

Sharon Payne

From: Amy Schutt <ASchutt@ck-law.com>
Sent: Thursday, January 31, 2019 12:05 PM
To: 'Mark Utecht'; Charles Lucia; 'tonyolivolo@stacymn.org'; 'MARK NESS'; rebeccalamotte@stacymn.org
Cc: Sharon Payne
Subject: Data Practices Act Review

--DO NOT REPLY ALL TO THIS EMAIL--

Councilmembers,
At the request of the Mayor, please review the following:

The Minnesota Government Data Practices Act, which is Chapter 13 of the Minnesota Statutes, is a state law that controls how government data is collected, created, maintained, used and released. Under the Act, government data includes all data collected, created, received, maintained, or disseminated by the City, regardless of its physical form, storage media, or conditions of use. This includes all the City's data, and in turn, all data you receive as part of your responsibilities as councilmember.

The Act categorizes data about people as either public, private, or confidential. Public data may be disclosed to anyone who requests it. Private data can only be disclosed to the individual who is the subject of the data. Confidential data may not be disclosed to anyone, including the subject of the data. Just because someone is an employee of the City does not mean they automatically have access to all private and confidential data maintained by the City. Private and confidential data may only be disclosed to employees who need that information in order to perform their jobs.

Under the Act, all government data is presumed to be public. However, there are many exceptions to this rule. One noteworthy exception is personnel data. Personnel data is information about a person that is kept by the City because that person is or was an employee, applicant, volunteer, or independent contractor for the City. Under the Act, most of the personnel data kept by cities is private data. This includes information in the individuals personnel file, performance reviews, etc. Furthermore, while a personnel complaint and/or investigation is pending, all data collected pursuant to that complaint/investigation is private data. That means it cannot be disclosed to the public.

As Councilmembers, you will often have access to this information in order to do your job of managing employees. However, you must not disclose private or confidential information that you learn about employees through your position as councilmembers. Doing so is a violation of the Data Practices Act. I know that, as a city with no Administrator/Manager, you are often the individuals that citizens approach to discuss city issues. However, you need to determine whether information is public, private, or confidential before you repeat that information to citizens or uninvolved employees. It would be impossible for the City to label every piece of information with its data classification, especially since many documents contain both public and private data. Therefore, it is your responsibility to figure out what the classification is. If you have questions regarding whether you can disclose certain information to members of the public or employees not involved in the issue, please contact me prior to disclosure.

Under the Act, improper disclosure of information can result in a civil penalty of \$300 and costs and fees of up to \$6000. Additionally, a willful disclosure of public or confidential information to an improper person is a misdemeanor crime, with a maximum penalty of \$1000 and 90 days in jail. Furthermore, disclosure opens the city up to potential lawsuits by the individual whose information was improperly disclosed.

If you have questions regarding this the Data Practices Act, we can discuss at the next council meeting.