DEPARTMENT OF ADMINISTRATION

Annual Report from the Data Practices Office

Fiscal Year 2023

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Introduction

The mission of the Department of Administration's Data Practices Office (DPO) is to promote understanding of and compliance with the [Minnesota Government Data Practices Act](#) and [Open Meeting Law](#). To further our mission, we provide the following services:

- Informal advice and technical assistance to government entities and members of the public (including the Legislature and the media) on questions related to data practices and open meetings;
- Training on the Data Practices Act and Open Meeting Law;
- Assistance to the Commissioner of Administration on data practices statutory duties, including advisory opinions, temporary classifications, new uses of data, and data challenge appeals;
- Legislative assistance to individuals, organizations, government entities, and the Legislature in drafting and tracking data practices and open meetings legislation;
- Explanatory information pages, model policies and procedures, informational videos, and training modules on our website and YouTube page; and
- Consultation on projects concerning data practices and open meetings issues.

The Office is funded for four full-time staff members and has an annual general fund budget of $582,000. In addition, the Office provides paid training which generated $46,000 in Fiscal Year 23 (July 2022-June 2023).

FY23 highlights and successes

Advisory opinion and data challenge appeal provisions updated

The Department of Administration pursued two changes impacting DPO's work in the 2023 legislative session. The legislature updated Minn. Stat. § 13.072, to eliminate the $200 fee for Open Meeting Law advisory opinions. This removes a significant barrier to requesters asking for an opinion.

The legislature also updated Minn. Stat. § 13.04, to clarify to process to challenge the accuracy and completeness of data. The changes bring forward requirements from the administrative rules and reorganizes the section for clarity, so that the parties understand their responsibilities.

New training

DPO launched two new workshops in FY23. *DP 201: Policies and Procedures* takes a closer look at the access policies and internal procedures that entities must develop and follow to comply with the Data Practices Act. We also introduced *Advanced Data Practices: Personnel Data Redaction* for experienced professionals who want more hands-on redaction experience.

Technical assistance success stories

- After receiving guidance from DPO about the operation of Minn. Stat. § 13.44, a government contact said, "In my ten year paralegal career, I have never seen someone respond to a question as thoroughly and concisely as you've done in your reply above."

- A member of the press who was having difficulty getting responses with data requests from a city shared that after DPO contacted the city, ""It's like magic, the responses roll in when your office makes a call. It sounds like everybody benefited--I got an answer to my request, [the city] was alerted to a problem, and your office educated another public entity. Win-win-win."

- A member of the public contacted DPO about a data request submitted to a city. The city notified the requester that there would be a charge to inspect the data responsive to their request. DPO reached out to the city and discussed the fee structure in the Data Practices Act, and how inspection requests are always free. The requester was then able to inspect the data without providing any payment.

- A member of the public contacted DPO after receiving a denial to inspect data at a sheriff's office. The denial letter was unclear. After discussion with the entity, DPO was able to explain to the requester the current not public classification, and provide information to the requester on when the classification will change so that they can submit a new request to inspect the data.

DPO outreach

One of DPO's aims is to raise our public profile and reach additional partners. This year, we added 642 new recipients to our listserv (for a total of 3,054 in FY23).

FY23 technical assistance/partner contacts

Technical assistance* usually begins with an email or phone call. These contacts may be a parent asking about data about their student, a police department asking about access to body camera video, or a water and soil conservation district asking about requests for proposals. The DPO team learns more about the issue, and then provides guidance on classification, decision points, and next steps. Some questions require further research and others can be answered relatively quickly. A DPO team member may also reach out to a government entity on behalf of a member of the public to act as an intermediary in resolving data practices and Open Meeting Law issues.

Our goal in providing this informal guidance to our public community partners is to assist them in accessing data to which they are entitled or to help them understand why they are unable to access data (i.e., the data are classified as not public, or the data do not exist). Our goal in assisting government is to achieve a better understanding of the law, resulting in greater compliance.

* Authority to provide technical assistance comes from [Minnesota Statutes, section 13.073, subdivision 5](#) and [Minnesota Rules, part 1205.1700](#).
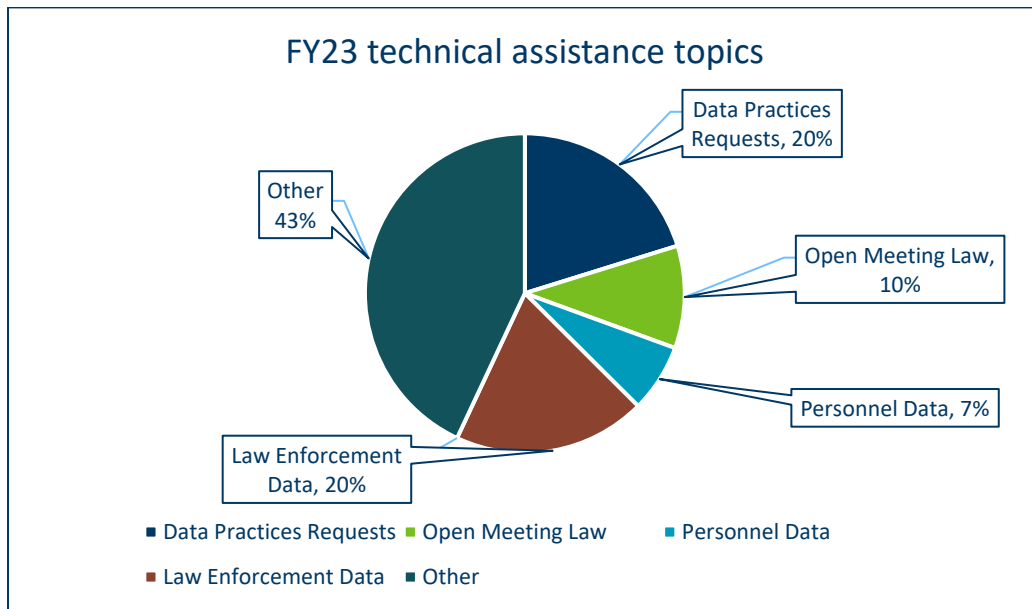
Technical assistance summary

In recording the number of contacts, DPO team members count the initial contact. Even though we may exchange several emails or calls to respond to an inquiry from one of our partners, for our tracking purposes, we consider that one contact. Thus, the total number of requests for technical assistance does not necessarily represent the qualitative effort involved in responding. Tracking allows us to monitor trends in questions and pinpoint areas of concern for our partners.

During FY23 we received and responded to 1,883 requests from our partners for informal advice or technical assistance. This represented a 13% increase in contacts from FY22. This partner contact number does not include the number of individuals we trained, requests for advisory opinions, audits we received and reviewed, or data challenge appeals.

Topics

The following are the top four topic areas of inquiry we addressed during FY23. These four topic areas resulted in over half (57%) of the questions DPO fielded in FY23.

1. **Data practices requests (407)** – assistance with fulfilling data requests, status updates, understanding entity responses (24% increase).

2. **Law Enforcement Data* (393)** – assistance obtaining and classifying information related to data collected, created, and maintained by law enforcement (15% increase).

3. **Open Meeting Law (209)** – understanding notice requirements, closed meetings, and technology.

4. **Personnel Data (139)** – assistance obtaining and classifying information related to public employees, volunteers, and independent contractors.

FY23 technical assistance topics

Data Practices Requests, 20%

Open Meeting Law, 10%

Personnel Data, 7%

Other 43%

Law Enforcement Data, 20%

- ■ Data Practices Requests
- ■ Open Meeting Law
- ■ Personnel Data
- ■ Law Enforcement Data
- ■ Other

*The number of law enforcement data contacts includes questions related to body cameras and peace officer records of children, which are tracked separately. Body camera questions accounted for 23% of all law enforcement questions in FY23 and peace officer records of children accounted for 11%.

The remaining 43% of inquiries involved the following topics:

- Copy costs (62)
- Data breaches (28)
- Data classification (130)
- Data on decedents (2)
- Data sharing (51)
- Education data (18)
- HIPAA & MN Health Records Act (20)

- Legislative (12)
- Licensing data (18)
- Policies and procedures (42)
- Property complaints (16)
- Privatization (10)
- Records management (65)
- Remedies (70)

- Other (142)
- Security information (13)
- Social services data (20)
- Tennessen warning notice and informed consent (30)
- Training (118)

The next most frequently requested topics were training resources, remedies and enforcement, copy costs, and policies and procedures and other. "Other" includes topics such as licensing data, corrections data, data on decedents, statutory provisions outside of Chapter 13 (court records, private actions, questions related to homeowners' associations), website feedback, and inquiries that are out of scope for the office.

Data practices and open meetings training

Workshops, webinars, and other trainings

DPO has developed curriculum for full-day and half-day training workshops based on the highest priority needs of our partners, as identified in the top four partner contact topic areas. Our full-day workshops cover the topics of law enforcement data and personnel data. Our half-day workshops cover open meetings and data practices basics (access policies, data requests, and data classification). The curriculum for these hands-on, interactive workshops provides an in-depth experience for our partners and takes dedicated staff time to develop and facilitate. The groups are small (20-30 attendees) to ensure participants are able to ask questions of DPO staff and expand on topics during the workshops. Therefore, we charge a fee to recoup a portion of our costs. The bulk of the training DPO provides are short presentations, trainings, webinars, or overviews that we conduct on an ad-hoc basis and remain free for our partners. In presenting free training, we are able to reach audiences of over 100 attendees. In addition to DPO-sponsored training, we also partner with other groups to offer training to the widest audience.

The Office trained a total of 2,925 partners in FY23. This represents a 58% increase from the previous year!

- 43 total training events in FY23
    - 13 full-day and partial-day workshops
    - 7 free webinars: four data practices potpourri webinars, the second installment of DPO Presents partnering with the Minnesota School Boards Association, one webinar focused on the Open Meeting Law, and one on data breaches. (930 individuals attended the webinars.)
    - 23 free trainings, including four in-person presentations to the BCA User's Conference, panel discussions about body camera videos and reasonable searches for data at the annual COGEL conference, and presentations for state enterprise agencies and other groups with a statewide reach (Attorney General CLE, MNCLE, University of Minnesota School of Journalism, Minnesota Association of City Attorneys, and the Minnesota Bar Association's Public Law Section).

Partner feedback

At each workshop and most webinars, we ask our partners to provide feedback. We use this feedback to determine the training curriculum and to develop new content to address partner needs.
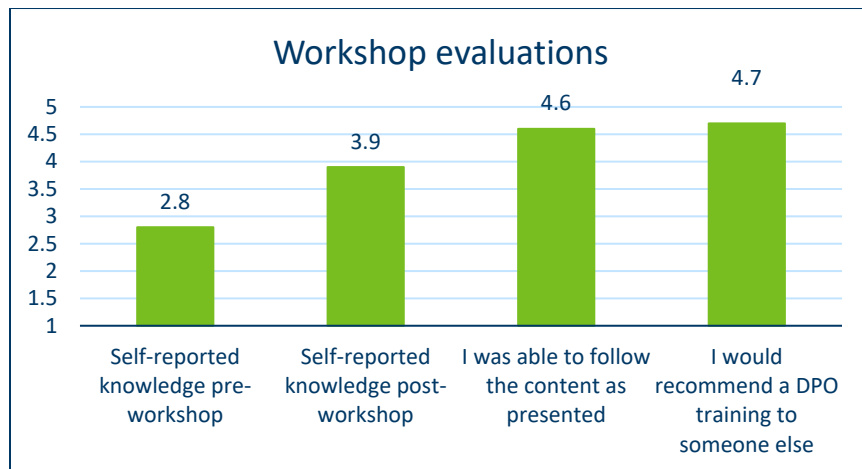
We ask for feedback in several areas:

1. For workshops, we ask participants to evaluate their knowledge of data practices on a 5-point scale, 1-very low and 5-very high, before and after the workshop

2. For workshops and webinars, we ask whether the participant could follow the content

3. For workshops and webinars, we ask whether the participant would recommend a DPO training to someone who was interested

We ask our partners to provide a rating from 1 – 5, with a rating of 1 being the lowest (i.e., the information will not be useful in the future, the attendee did not gain any new knowledge, the presenters were not knowledgeable and effective presenters, the level of information did not fit my needs.)

Participants continued to give our workshops, webinars, and trainings positive feedback. Workshop participants showed a demonstrated increase in knowledge after having attended a workshop. Workshop and webinar participants responding to the evaluations overwhelmingly said that they would recommend a DPO training to other interested individuals. *

Trends

Webinar evaluations

Question	Rating
I was able to follow the content as presented	4.5
I would recommend a DPO training to someone	4.7

Workshop evaluations

Question	Rating
Self-reported knowledge pre-workshop	2.8
Self-reported knowledge post-workshop	3.9
I was able to follow the content as presented	4.6
I would recommend a DPO training to someone else	4.7

*There was a 76.1% response rate for workshop attendees (175/230) and a 51% response rate for webinar attendees (450/930).

Feedback from training attendees:

- These trainings and materials are really so good. Thanks for all the help!
- The webinars are amazing. I've not had anything like this for my first 15 years of service.
- Made a complicated subject digestible for both newbies and more seasoned data practice professionals. Scenarios were great to work through and apply in the real world - thanks
- This presentation was honestly one of the best seminars I have been to in a very long time! Well done!
- Enjoyed the session. It was well paced and the time went by quickly. Gave me a much better high level understanding of data practice issues.
- Super helpful! I still think my knowledge level is low, but it is much better after this training.
- Thank you! This was great information. So clearly presented and practical.

Advisory opinion activity

The Commissioner of Administration has authority to issue non-binding advisory opinions, on certain matters involving data practices and open meetings, pursuant to Minnesota Statutes, section 13.072. DPO administers the advisory opinion process for the Commissioner. The Commissioner has issued more than 1,000 opinions since 1993, which provide a range of guidance on many data practices and Open Meeting Law issues. Our website hosts the full text of all advisory opinions.

Opinion authority and process

The scope of the Commissioner's authority to issue advisory opinions depends on the requester. For data practices opinions, government entities may ask, "any question relating to public access to government data, rights of subjects of data, or classification of data under [Chapter 13] or other Minnesota statutes governing government data practices." Members of the public who disagree with an entity's determination may ask for an opinion about, "the person's right as a subject of government data or right to have access to government data." Requesters do not need to pay a fee for a data practices advisory opinion request.

A public body may ask for an advisory opinion on "any question relating to the public body's duties under Chapter 13D." A member of the public who disagrees with how a public body performs its duties under the Open Meeting Law may also ask for an opinion. Requesters must pay a $200 fee for an Open Meeting Law advisory opinion request. (Due to a legislative change, this fee will not be required in FY24 and going forward.)
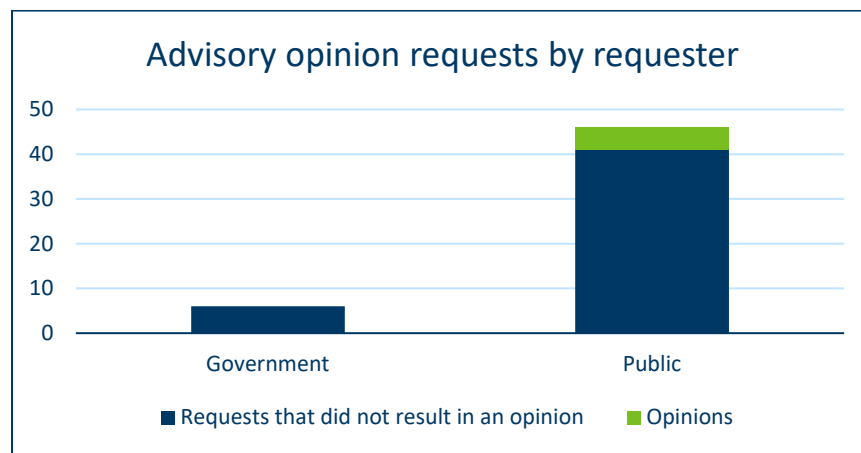
The Commissioner has five business days to decline to issue an advisory opinion. For accepted requests, the Commissioner has 20 days to issue an advisory opinion and can extend that time for 30 days for good cause. During that time, DPO team members seek comments from parties, draft the opinion, and the Commissioner reviews and signs the opinion. The Commissioner does not have fact-finding authority and limits parties to one opportunity to present their facts and arguments.

Occasionally, a member of the public or government will ask for an "informal advisory opinion" on a specific question. In that case, we handle the question in the same manner as a request for technical assistance, rather than through the formal advisory opinion process (see page 4).

Opinion requests in FY23

The Commissioner received 47 opinion requests in FY23 and issued five advisory opinions. (Two opinion requests received in FY22 resulted in advisory opinions issued in FY23.) Of the opinions issued, two opinions addressed Open Meeting Law issues and the remainder involved data practices issues.

The following chart shows the opinion requests by requester:

Advisory opinion requests by requester

Government: ~6 (Requests that did not result in an opinion)
Public: ~41 Requests that did not result in an opinion, ~5 Opinions

Legend:
- Requests that did not result in an opinion
- Opinions

We respond to all advisory opinion requests and can resolve many of the issues requesters raise through education and communication with the parties, which can be more expedient than the formal advisory opinion process. In many situations, we provide technical assistance in an email or letter, direct the opinion requester to prior advisory opinions on the requested topic, and/or provide informal resolution assistance by contacting government entities to resolve disputes with data requesters.

Of the 42 opinion requesters that did not receive an advisory opinion:

- 13 received informal resolution or technical assistance
- 15 required additional information
  - Information may not have been provided by the requester
  - Additional information provided by requester did not raise a clear violation
  - Information provided by DPO was sufficient to address concern
- 7 did not raise a clear violation and technical assistance provided
- 2 raised issues outside the scope of section 13.072 and technical assistance provided
- 2 presented intra-body disputes
- 2 withdrawn by the requester
- 1 raised an issue of fact the Commissioner could not resolve

Other activities

Temporary classification requests

The Commissioner of Administration has authority to approve requests for temporary classification of government data under [Minnesota Statues, section 13.06](#). The Commissioner received one application for a temporary classification from the Department of Labor and Industry. The Commissioner approved the classification of private or nonpublic data related to a study required by executive order of transportation network company data. [Learn more about the temporary classification.](#)

Requests for new uses of government data

Government entities may request approval from the Commissioner for a new use of private or confidential data the entities maintain under [Minnesota Statutes, section 13.05](#), subdivision 4(c). The Commissioner did not receive or act on any requests for new uses of data in FY23.

Data challenge appeals

Data subjects have the right to challenge the accuracy and completeness of data about them under [Minnesota Statutes, section 13.04](#), subdivision 4. The Commissioner of Administration has the authority to receive appeals of those challenges. DPO administers that process for the Commissioner. When the Commissioner receives a complete appeal that meet the requirements of the statute, we are required to offer the data subject an opportunity to resolve the appeal informally. If the data subject declines informal resolution or informal resolution is not successful, then DPO sets the matter for a contested case hearing at the Office of Administrative Hearings. Upon receipt of the administrative law judge's findings, the Commissioner issues a final order. The Commissioner issued 4 final orders in FY23.

Automated license plate reader audits

The Commissioner of Administration is tasked with receiving audit report summaries for law enforcement agencies using automated license plate readers (ALPR) pursuant to [Minnesota Statutes, section 13.824](#), subdivision 6. DPO administers the audit review function for the Commissioner.

Trends

In addition to the trends noted in last year's annual report (body camera data, copy cost structure, virtual meetings, and records management), DPO has identified the following areas as of concern for members of the public and government and opportunities for clarification.

1. **Law enforcement data** – DPO receives more questions about law enforcement data than any other subject. The questions come from both government and members of the public, with the majority coming from law enforcement agencies themselves. Law enforcement data can be complex because some data are always public, some data are never public, and some data change classifications depending on the circumstances. In addition, there are provisions that require law enforcement discretion and some provisions that are open to reasonable interpretations. Questions about videos and recordings – body camera, drone, squad, cellphone, 911 audio – are common and the classifications inconsistent, even if depicting the same incident. Classifications and requirements for law enforcement data are ever-growing in number, adding to the complexity in responding to requests. Consequently, there is an on-going need for updated training and resources.

2. **Data requests –** Government entities report receiving more requests and requests for larger amounts of data, requiring additional resources, and resulting in longer wait times for data requesters. There is increased discussion of a burdensome and/or harassing request exception to the Data Practices Act. Understandably, there is resistance from public stakeholders to such a proposal.

   General data request concerns from members of the public center around lack of responses from government entities, length of time to respond to requests, and disagreement with data classifications. After 50 years of the Data Practices Act, we still encounter government entities that do not have the required policies, procedures, and inventory. These requirements ensure appropriate response to data requests. When they are absent, date requesters run into problems. We also find that there are still entities that simply do not respond to requests.

3. **Enforcement** – Data requesters frequently express frustration with the lack of enforcement options for perceived data practices violations and the Open Meeting Law. The legislature has placed enforcement squarely in the purview of the courts for both laws. For data practices issues, there is also an administrative option at the Office of Administrative Hearings (OAH), which requires a $1,000 filing fee, which the complainant may be awarded if they *substantially* prevail. Filing at OAH or in court can be a significant barrier to adjudicating data practices issues. After attempts at informal resolution by DPO, data requesters can still feel unheard and dissatisfied.

   The Open Meeting Law enforcement provisions in Minnesota Statutes, section 13D.06, allow for a $300 personal fine for a public body member found to have intentionally violated the law. After three violations, the member forfeits their office for the period of a term of office. However, the Supreme Court has held that this must be three separate adjudications before forfeiture can occur. (See *Funk, et al. v. O'Connor, et al.,* 916 N.W.2d 319 (Minn. 2018).) The Supreme Court has also held that reversal of an action taken in a meeting violating the OML is not a remedy under Chapter 13D. (See *Moberg v. Independent Sch. Dist. No. 281*, 336 NW 2d 510, 519 (1983), holding that other avenues for correction are more appropriate.)

   With the current remedy structures, members of the public can feel frustrated by the lack of easily accessible enforcement mechanisms to ensure they can exercise their rights under these laws.

Areas for growth and looking forward

Legislative activities

DPO will continue to track data practices and Open Meeting Law legislation and summarize any changes. During session, we will also identify bills that involve data collection or sharing and determine whether a conversation with the author or sponsor is appropriate to clarify any data practices issues.

Administrative rules

DPO has formally begun the rulemaking update process. This video provides an overview of our approach. The Governor's Office signed the preliminary form, and DPO will begin holding stakeholder meetings to solicit feedback on updating Chapter 1205 of the administrative rules. Interested individuals can follow DPO's rulemaking activity by signing up for the listserv or sending comments to info.dpo@state.mn.us.

Training

DPO will develop and launch a new training this FY on law enforcement redaction. We will continue to solicit feedback from government partners to tailor trainings to the needs of those implementing and using the law. We will continue to seek out opportunities to engage with the public and identify opportunities to provide training to a wider audience. As demand for training increases, DPO's limited resources are strained. DPO will pursue additional resources to meet that need.