

DATA PRACTICES ACT AND OPEN MEETING LAW BASICS

MNA CONVENTION 2019

INTRODUCTION

Overview and Orientation: The Minnesota Government Data Practices Act (MGDPA), and the Minnesota Open Meeting Law (OML).

A. MINNESOTA GOVERNMENT DATA PRACTICES ACT (Minn. Stat., Chapter 13)

Legal issues and problems most often encountered by journalists when requesting access to government records—and how to deal with them.

1. Application and Scope of the Data Practices Act

- a. Government entities that are subject to the MGDPA.
- b. Definition of the “government data” that is covered by the MGDPA.

2. Key Procedural Rules and Requirements found in the Data Practices Act

- a. Agency response time when access to public data is requested.
- b. Request must be for an existing record; preparation of summary data.
- c. Request must go to the Responsible Authority.
- d. Copies, copy fees, inspection of records; duty to redact, and redaction costs.
- e. Electronic copies.
- f. Agency obligations when request for public access is denied.
- g. Legitimacy of “no responsive public data” claim.

3. Access to Major Categories of Government Records

- a. Section 13.32 – Educational Data (Public School Records)
 - Definition – presumption against public access.
 - Complications caused by federal law.
 - What records are public?

- b. Section 13.43 – Personnel Data (Records on Government Employees, Other Workers)
 - Definition of “personnel data”– presumption against public access.
 - Access to information about personnel complaints.
 - “Final disposition” of a disciplinary action, why it’s important.
 - Access to complaint data when employee resigns.
 - Access to emails among government employees.
 - Access to names of candidates for government employment.
 - Access to private personnel data with consent of employee.

- c. Section 13.82 – Law Enforcement Data
 - Incident and arrest data; exceptions to public access.
 - Access to law enforcement data when there is an active investigation.
 - Access to law enforcement data when investigation ends; definition of “inactive.”
 - Access to law enforcement data regarding juveniles.
 - Relation of law enforcement data to other categories (educational, personnel data).

4. Miscellaneous Recurring Issues

- a. Access to video-audio recordings maintained by government entities.
- b. Access to data relating to government contracts and contractors (“Timberjay” rule).
- c. Correspondence to and from elected officials.

5. Remedies and Resources

- a. Litigation.
- b. Expedited process with Office of Administrative Hearings.
- c. Department of Administration -- advisory opinions.

B. MINNESOTA OPEN MEETING LAW (Minn. Stat., Chapter 13D)

Legal issues and problems most often encountered by journalists when covering government meetings—and how to deal with them.

1. Application and Scope of the Open Meeting Law

- a. Definition of “public body” subject to the OML.
- b. Application to committees and advisory groups established by a public body.

2. Meetings that are Subject to the Open Meeting Law

- a. The quorum rule.
- b. Evasions of the quorum rule: serial meetings; use of email; use of social media by public officials.
- c. Use of Skype and similar technology.

3. Conduct of Meetings

- a. Notice (including closed and special meetings)
- b. Public agenda materials in electronic form.
- c. Recording open meetings.
- d. Public participation, comment during open meetings.

4. Open Meeting Law Exceptions -- Closed Meetings

- a. Duty to cite statute, describe subject before closing meeting; relation to MGDPA.
- b. Exception for preliminary consideration of allegations or charges.
- c. Exception for performance evaluations.
- d. Exception for attorney-client privilege.
- e. Recording closed meeting – and access to recordings.
- f. Voting in closed meetings.

5. Remedies and Resources

- a. Litigation
- b. Department of Administration -- advisory opinions.