could not be considered government data. (See [Advisory Opinion 08-028](#).)

...

Here, the data requester, Allegiant, asked the Authority to provide data documenting conversations and correspondence between the Authority and Monaco Air. **Some of the correspondence between Authority board members was sent to and received from personal email accounts, phones and home addresses ... As long as the members of the Authority, or staff of the Airport, were communicating in their capacity as board members or public employees, the data are government data, subject to Chapter 13.**

Opinion: Text messages, emails, and letters among between members of the Duluth Airport Authority and employees or representatives of Monaco Air, are "government data" when the board members are acting in their capacity as public officials, regardless of whether the correspondence was sent to or from the Board Members' personal cellphones, computers, or home addresses.

Advisory Opinion 18-013

Issue: Did St. Louis County respond appropriately to a request for a County Commissioner's correspondence when it denied access pursuant to Minnesota Statutes, section 13.601?

Discussion: The Commissioner would like to also address one additional issue. While the County ultimately determined that there were no text messages responsive to the Star Tribune's data request, it stated in its original response: "[w]ith regard to text messages, Commissioner Stauber does not have a county owned mobile device, therefore the county is not the custodian of the data." **The Commissioner has previously opined that government employees and public officials can create and maintain government data on personal devices and accounts.** (See [Advisory Opinions 08-028](#), [10-023](#), and [12-019](#).) **Therefore, to the extent that county commissioners are creating public government data via text, the County is responsible for providing access to those data.**