



## Government Data Practices & Open Meeting Law Overview

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# Who we are and what we do

- Statewide resource on Minnesota's data practices and open meeting laws
  - ✓ Informal advice/technical assistance to government, public, media and Legislature
  - ✓ Website, newsletters, Twitter
  - ✓ Advisory opinions
  - ✓ Legislative assistance
  - ✓ Training



# Government Data Practices

Minnesota Statutes, Chapter 13

# Why is government data practices so important?

- The Data Practices Act advances open government, accountability, and transparency
- The law promotes the ability of our citizens to know and gain understanding of the decisions made by their government
- In Minnesota, our law presumes that everything government creates as part of its official duties is public
  - This means, for example, that your email correspondence is public, unless there is a specific state or federal law that allows you to protect it from the public

# Government Data Practices Act (Minnesota Statutes, Ch. 13)

- The Data Practices Act:
  - Defines government data
  - Presumes government data are public
  - Classifies certain data as not public
  - Provides rights for the public and data subjects
  - Requires that data on individuals are accurate, complete, current and secure
  - Does not apply to the Legislative or Judicial branches

# Other Data Practices Laws

- Official Records Act (Minnesota Statutes, section 15.17)
  - Entities must make and preserve records that document official activities
- Records Management Statutes (Minnesota Statutes, section 138.17)
  - Requires entities to keep and destroy records according to a records retention schedule

# What are government data?

- Government data are:

“All data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.”

# Classification of Government Data

Classification	Meaning of Classification	Examples
Public	Available to anyone for any reason	Government employee's name
Private/Nonpublic	Available to: <ul style="list-style-type: none"><li>• Data subject</li><li>• Those in the entity whose work requires access</li><li>• Entities authorized by law</li><li>• Those authorized by data subject</li></ul>	Social security numbers
Confidential/ Protected nonpublic	Available to: <ul style="list-style-type: none"><li>• Those in the entity whose work requires access</li><li>• Entities authorized by law</li></ul> **Not available to data subject**	Active civil or criminal investigative data



# Responsible Authority, Compliance Official & Policies

- Your Council must appoint a Responsible Authority (RA) for data practices
  - The RA is responsible for the collection, use and dissemination of your Council's government data
- The RA must appoint a Data Practices Compliance Official (DPCO)
  - RA can serve as DPCO
  - DPCO is responsible for day-to-day data practices duties
- Two required policies
  - Responding to public data requests
  - Data subject rights and responding to data subject requests

# Application of Data Practices

- Data about you – Minn. Stat. § 13.601
  - Some are public and some are private
  - Examples of public data include:
    - Name
    - Residential address
    - Education and training background
    - Email address or telephone number
    - Existence/status of complaints about you
- Use of personal portable computing devices (laptop, iPad, smart phone, etc.) for Council duties
  - Council-related data on these devices are government data



# Open Meeting Law

Minnesota Statutes, Chapter 13D

# Key Discussion Issues – Open Meeting Law

- When does the Open Meeting Law (OML) apply
  - Groups subject
  - Meetings subject
- Types of meetings
  - Meeting notices
- Closed meetings
- Special considerations

# Open Meetings

- With limited exceptions, all meetings of public bodies must be open to the public
  - The public can attend open meetings
- Meetings subject to the law
  - The “quorum rule” (*Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983).)
  - Two parts:
    1. Quorum (majority) or more of full public body, or quorum of any of the public body’s committees, subcommittees, etc. – and
    2. Quorum (majority) discusses, decides, or receives information as a group on issues relating to its official business

# Types of Meetings

- Regularly scheduled meetings
  - Schedule of meetings on file at primary office
- Special meetings
  - Any meeting not on the regular schedule
  - 3-day advance posting on website, including date, time, place, and meeting purpose
- Emergency meetings
  - Special meetings called because circumstances don't allow for a 3-day prior notice
  - Good faith effort to notify media that requested notice

# Types of Meetings Not Covered by the Law

- Meetings of less than a quorum of members
- Chance or social gatherings
  - Banquets, parties, etc.
- Trainings
  - No discussion of official business
  - Advisory Opinion 16-006
    - Public body may meet in private facilitated discussions designed to “improve trust, relationships, communications, and collaborative problem solving” among members without violating OML

# Special Considerations

- Use of email
  - Avoid “discussion”
  - Advisory Opinion 09-020:
    - Public body did not comply with OML when exchanging certain email messages relating to official activities
    - One-way communication between the chair/staff and members of a public body is permissible, such as sending meeting materials via email to all board members, with no discussion or decision-making
- “Serial meetings”
  - Meetings of less than a quorum
  - Avoid public meetings to fashion agreement
  - Might be a violation



# Closed Meetings

- Meetings can be closed only if required or permitted in the law
- All closed meetings, except those closed by attorney-client privilege, must be recorded
- No general “personnel exception” to close a meeting
- Statement on the record before closing a meeting
  - Legal authority to close the meeting
  - Describe what will be discussed
- Public bodies may or must close certain other meetings under the law, including as permitted by the attorney-client privilege

# Meetings & Technology

- Permissible for statewide bodies to have a meeting by telephone or other electronic means
- Social media use
  - Exchanges must be with the public
  - Excludes email

# Penalties & Remedies

- Intentional violation
  - Personal liability - \$300 fine
- Three, separate intentional violations
  - Forfeit office
- Reasonable costs, disbursements, attorneys fees
- No reversal of public body actions taken while in violation of the law

# Open Meetings & Data Practices

- Public bodies may discuss not public data
  - Disclosure must relate to a matter within scope of authority
  - Reasonably necessary to conduct business or agenda item before the body
- Data retain original classification
  - Record of the meeting is public
- Recordings
  - Record all closed meetings, except under attorney-client privilege
  - Recordings are public with not public data removed

# Questions?

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