

SUBCOMMITTEE REPORT - WITH AMENDMENTS

TO: Judiciary Committee

FROM: Data Practices Subcommittee

S . F. No. 965

Amendments:

A-1 written amendment

Subcommittee recommendation:

And when so amended that the bill be recommended to pass and be referred to the full committee

And when so amended that the bill _____

February 24, 2005 (date of subcommittee action)

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S.F. No. 965 - Applicant Data

Author: Senator Don Betzold

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: February 21, 2005

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S.F. No. 965 provides that personnel data about applicants for appointment to state and local government boards and commissions is public from the time an application is submitted.

HW:cs

AW

Senator Betzold introduced--

S.F. No. 965: Referred to the Committee on Judiciary.

1 A bill for an act

2 relating to government data practices; modifying
3 applicant data; amending Minnesota Statutes 2004,
4 section 13.43, subdivision 3.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

6 Section 1. Minnesota Statutes 2004, section 13.43,
7 subdivision 3, is amended to read:

8 Subd. 3. [APPLICANT DATA.] Except for applicants described
9 in subdivision 5, the following personnel data on current and
10 former applicants for employment by a state agency, statewide
11 system or political subdivision ~~or appointment to an advisory~~
12 ~~board or commission~~ is public: veteran status; relevant test
13 scores; rank on eligible list; job history; education and
14 training; and work availability. Names of applicants shall be
15 private data except when certified as eligible for appointment
16 to a vacancy or when applicants are considered by the appointing
17 authority to be finalists for a position in public employment.
18 For purposes of this subdivision, "finalist" means an individual
19 who is selected to be interviewed by the appointing authority
20 prior to selection. ~~Names and home addresses~~ In the case of
21 applicants for appointment to and a public body subject to
22 chapter 13D, including members of an advisory board or
23 commission, names, home addresses, and the other personnel data
24 described above are public from the time an application is
25 submitted, regardless of whether the applicant is a finalist.

1 Senator moves to amend S.F. No. 965 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 2004, section 13.43,
4 subdivision 1, is amended to read:

5 Subdivision 1. [DEFINITION.] As used in this section,
6 "personnel data" means data on individuals collected because the
7 individual is or was an employee of or an applicant for
8 employment by, performs services on a voluntary basis for, or
9 acts as an independent contractor with a ~~state-agency,-statewide~~
10 ~~system-or-political-subdivision-or-is-a-member-of-or-an~~
11 ~~applicant-for-an-advisory-board-or-commission~~ government entity.

12 Personnel data includes data submitted by an employee to a
13 government entity as part of an organized self-evaluation effort
14 by the government entity to request suggestions from all
15 employees on ways to cut costs, make government more efficient,
16 or improve the operation of government. An employee who is
17 identified in a suggestion shall have access to all data in the
18 suggestion except the identity of the employee making the
19 suggestion.

20 Sec. 2. Minnesota Statutes 2004, section 13.43,
21 subdivision 2, is amended to read:

22 Subd. 2. [PUBLIC DATA.] (a) Except for employees described
23 in subdivision 5 and subject to the limitations described in
24 subdivision 5a, the following personnel data on current and
25 former employees, volunteers, and independent contractors of
26 a ~~state-agency,-statewide-system,-or-political-subdivision-and~~
27 ~~members-of-advisory-boards-or-commissions~~ government entity is
28 public:

29 (1) name; employee identification number, which must not be
30 the employee's Social Security number; actual gross salary;
31 salary range; contract fees; actual gross pension; the value and
32 nature of employer paid fringe benefits; and the basis for and
33 the amount of any added remuneration, including expense
34 reimbursement, in addition to salary;

35 (2) job title and bargaining unit; job description;
36 education and training background; and previous work experience;

1 (3) date of first and last employment;

2 (4) the existence and status of any complaints or charges
3 against the employee, regardless of whether the complaint or
4 charge resulted in a disciplinary action;

5 (5) the final disposition of any disciplinary action
6 together with the specific reasons for the action and data
7 documenting the basis of the action, excluding data that would
8 identify confidential sources who are employees of the public
9 body;

10 (6) the terms of any agreement settling any dispute arising
11 out of an employment relationship, including a buyout agreement
12 as defined in section 123B.143, subdivision 2, paragraph (a);
13 except that the agreement must include specific reasons for the
14 agreement if it involves the payment of more than \$10,000 of
15 public money;

16 (7) work location; a work telephone number; badge number;
17 and honors and awards received; and

18 (8) payroll time sheets or other comparable data that are
19 only used to account for employee's work time for payroll
20 purposes, except to the extent that release of time sheet data
21 would reveal the employee's reasons for the use of sick or other
22 medical leave or other not public data.

23 (b) For purposes of this subdivision, a final disposition
24 occurs when the state agency, statewide system, or political
25 subdivision makes its final decision about the disciplinary
26 action, regardless of the possibility of any later proceedings
27 or court proceedings. In the case of arbitration proceedings
28 arising under collective bargaining agreements, a final
29 disposition occurs at the conclusion of the arbitration
30 proceedings, or upon the failure of the employee to elect
31 arbitration within the time provided by the collective
32 bargaining agreement. Final disposition includes a resignation
33 by an individual when the resignation occurs after the final
34 decision of the state agency, statewide system, political
35 subdivision, or arbitrator.

36 (c) The state agency, statewide system, or political

1 subdivision may display a photograph of a current or former
2 employee to a prospective witness as part of the state agency's,
3 statewide system's, or political subdivision's investigation of
4 any complaint or charge against the employee.

5 (d) A complainant has access to a statement provided by the
6 complainant to a state agency, statewide system, or political
7 subdivision in connection with a complaint or charge against an
8 employee.

9 (e) Notwithstanding paragraph (a), clause (5), upon
10 completion of an investigation of a complaint or charge against
11 a public official, or if a public official resigns or is
12 terminated from employment while the complaint or charge is
13 pending, all data relating to the complaint or charge are
14 public, unless access to the data would jeopardize an active
15 investigation or reveal confidential sources. For purposes of
16 this paragraph, "public official" means:

17 (1) the head of a state agency and deputy and assistant
18 state agency heads;

19 (2) members of boards or commissions required by law to be
20 appointed by the governor or other elective officers; and

21 (3) executive or administrative heads of departments,
22 bureaus, divisions, or institutions.

23 Sec. 3. Minnesota Statutes 2004, section 13.43,
24 subdivision 3, is amended to read:

25 Subd. 3. [APPLICANT DATA.] Except for applicants described
26 in subdivision 5, the following personnel data on current and
27 former applicants for employment by a ~~state-agency,-statewide~~
28 ~~system-or-political-subdivision-or-appointment-to-an-advisory~~
29 ~~board-or-commission~~ government entity is public: veteran
30 status; relevant test scores; rank on eligible list; job
31 history; education and training; and work availability. Names
32 of applicants shall be private data except when certified as
33 eligible for appointment to a vacancy or when applicants are
34 considered by the appointing authority to be finalists for a
35 position in public employment. For purposes of this
36 subdivision, "finalist" means an individual who is selected to

1 be interviewed by the appointing authority prior to selection.
2 ~~Names-and-home-addresses-of-applicants-for-appointment-to-and~~
3 ~~members-of-an-advisory-board-or-commission-are-publie-~~

4 Sec. 4. Minnesota Statutes 2004, section 13.601, is
5 amended by adding a subdivision to read:

6 Subd. 3. [APPLICANTS FOR ELECTION OR APPOINTMENT.] All
7 data about applicants for election or appointment to a public
8 body, including those public bodies subject to chapter 13D, are
9 public."

10 Amend the title as follows:

11 Page 1, delete line 4, and insert "sections 13.43,
12 subdivisions 1, 2, 3; 13.601, by adding a subdivision."

SUBCOMMITTEE REPORT - NO AMENDMENTS

TO: Judiciary Committee

FROM: Data Practices Subcommittee

S . F. No. 608

Subcommittee recommendation:

the bill be recommended to pass and be referred to the full committee

the bill _____

February 24, 2005 (date of subcommittee action)

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**S.F. No. 608 - Department of Commerce Law
Enforcement Data**

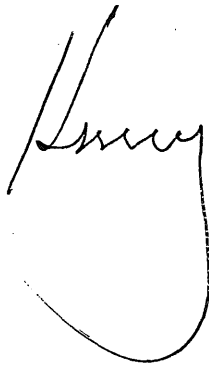
Author: Senator Don Betzold

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: February 8, 2005

S.F. No. 608 subjects all law enforcement data generated by the state Commerce Department to the provisions of **Minnesota Statutes, section 13.82**, the comprehensive law enforcement data section.

HW:cs



Senators Betzold, Skoglund, Scheid and Limmer introduced--
S.F. No. 608: Referred to the Committee on Judiciary.

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A bill for an act

relating to government data; regulating comprehensive
law enforcement data of the Department of Commerce;
amending Minnesota Statutes 2004, section 13.82,
subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 13.82,
subdivision 1, is amended to read:

Subdivision 1. [APPLICATION.] This section shall apply to
agencies which carry on a law enforcement function, including
but not limited to municipal police departments, county sheriff
departments, fire departments, the Bureau of Criminal
Apprehension, the Minnesota State Patrol, the Board of Peace
Officer Standards and Training, ~~the Division of Insurance-Fraud
Prevention-in~~ the Department of Commerce, and the program
integrity section of, and county human service agency client and
provider fraud prevention and control units operated or
supervised by the Department of Human Services.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day following final enactment.

SUBCOMMITTEE REPORT - NO AMENDMENTS

TO: Judiciary Committee

FROM: Data Practices Subcommittee

S. F. No. 361

Subcommittee recommendation:

the bill be recommended to pass and be referred to the full committee

the bill _____

February 24, 2005 (date of subcommittee action)

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S.F. No. 361 - Data Practices Technical Changes

Author: Senator Wes Skoglund

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: January 24, 2005

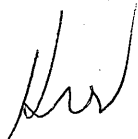
S.F. No. 361, sections 1 to 28, substitutes the term “government entity” for various phrases throughout the government data practices chapter that refer to government entities. “Government entity” is defined in **Minnesota Statutes, section 13.02, subdivision 7a**.

Section 29 makes explicit that parents have an unlimited right to inspect the educational records of a disabled child.

Section 30 substitutes “not public” for the term “confidential” in one place in the law enforcement data provisions of **Minnesota Statutes, section 13.82**.

Section 31 repeals the prior provision on disabled children’s educational records.

HW:cs



Senators Skoglund, Betzold and Limmer introduced--

S.F. No. 361: Referred to the Committee on Judiciary.

1 A bill for an act

2 relating to government data practices; making
3 technical, conforming, and clarifying changes to the
4 Minnesota Government Data Practices Act; amending
5 Minnesota Statutes 2004, sections 13.01, subdivisions
6 1, 3; 13.02, subdivision 7; 13.03, subdivisions 1, 2,
7 3, 4, 5, 6, 8; 13.04, subdivisions 2, 4; 13.05,
8 subdivisions 1, 4, 6, 7, 8, 9; 13.06, subdivisions 1,
9 2, 3, 4; 13.07; 13.072, subdivision 4; 13.073,
10 subdivision 3; 13.08, subdivisions 1, 2, 5; 13.32, by
11 adding a subdivision; 13.82, subdivision 16; repealing
12 Minnesota Statutes 2004, section 13.04, subdivision 5.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

14 Section 1. Minnesota Statutes 2004, section 13.01,
15 subdivision 1, is amended to read:

16 Subdivision 1. [APPLICABILITY.] All ~~state-agencies,~~
17 ~~political-subdivisions-and-statewide-systems~~ government entities
18 shall be governed by this chapter.

19 Sec. 2. Minnesota Statutes 2004, section 13.01,
20 subdivision 3, is amended to read:

21 Subd. 3. [SCOPE.] This chapter regulates the collection,
22 creation, storage, maintenance, dissemination, and access to
23 government data in ~~state-agencies,-statewide-systems,-and~~
24 ~~political-subdivisions~~ government entities. It establishes a
25 presumption that government data are public and are accessible
26 by the public for both inspection and copying unless there is
27 federal law, a state statute, or a temporary classification of
28 data that provides that certain data are not public.

29 Sec. 3. Minnesota Statutes 2004, section 13.02,

1 subdivision 7, is amended to read:

2 Subd. 7. [GOVERNMENT DATA.] "Government data" means all
3 data collected, created, received, maintained or disseminated by
4 any ~~state-agency, political-subdivision, or statewide~~
5 system government entity regardless of its physical form,
6 storage media or conditions of use.

7 Sec. 4. Minnesota Statutes 2004, section 13.03,
8 subdivision 1, is amended to read:

9 Subdivision 1. [PUBLIC DATA.] All government data
10 collected, created, received, maintained or disseminated by a
11 ~~state-agency, political-subdivision, or statewide~~
12 system government entity shall be public unless classified by
13 statute, or temporary classification pursuant to section 13.06,
14 or federal law, as nonpublic or protected nonpublic, or with
15 respect to data on individuals, as private or confidential. The
16 responsible authority in every ~~state-agency, political~~
17 ~~subdivision and statewide system~~ government entity shall keep
18 records containing government data in such an arrangement and
19 condition as to make them easily accessible for convenient use.
20 Photographic, photostatic, microphotographic, or microfilmed
21 records shall be considered as accessible for convenient use
22 regardless of the size of such records.

23 Sec. 5. Minnesota Statutes 2004, section 13.03,
24 subdivision 2, is amended to read:

25 Subd. 2. [PROCEDURES.] (a) The responsible authority in
26 every ~~state-agency, political-subdivision, and statewide~~
27 system government entity shall establish procedures, consistent
28 with this chapter, to insure that requests for government data
29 are received and complied with in an appropriate and prompt
30 manner.

31 (b) The responsible authority shall prepare public access
32 procedures in written form and update them no later than August
33 1 of each year as necessary to reflect any changes in personnel
34 or circumstances that might affect public access to government
35 data. The responsible authority shall make copies of the
36 written public access procedures easily available to the public

1 by distributing free copies of the procedures to the public or
2 by posting a copy of the procedures in a conspicuous place
3 within the government entity that is easily accessible to the
4 public.

5 (c) Full convenience and comprehensive accessibility shall
6 be allowed to researchers including historians, genealogists and
7 other scholars to carry out extensive research and complete
8 copying of all records containing government data except as
9 otherwise expressly provided by law.

10 A responsible authority may designate one or more designees.

11 Sec. 6. Minnesota Statutes 2004, section 13.03,
12 subdivision 3, is amended to read:

13 Subd. 3. [REQUEST FOR ACCESS TO DATA.] (a) Upon request to
14 a responsible authority or designee, a person shall be permitted
15 to inspect and copy public government data at reasonable times
16 and places, and, upon request, shall be informed of the data's
17 meaning. If a person requests access for the purpose of
18 inspection, the responsible authority may not assess a charge or
19 require the requesting person to pay a fee to inspect data.

20 (b) For purposes of this section, "inspection" includes,
21 but is not limited to, the visual inspection of paper and
22 similar types of government data. Inspection does not include
23 printing copies by the government entity, unless printing a copy
24 is the only method to provide for inspection of the data. In
25 the case of data stored in electronic form and made available in
26 electronic form on a remote access basis to the public by the
27 government entity, inspection includes remote access to the data
28 by the public and the ability to print copies of or download the
29 data on the public's own computer equipment. Nothing in this
30 section prohibits a government entity from charging a reasonable
31 fee for remote access to data under a specific statutory grant
32 of authority. A government entity may charge a fee for remote
33 access to data where either the data or the access is enhanced
34 at the request of the person seeking access.

35 (c) The responsible authority or designee shall provide
36 copies of public data upon request. If a person requests copies

1 or electronic transmittal of the data to the person, the
2 responsible authority may require the requesting person to pay
3 the actual costs of searching for and retrieving government
4 data, including the cost of employee time, and for making,
5 certifying, compiling, and electronically transmitting the
6 copies of the data or the data, but may not charge for
7 separating public from not public data. If the responsible
8 authority or designee is not able to provide copies at the time
9 a request is made, copies shall be supplied as soon as
10 reasonably possible.

11 (d) When a request under this subdivision involves any
12 person's receipt of copies of public government data that has
13 commercial value and is a substantial and discrete portion of or
14 an entire formula, pattern, compilation, program, device,
15 method, technique, process, database, or system developed with a
16 significant expenditure of public funds by the agency government
17 entity, the responsible authority may charge a reasonable fee
18 for the information in addition to the costs of making,
19 certifying, and compiling the copies. Any fee charged must be
20 clearly demonstrated by the agency government entity to relate
21 to the actual development costs of the information. The
22 responsible authority, upon the request of any person, shall
23 provide sufficient documentation to explain and justify the fee
24 being charged.

25 (e) The responsible authority of a ~~state-agency, statewide~~
26 ~~system, or political-subdivision~~ government entity that
27 maintains public government data in a computer storage medium
28 shall provide to any person making a request under this section
29 a copy of any public data contained in that medium, in
30 electronic form, if the government entity can reasonably make
31 the copy or have a copy made. This does not require a
32 government entity to provide the data in an electronic format or
33 program that is different from the format or program in which
34 the data are maintained by the government entity. The entity
35 may require the requesting person to pay the actual cost of
36 providing the copy.

1 (f) If the responsible authority or designee determines
 2 that the requested data is classified so as to deny the
 3 requesting person access, the responsible authority or designee
 4 shall inform the requesting person of the determination either
 5 orally at the time of the request, or in writing as soon after
 6 that time as possible, and shall cite the specific statutory
 7 section, temporary classification, or specific provision of
 8 federal law on which the determination is based. Upon the
 9 request of any person denied access to data, the responsible
 10 authority or designee shall certify in writing that the request
 11 has been denied and cite the specific statutory section,
 12 temporary classification, or specific provision of federal law
 13 upon which the denial was based.

14 Sec. 7. Minnesota Statutes 2004, section 13.03,
 15 subdivision 4, is amended to read:

16 Subd. 4. [CHANGE IN CLASSIFICATION OF DATA; EFFECT OF
 17 DISSEMINATION AMONG AGENCIES.] (a) The classification of data in
 18 the possession of an agency entity shall change if it is
 19 required to do so to comply with either judicial or
 20 administrative rules pertaining to the conduct of legal actions
 21 or with a specific statute applicable to the data in the
 22 possession of the disseminating or receiving agency entity.

23 (b) If data on individuals is classified as both private
 24 and confidential by this chapter, or any other statute or
 25 federal law, the data is private.

26 (c) To the extent that government data is disseminated to
 27 ~~state-agencies, political-subdivisions, or statewide-systems~~ a
 28 government entity by another ~~state-agency, political~~
 29 ~~subdivision, or statewide-system~~ government entity, the data
 30 disseminated shall have the same classification in the hands of
 31 the agency entity receiving it as it had in the hands of the
 32 entity providing it.

33 (d) If a ~~state-agency, statewide-system, or political~~
 34 ~~subdivision~~ government entity disseminates data to another ~~state~~
 35 ~~agency, statewide-system, or political-subdivision~~ government
 36 entity, a classification provided for by law in the hands of the

1 entity receiving the data does not affect the classification of
2 the data in the hands of the entity that disseminates the data.

3 Sec. 8. Minnesota Statutes 2004, section 13.03,
4 subdivision 5, is amended to read:

5 Subd. 5. [COPYRIGHT OR PATENT OF GOVERNMENT DATA.] A state
6 agency, statewide-system, or political-subdivision government
7 entity may enforce a copyright or acquire a patent for a
8 computer software program or components of a program created by
9 that government agency entity without statutory authority. In
10 the event that a government agency entity acquires a patent to a
11 computer software program or component of a program, the data
12 shall be treated as trade secret information pursuant to section
13 13.37.

14 Sec. 9. Minnesota Statutes 2004, section 13.03,
15 subdivision 6, is amended to read:

16 Subd. 6. [DISCOVERABILITY OF NOT PUBLIC DATA.] If a state
17 agency, political-subdivision, or statewide-system government
18 entity opposes discovery of government data or release of data
19 pursuant to court order on the grounds that the data are
20 classified as not public, the party that seeks access to the
21 data may bring before the appropriate presiding judicial
22 officer, arbitrator, or administrative law judge an action to
23 compel discovery or an action in the nature of an action to
24 compel discovery.

25 The presiding officer shall first decide whether the data
26 are discoverable or releasable pursuant to the rules of evidence
27 and of criminal, civil, or administrative procedure appropriate
28 to the action.

29 If the data are discoverable the presiding officer shall
30 decide whether the benefit to the party seeking access to the
31 data outweighs any harm to the confidentiality interests of the
32 agency entity maintaining the data, or of any person who has
33 provided the data or who is the subject of the data, or to the
34 privacy interest of an individual identified in the data. In
35 making the decision, the presiding officer shall consider
36 whether notice to the subject of the data is warranted and, if

1 warranted, what type of notice must be given. The presiding
2 officer may fashion and issue any protective orders necessary to
3 assure proper handling of the data by the parties. If the data
4 are a videotape of a child victim or alleged victim alleging,
5 explaining, denying, or describing an act of physical or sexual
6 abuse, the presiding officer shall consider the provisions of
7 section 611A.90, subdivision 2, paragraph (b).

8 Sec. 10. Minnesota Statutes 2004, section 13.03,
9 subdivision 8, is amended to read:

10 Subd. 8. [CHANGE TO CLASSIFICATION OF DATA NOT ON
11 INDIVIDUALS.] Except for security information, nonpublic and
12 protected nonpublic data shall become public either ten years
13 after the creation of the data by the government agency entity
14 or ten years after the data was received or collected by any
15 governmental agency entity unless the responsible authority for
16 the originating or custodial agency entity for the data
17 reasonably determines that, if the data were made available to
18 the public or to the data subject, the harm to the public or to
19 a data subject would outweigh the benefit to the public or to
20 the data subject. If the responsible authority denies access to
21 the data, the person denied access may challenge the denial by
22 bringing an action in district court seeking release of the
23 data. The action shall be brought in the district court located
24 in the county where the data are being maintained, or, in the
25 case of data maintained by a state agency, in any county. The
26 data in dispute shall be examined by the court in camera. In
27 deciding whether or not to release the data, the court shall
28 consider the benefits and harms in the same manner as set forth
29 above. The court shall make a written statement of findings in
30 support of its decision.

31 Sec. 11. Minnesota Statutes 2004, section 13.04,
32 subdivision 2, is amended to read:

33 Subd. 2. [INFORMATION REQUIRED TO BE GIVEN INDIVIDUAL.] An
34 individual asked to supply private or confidential data
35 concerning the individual shall be informed of: (a) the purpose
36 and intended use of the requested data within the collecting

1 ~~state-agency, political-subdivision, or statewide~~
2 ~~system government entity~~; (b) whether the individual may refuse
3 or is legally required to supply the requested data; (c) any
4 known consequence arising from supplying or refusing to supply
5 private or confidential data; and (d) the identity of other
6 persons or entities authorized by state or federal law to
7 receive the data. This requirement shall not apply when an
8 individual is asked to supply investigative data, pursuant to
9 section 13.82, subdivision 7, to a law enforcement officer.

10 Sec. 12. Minnesota Statutes 2004, section 13.04,
11 subdivision 4, is amended to read:

12 Subd. 4. [PROCEDURE WHEN DATA IS NOT ACCURATE OR
13 COMPLETE.] (a) An individual subject of the data may contest the
14 accuracy or completeness of public or private data. To exercise
15 this right, an individual shall notify in writing the
16 responsible authority describing the nature of the
17 disagreement. The responsible authority shall within 30 days
18 either: (1) correct the data found to be inaccurate or
19 incomplete and attempt to notify past recipients of inaccurate
20 or incomplete data, including recipients named by the
21 individual; or (2) notify the individual that the authority
22 believes the data to be correct. Data in dispute shall be
23 disclosed only if the individual's statement of disagreement is
24 included with the disclosed data.

25 The determination of the responsible authority may be
26 appealed pursuant to the provisions of the Administrative
27 Procedure Act relating to contested cases. Upon receipt of an
28 appeal by an individual, the commissioner shall, before issuing
29 the order and notice of a contested case hearing required by
30 chapter 14, try to resolve the dispute through education,
31 conference, conciliation, or persuasion. If the parties
32 consent, the commissioner may refer the matter to mediation.
33 Following these efforts, the commissioner shall dismiss the
34 appeal or issue the order and notice of hearing.

35 (b) Data on individuals that have been successfully
36 challenged by an individual must be completed, corrected, or

1 destroyed by a state agency, political subdivision, or statewide
2 system without regard to the requirements of section 138.17.

3 After completing, correcting, or destroying successfully
4 challenged data, a ~~state-agency, political-subdivision, or~~
5 ~~statewide-system~~ government entity may retain a copy of the
6 commissioner of administration's order issued under chapter 14
7 or, if no order were issued, a summary of the dispute between
8 the parties that does not contain any particulars of the
9 successfully challenged data.

10 Sec. 13. Minnesota Statutes 2004, section 13.05,
11 subdivision 1, is amended to read:

12 Subdivision 1. [PUBLIC DOCUMENT OF DATA CATEGORIES.] The
13 responsible authority shall prepare a public document containing
14 the authority's name, title and address, and a description of
15 each category of record, file, or process relating to private or
16 confidential data on individuals maintained by the
17 authority's ~~state-agency, statewide-system, or political~~
18 ~~subdivision~~ government entity. Forms used to collect private
19 and confidential data shall be included in the public document.
20 Beginning August 1, 1977 and annually thereafter, the
21 responsible authority shall update the public document and make
22 any changes necessary to maintain the accuracy of the document.
23 The document shall be available from the responsible authority
24 to the public in accordance with the provisions of sections
25 13.03 and 15.17.

26 Sec. 14. Minnesota Statutes 2004, section 13.05,
27 subdivision 4, is amended to read:

28 Subd. 4. [LIMITATIONS ON COLLECTION AND USE OF DATA.]
29 Private or confidential data on an individual shall not be
30 collected, stored, used, or disseminated by ~~political~~
31 ~~subdivisions, statewide-systems, or state-agencies~~ government
32 entities for any purposes other than those stated to the
33 individual at the time of collection in accordance with section
34 13.04, except as provided in this subdivision.

35 (a) Data collected prior to August 1, 1975, and which have
36 not been treated as public data, may be used, stored, and

1 disseminated for the purposes for which the data was originally
2 collected or for purposes which are specifically approved by the
3 commissioner as necessary to public health, safety, or welfare.

4 (b) Private or confidential data may be used and
5 disseminated to individuals or agencies entities specifically
6 authorized access to that data by state, local, or federal law
7 enacted or promulgated after the collection of the data.

8 (c) Private or confidential data may be used and
9 disseminated to individuals or agencies entities subsequent to
10 the collection of the data when the responsible authority
11 maintaining the data has requested approval for a new or
12 different use or dissemination of the data and that request has
13 been specifically approved by the commissioner as necessary to
14 carry out a function assigned by law.

15 (d) Private data may be used by and disseminated to any
16 person or agency entity if the individual subject or subjects of
17 the data have given their informed consent. Whether a data
18 subject has given informed consent shall be determined by rules
19 of the commissioner. The format for informed consent is as
20 follows, unless otherwise prescribed by the HIPAA, Standards for
21 Privacy of Individually Identifiable Health Information, 65 Fed.
22 Reg. 82, 461 (2000) (to be codified as Code of Federal
23 Regulations, title 45, section 164): informed consent shall not
24 be deemed to have been given by an individual subject of the
25 data by the signing of any statement authorizing any person
26 or agency entity to disclose information about the individual to
27 an insurer or its authorized representative, unless the
28 statement is:

- 29 (1) in plain language;
30 (2) dated;
31 (3) specific in designating the particular persons or
32 agencies the data subject is authorizing to disclose information
33 about the data subject;
34 (4) specific as to the nature of the information the
35 subject is authorizing to be disclosed;
36 (5) specific as to the persons or agencies entities to whom

1 the subject is authorizing information to be disclosed;

2 (6) specific as to the purpose or purposes for which the
3 information may be used by any of the parties named in clause
4 (5), both at the time of the disclosure and at any time in the
5 future;

6 (7) specific as to its expiration date which should be
7 within a reasonable period of time, not to exceed one year
8 except in the case of authorizations given in connection with
9 applications for (i) life insurance or noncancelable or
10 guaranteed renewable health insurance and identified as such,
11 two years after the date of the policy or (ii) medical
12 assistance under chapter 256B or MinnesotaCare under chapter
13 256L, which shall be ongoing during all terms of eligibility,
14 for individual education plan health-related services provided
15 by a school district under section 125A.21, subdivision 2.

16 The responsible authority may require a person requesting
17 copies of data under this paragraph to pay the actual costs of
18 making, certifying, and compiling the copies.

19 (e) Private or confidential data on an individual may be
20 discussed at a meeting open to the public to the extent provided
21 in section 13D.05.

22 Sec. 15. Minnesota Statutes 2004, section 13.05,
23 subdivision 6, is amended to read:

24 Subd. 6. [CONTRACTS.] Except as provided in section 13.46,
25 subdivision 5, in any contract between a ~~governmental~~
26 ~~unit~~ government entity subject to this chapter and any person,
27 when the contract requires that data on individuals be made
28 available to the contracting parties by the ~~governmental-unit~~
29 government entity, that data shall be administered consistent
30 with this chapter. A contracting party shall maintain the data
31 on individuals which it received according to the statutory
32 provisions applicable to the data.

33 Sec. 16. Minnesota Statutes 2004, section 13.05,
34 subdivision 7, is amended to read:

35 Subd. 7. [PREPARATION OF SUMMARY DATA.] The use of summary
36 data derived from private or confidential data on individuals

1 under the jurisdiction of one or more responsible authorities is
2 permitted. Unless classified pursuant to section 13.06, another
3 statute, or federal law, summary data is public. The
4 responsible authority shall prepare summary data from private or
5 confidential data on individuals upon the request of any person
6 if the request is in writing and the cost of preparing the
7 summary data is borne by the requesting person. The responsible
8 authority may delegate the power to prepare summary data (1) to
9 the administrative officer responsible for any central
10 repository of summary data; or (2) to a person outside of ~~its~~
11 agency the entity if the person's purpose is set forth, in
12 writing, and the person agrees not to disclose, and the
13 agency entity reasonably determines that the access will not
14 compromise private or confidential data on individuals.

15 Sec. 17. Minnesota Statutes 2004, section 13.05,
16 subdivision 8, is amended to read:

17 Subd. 8. [PUBLICATION OF ACCESS PROCEDURES.] The
18 responsible authority shall prepare a public document setting
19 forth in writing the rights of the data subject pursuant to
20 section 13.04 and the specific procedures in effect in the ~~state~~
21 agency, statewide system or political subdivision government
22 entity for access by the data subject to public or private data
23 on individuals.

24 Sec. 18. Minnesota Statutes 2004, section 13.05,
25 subdivision 9, is amended to read:

26 Subd. 9. [INTERGOVERNMENTAL ACCESS OF DATA.] A responsible
27 authority shall allow another responsible authority access to
28 data classified as not public only when the access is authorized
29 or required by statute or federal law. An agency entity that
30 supplies government data under this subdivision may require the
31 requesting agency entity to pay the actual cost of supplying the
32 data.

33 Sec. 19. Minnesota Statutes 2004, section 13.06,
34 subdivision 1, is amended to read:

35 Subdivision 1. [APPLICATION TO COMMISSIONER.]

36 Notwithstanding the provisions of section 13.03, the responsible

1 authority of a ~~state-agency, political-subdivision, or statewide~~
2 system government entity may apply to the commissioner for
3 permission to classify data or types of data on individuals as
4 private or confidential, or data not on individuals as nonpublic
5 or protected nonpublic, for its own use and for the use of other
6 similar ~~agencies, political-subdivisions, or statewide~~
7 systems government entities on a temporary basis until a
8 proposed statute can be acted upon by the legislature. The
9 application for temporary classification is public.

10 Upon the filing of an application for temporary
11 classification, the data which is the subject of the application
12 shall be deemed to be classified as set forth in the application
13 for a period of 45 days, or until the application is
14 disapproved, rejected, or granted by the commissioner, whichever
15 is earlier.

16 If the commissioner determines that an application has been
17 submitted for purposes not consistent with this section, the
18 commissioner may immediately reject the application, give notice
19 of that rejection to the applicant, and return the application.
20 When the applicant receives the notice of rejection from the
21 commissioner, the data which was the subject of the application
22 shall have the classification it had before the application was
23 submitted to the commissioner.

24 Sec. 20. Minnesota Statutes 2004, section 13.06,
25 subdivision 2, is amended to read:

26 Subd. 2. [CONTENTS OF APPLICATION FOR PRIVATE OR
27 CONFIDENTIAL DATA.] An application for temporary classification
28 of data on individuals shall include and the applicant shall
29 have the burden of clearly establishing that no statute
30 currently exists which either allows or forbids classification
31 as private or confidential; and either

32 (a) that data similar to that for which the temporary
33 classification is sought has been treated as either private or
34 confidential by other ~~state-agencies or political~~
35 subdivisions government entities, and by the public; or

36 (b) that a compelling need exists for immediate temporary

1 classification, which if not granted could adversely affect the
2 public interest or the health, safety, well being or reputation
3 of the data subject.

4 Sec. 21. Minnesota Statutes 2004, section 13.06,
5 subdivision 3, is amended to read:

6 Subd. 3. [CONTENTS OF APPLICATION FOR NONPUBLIC OR
7 NONPUBLIC PROTECTED DATA.] An application for temporary
8 classification of government data not on individuals shall
9 include and the applicant shall have the burden of clearly
10 establishing that no statute currently exists which either
11 allows or forbids classification as nonpublic or protected
12 nonpublic; and either

13 (a) that data similar to that for which the temporary
14 classification is sought has been treated as nonpublic or
15 protected nonpublic by other ~~state-agencies-or-political~~
16 ~~subdivisions~~ government entities, and by the public; or

17 (b) public access to the data would render unworkable a
18 program authorized by law; or

19 (c) that a compelling need exists for immediate temporary
20 classification, which if not granted could adversely affect the
21 health, safety or welfare of the public.

22 Sec. 22. Minnesota Statutes 2004, section 13.06,
23 subdivision 4, is amended to read:

24 Subd. 4. [PROCEDURE WHEN CLASSIFICATION AFFECTS OTHERS.]
25 If the commissioner determines that an application for temporary
26 classification involves data which would reasonably be
27 classified in the same manner by all ~~agencies,-political~~
28 ~~subdivisions,-or-statewide-systems~~ government entities similar
29 to the one which made the application, the commissioner may
30 approve or disapprove the classification for data of the kind
31 which is the subject of the application for the use of
32 all ~~agencies,-political-subdivisions,-or-statewide~~
33 ~~systems~~ government entities similar to the applicant. On
34 deeming this approach advisable, the commissioner shall provide
35 notice of the proposed action by publication in the State
36 Register within ten days of receiving the application. Within

1 30 days after publication in the State Register an
2 affected ~~agency, political-subdivision,~~ government entity or the
3 ~~public, or statewide-system~~ may submit comments on the
4 commissioner's proposal. The commissioner shall consider any
5 comments received when granting or denying a classification for
6 data of the kind which is the subject of the application, for
7 the use of all ~~agencies, political-subdivisions, or statewide~~
8 ~~systems~~ government entities similar to the applicant. Within 45
9 days after the close of the period for submitting comment, the
10 commissioner shall grant or disapprove the application.
11 Applications processed under this subdivision shall be either
12 approved or disapproved by the commissioner within 90 days of
13 the receipt of the application. For purposes of subdivision 1,
14 the data which is the subject of the classification shall be
15 deemed to be classified as set forth in the application for a
16 period of 90 days, or until the application is disapproved or
17 granted by the commissioner, whichever is earlier. If requested
18 in the application, or determined to be necessary by the
19 commissioner, the data in the application shall be so classified
20 for all ~~agencies, political-subdivisions, or statewide~~
21 ~~systems~~ government entities similar to the applicant until the
22 application is disapproved or granted by the commissioner,
23 whichever is earlier. Proceedings after the grant or
24 disapproval shall be governed by the provisions of subdivision 5.

25 Sec. 23. Minnesota Statutes 2004, section 13.07, is
26 amended to read:

27 13.07 [DUTIES OF THE COMMISSIONER.]

28 The commissioner shall promulgate rules, in accordance with
29 the rulemaking procedures in the Administrative Procedure Act
30 which shall apply to ~~state-agencies, statewide-systems-and~~
31 ~~political-subdivisions~~ government entities to implement the
32 enforcement and administration of this chapter. The rules shall
33 not affect section 13.04, relating to rights of subjects of
34 data. Prior to the adoption of rules authorized by this section
35 the commissioner shall give notice to all state agencies and
36 political subdivisions in the same manner and in addition to

1 other parties as required by section 14.06 of the date and place
2 of hearing, enclosing a copy of the rules to be adopted.

3 Sec. 24. Minnesota Statutes 2004, section 13.072,
4 subdivision 4, is amended to read:

5 Subd. 4. [DATA SUBMITTED TO COMMISSIONER.] A ~~state-agency,~~
6 ~~statewide-system,-or-political-subdivision~~ government entity may
7 submit not public data to the commissioner for the purpose of
8 requesting or responding to a person's request for an opinion.
9 Government data submitted to the commissioner by a ~~state-agency,~~
10 ~~statewide-system,-or-political-subdivision~~ government entity or
11 copies of government data submitted by other persons have the
12 same classification as the data have when held by the ~~state~~
13 ~~agency,-statewide-system,-or-political-subdivision~~ government
14 entity. If the nature of the opinion is such that the release
15 of the opinion would reveal not public data, the commissioner
16 may issue an opinion using pseudonyms for individuals. Data
17 maintained by the commissioner, in the record of an opinion
18 issued using pseudonyms that would reveal the identities of
19 individuals protected by the use of the pseudonyms, are private
20 data on individuals.

21 Sec. 25. Minnesota Statutes 2004, section 13.073,
22 subdivision 3, is amended to read:

23 Subd. 3. [BASIC TRAINING.] The basic training component
24 should be designed to meet the basic information policy needs of
25 all government employees and public officials with a focus on
26 key data practices laws and procedures that apply to all
27 government entities. The commissioner should design the basic
28 training component in a manner that minimizes duplication of the
29 effort and cost for government entities to provide basic
30 training. The commissioner may develop general programs and
31 materials for basic training such as video presentations, data
32 practices booklets, and training guides. The commissioner may
33 assist state and local government ~~agencies~~ entities in
34 developing training expertise within their own ~~agencies~~ entities
35 and offer assistance for periodic training sessions for this
36 purpose.

1 Sec. 26. Minnesota Statutes 2004, section 13.08,
2 subdivision 1, is amended to read:

3 Subdivision 1. [ACTION FOR DAMAGES.] Notwithstanding
4 section 466.03, a ~~political-subdivision~~, responsible authority,
5 ~~statewide-system~~, or state-agency government entity which
6 violates any provision of this chapter is liable to a person or
7 representative of a decedent who suffers any damage as a result
8 of the violation, and the person damaged or a representative in
9 the case of private data on decedents or confidential data on
10 decedents may bring an action against the ~~political-subdivision~~,
11 responsible authority,~~statewide-system~~ or state-agency
12 government entity to cover any damages sustained, plus costs and
13 reasonable attorney fees. In the case of a willful violation,
14 the ~~political-subdivision, statewide-system-or-state~~
15 agency government entity shall, in addition, be liable to
16 exemplary damages of not less than \$100, nor more than \$10,000
17 for each violation. The state is deemed to have waived any
18 immunity to a cause of action brought under this chapter.

19 Sec. 27. Minnesota Statutes 2004, section 13.08,
20 subdivision 2, is amended to read:

21 Subd. 2. [INJUNCTION.] A ~~political-subdivision~~,
22 responsible authority,~~statewide-system~~ or state-agency
23 government entity which violates or proposes to violate this
24 chapter may be enjoined by the district court. The court may
25 make any order or judgment as may be necessary to prevent the
26 use or employment by any person of any practices which violate
27 this chapter.

28 Sec. 28. Minnesota Statutes 2004, section 13.08,
29 subdivision 5, is amended to read:

30 Subd. 5. [IMMUNITY FROM LIABILITY.] A ~~state-agency~~,
31 ~~statewide-system, political-subdivision~~, government entity or
32 person that releases not public data pursuant to an order under
33 section 13.03, subdivision 6 is immune from civil and criminal
34 liability.

35 Sec. 29. Minnesota Statutes 2004, section 13.32, is
36 amended by adding a subdivision to read:

1 Subd. 10. [EDUCATION RECORDS; CHILD WITH DISABILITY.]

2 Nothing in this chapter shall be construed as limiting the
3 frequency of inspection of the educational records of a child
4 with a disability by the child's parent or guardian or by the
5 child upon the child reaching the age of majority. An agency or
6 institution may not charge a fee to search for or to retrieve
7 the educational records. An agency or institution that receives
8 a request for copies of the educational records of a child with
9 a disability may charge a fee that reflects the costs of
10 reproducing the records except when to do so would impair the
11 ability of the child's parent or guardian, or the child who has
12 reached the age of majority, to exercise their right to inspect
13 and review those records.

14 Sec. 30. Minnesota Statutes 2004, section 13.82,
15 subdivision 16, is amended to read:

16 Subd. 16. [PUBLIC ACCESS.] When data is classified as
17 public under this section, a law enforcement agency shall not be
18 required to make the actual physical data available to the
19 public if it is not administratively feasible to segregate the
20 public data from the ~~confidential~~ not public. However, the
21 agency must make the information described as public data
22 available to the public in a reasonable manner. When
23 investigative data becomes inactive, as described in subdivision
24 7, the actual physical data associated with that investigation,
25 including the public data, shall be available for public access.

26 Sec. 31. [REPEALER.]

27 Minnesota Statutes 2004, section 13.04, subdivision 5, is
28 repealed.

APPENDIX
Repealed Minnesota Statutes for 05-1144

13.04 RIGHTS OF SUBJECTS OF DATA.

Subd. 5. **Education records; child with a disability.**
Nothing in this chapter shall be construed as limiting the frequency of inspection of the educational records of a child with a disability by the child's parent or guardian or by the child upon the child reaching the age of majority. An agency or institution may not charge a fee to search for or to retrieve the educational records. An agency or institution that receives a request for copies of the educational records of a child with a disability may charge a fee that reflects the costs of reproducing the records except when to do so would impair the ability of the child's parent or guardian, or the child who has reached the age of majority, to exercise their right to inspect and review those records.

SUBCOMMITTEE REPORT - WITH AMENDMENTS

TO: Judiciary Committee

FROM: Data Practices Subcommittee

S. F. No. 966

Amendments:

Page 2, line 14, after "requested," insert
for readily available documents

Page 2, line 16, after "each" insert separate

Page 2, line 16, in blank insert 25

Subcommittee recommendation:

And when so amended that the bill be recommended to pass and be referred to the full committee

And when so amended that the bill _____

February 24, 2005 (date of subcommittee action)

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S.F. No. 966 - Charges for Copies of Public Data

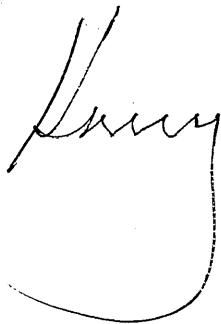
Author: Senator Don Betzold

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: February 16, 2005

S.F. No. 966 allows authorities to charge a per copy fee for 300 or fewer copies of public data provided to a person under the data practices law.

HW:cs



Senator Betzold introduced--

S.F. No. 966: Referred to the Committee on Judiciary.

A bill for an act

relating to government data practices; providing a maximum copy fee for certain copies of data; amending Minnesota Statutes 2004, section 13.03, subdivision 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 13.03, subdivision 3, is amended to read:

Subd. 3. [REQUEST FOR ACCESS TO DATA.] (a) Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places, and, upon request, shall be informed of the data's meaning. If a person requests access for the purpose of inspection, the responsible authority may not assess a charge or require the requesting person to pay a fee to inspect data.

(b) For purposes of this section, "inspection" includes, but is not limited to, the visual inspection of paper and similar types of government data. Inspection does not include printing copies by the government entity, unless printing a copy is the only method to provide for inspection of the data. In the case of data stored in electronic form and made available in electronic form on a remote access basis to the public by the government entity, inspection includes remote access to the data by the public and the ability to print copies of or download the data on the public's own computer equipment. Nothing in this section prohibits a government entity from charging a reasonable

1 fee for remote access to data under a specific statutory grant
2 of authority. A government entity may charge a fee for remote
3 access to data where either the data or the access is enhanced
4 at the request of the person seeking access.

5 (c) The responsible authority or designee shall provide
6 copies of public data upon request. If a person requests copies
7 or electronic transmittal of the data to the person, the
8 responsible authority may require the requesting person to pay
9 the actual costs of searching for and retrieving government
10 data, including the cost of employee time, and for making,
11 certifying, compiling, and electronically transmitting the
12 copies of the data or the data, but may not charge for
13 separating public from not public data. However, if 300 or
14 fewer paper copies are requested, actual costs shall not be
15 used, and instead the responsible authority may assess a set fee
16 per copy, which shall not exceed .. cents for each page. If the
17 responsible authority or designee is not able to provide copies
18 at the time a request is made, copies shall be supplied as soon
19 as reasonably possible.

20 (d) When a request under this subdivision involves any
21 person's receipt of copies of public government data that has
22 commercial value and is a substantial and discrete portion of or
23 an entire formula, pattern, compilation, program, device,
24 method, technique, process, database, or system developed with a
25 significant expenditure of public funds by the agency, the
26 responsible authority may charge a reasonable fee for the
27 information in addition to the costs of making, certifying, and
28 compiling the copies. Any fee charged must be clearly
29 demonstrated by the agency to relate to the actual development
30 costs of the information. The responsible authority, upon the
31 request of any person, shall provide sufficient documentation to
32 explain and justify the fee being charged.

33 (e) The responsible authority of a state agency, statewide
34 system, or political subdivision that maintains public
35 government data in a computer storage medium shall provide to
36 any person making a request under this section a copy of any

1 public data contained in that medium, in electronic form, if the
2 government entity can reasonably make the copy or have a copy
3 made. This does not require a government entity to provide the
4 data in an electronic format or program that is different from
5 the format or program in which the data are maintained by the
6 government entity. The entity may require the requesting person
7 to pay the actual cost of providing the copy.

8 (f) If the responsible authority or designee determines
9 that the requested data is classified so as to deny the
10 requesting person access, the responsible authority or designee
11 shall inform the requesting person of the determination either
12 orally at the time of the request, or in writing as soon after
13 that time as possible, and shall cite the specific statutory
14 section, temporary classification, or specific provision of
15 federal law on which the determination is based. Upon the
16 request of any person denied access to data, the responsible
17 authority or designee shall certify in writing that the request
18 has been denied and cite the specific statutory section,
19 temporary classification, or specific provision of federal law
20 upon which the denial was based.