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MINNESOTA DEPARTMENT OF HUMAN SERVICES

DATA PRACTICES

POLICY AND PROCEDURES

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PURPOSE

This document sets forth the policy and procedures which may be observed by employees of agencies in the statewide welfare system in complying with the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 and other related applicable federal and state laws and regulations governing privacy and confidentiality of records. The statewide welfare system probably collects more sensitive, private, or confidential information on individuals than any other agency in the state. Because of this it is exceedingly important for employees of the system to be aware of the requirements of the law and abide by them. The welfare system includes the State Department of Human Services (DHS), county welfare boards, county welfare agencies, human services boards, community mental health center boards, state hospitals, state nursing homes, and persons, agencies, institutions, organizations, and other entities under contract to any of these agencies to the extent specified in the contract. This manual contains a general policy. Each responsible authority or designee within the welfare system is responsible for developing and publishing his/her own specific procedures if they are different than that described here. Although this document is designed to be an instructional manual for employees of the system, it is a public document as described in Minnesota Statutes, section 13.03, subdivision 1. Public dissemination is not encouraged as brochure #DHS-2667 (7/84) describes public, researcher, and data subjects access to data and is available for public distribution.

BASIC CONCEPTS

The Minnesota Government Data Practices Act establishes two distinct but related obligations in all public agencies in Minnesota: a) to ensure individuals are given certain rights when that agency collects, stores, and uses information about them, and b) to facilitate access to the government information which should lawfully be disclosed.

GENERAL POLICY

It is the policy of the statewide welfare system that all entities within the welfare system, their agents, and employees be informed of the requirements of the statute and that they comply both with the letter of the law and the clear legislative intent that government information be handled in such a way to promote the public's freedom to information about government activities but which also ensures individuals are given certain rights when those agencies collect, store, and use information about them. Those persons appointed Data Practices Designees (pursuant to Minnesota Statutes, section 13.02, subdivision 6) are expected to be especially knowledgeable about the statute and its application to the Department's and/or agency's programs.

INFORMATION

Any individual or employee of an agency of the statewide welfare system who has questions about procedures outlined in this manual or questions about data practices issues not covered in this manual should contact the Data Privacy Office, DHS, 4th Floor, Centennial Office Building, St. Paul, Minnesota 55155, 612/297-3173.

THE LAW

Legislative History

The subject of privacy in government did not become a hotly debated issue until after World War II. Most states, Minnesota included, had "freedom of information" laws but there was relatively little need to use these laws, basically because there was very little request for government data.

The years following the Second World War saw the invention of numerous office automation devices which allowed agencies to create, maintain, and disseminate information at an alarming rate. Individuals became concerned about the volumes of data maintained about them and to whom it was being disseminated. At the same time the public became more concerned about accountability in government agencies. Thus, the conflict arose regarding the individual citizen's "right to privacy" and the public's right of "freedom of information." This conflict finally became a national concern when the atrocities of Watergate were revealed. It was apparent at that time that some basic aspects of right to privacy and right to freedom of information had to be legislated.

Minnesota passed its "freedom of information" law in 1941, but it wasn't until 1974 that it passed a data privacy law. Minnesota was the first state in the union to pass a data privacy law. Minnesota's law even predates the federal privacy law.

There is one aspect of Minnesota's freedom of information act which should be mentioned because it continues to cause confusion. It was officially titled the Official Records Act (that portion of the Act has been repealed but the Act itself still is in effect). It required officials to permit all public records in their custody to be accessed at reasonable times. Subsequently, the Minnesota Supreme Court redefined public record to exclude the information pertaining to the process by which official decisions were reached. This created a loophole by which officials were able to keep "working papers" from the public. Interestingly, the Minnesota Government Data Practices Act does not similarly exclude working papers. Government records are defined by that statute as all data in any storage medium maintained by any government agency. Under the Data Practices Act, working papers carry the same classification as the official record.

The Minnesota Government Data Practices Act is unique in that it combines the freedom of information rights with the individual rights to privacy into one law. Most states (those that have laws legislating freedom of information and privacy of government records) as well as the federal

government have created two laws to deal with these two subjects. The seemingly conflicting rights are handled through a complex procedure of classifying data. The classification of data determines who has access.

The law was originally part of the Administrative Procedures Act, Minnesota Statutes, chapter 15, which governs the activities of government agencies. It has been amended in each legislative session since it was passed in 1974.

In 1979, it was officially retitled the "Minnesota Government Data Practices Act." In 1982, the most dramatic change in the law came in recodifying all of its provisions. It was reorganized, some sections were combined and the Act was removed from the Administrative Procedures Act to become Minnesota Statutes, chapter 13.

The Act is intended to regulate the information handling practices of all government agencies and their subdivisions. It does not generally govern the handling of data in private business, except where private business enters into certain types of contracts with the government.

REGULATIONS

The Commissioner of Administration has published rules, Minnesota Rule, parts 1205.0100 to 1205.2000, pursuant to Minnesota Statutes, section 13.07, in order to implement the Data Practices Act. These rules have the same authority as the law itself. A copy of the rules is found at the end of this document.

GLOSSARY

The following is a glossary of terms commonly used in the Data Practices Act.

<u>Term</u>	<u>Definition</u>	<u>Source</u>
Accurate	The data in question are reasonably correct and free from error.	MN Rule, section 1205.1500, subp. 2.A.
Agency	For the purposes of this manual, the State Department of Human Services, county welfare boards, human services boards, community mental health center boards, state nursing homes, and persons, agencies, institutions, organizations and other entities under contract to any of the above components of the statewide welfare system.	§13.46, Subd. 1(c)
Complete	The data in question reasonably reflect the history of an individual's transactions with that particular agency. (Omissions in an individual's history that place the individual in a false light are incomplete.)	MN Rule, section 1205.1500, subp. 2.B.
Commissioner	For the purposes of this manual, Commissioner means the Commissioner of the Department of Human Services unless it specifies otherwise.	
Confidential data on Individuals	Data which are made not public and are not accessible to the individual subject of the data.	§13.02, Subd. 3
Current	The data in question must be logically related to the agency's required and actual use of the data in its day-to-day operations	MN Rule, section 1205.1500, subp. 2.C.
Data	Records, files, items of information maintained by an agency in any storage medium, including but not limited to paper records and	MN Rule, section 1205.0200, subp. 4.

	files, microfilm, computer medium, or other processes.	
Data Subject	The individual or person about whom data are created, collected, stored, or maintained.	§13.02, Subd. 5
Data Not On Individuals	All government data which are not data on individuals. See Data on Individuals.	§13.02, Subd. 4
Data On Individuals	All government data in which any individual is or can be identified as the subject of that data unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual. It is also data on individuals if it can be used in connection with other data elements to uniquely identify an individual.	§13.02, Subd. 5 MN Rule, section 1205.0200, subp. 4.
Designee	Any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data.	§13.02, Subd. 6
Entity	Any governmental agency subject to the requirements of the Act.	MN Rule, section 1205.0200, subp. 6.
Federal Law	United States Code, rules and regulations of federal agencies as published in the Code of Federal Regulations (CFR), and federal case law, including decisions of any court in the federal judicial system.	MN Rule, section 1205.0200, subp. 7.
Government Data	All data collected, created, received, maintained, or disseminated by any state agency, political subdivision, or statewide system regardless of its physical form, storage media or conditions of use.	§13.02, Subd. 7
Individual	Individual means any living human being but does not include a vendor of services:	Minn. Stat. 13.46 Subd. 1(a)

a. Individual shall not include any fictional entity or business such as a corporation, association, partnership, or sole proprietorship even in those instances where the name of such an entity or business includes the name of a living human being. MN Rule, section 1205.0200, subp. 8

b. In the case of a minor or an individual adjudged to be mentally incompetent, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of that person, except that the responsible authority shall withhold data from parents or guardians, or individuals acting in their stead upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor. §13.02, Subd. 8

Informed Consent

a. The data subject possesses and exercises sufficient mental capacity to make a decision which reflects an appreciation of the consequences of allowing the agency to initiate a new purpose or use of the data in question. MN Rule, section 1205.1400, subp. 3.

b. That written document signed by the data subject which indicates that the person authorizes the disclosure of the information and understands the purposes and consequences of that release. See section on informed consent. §13.05, Subd. 4(d)

Investigative Data

In the welfare system, data on individuals and data on vendors of services, which are collected, maintained, used or disseminated in an investigation authorized by statute and relating to the enforcement of rules or law. §13.46, Subd. 3

Licensing Data	In the welfare system, all data collected, created, received, maintained, or disseminated by any applicable agency of the welfare system which pertains to individuals, persons, and vendors licensed or registered under the authority of the commissioner of human services under various authorized licensing functions.	\$13.46, Subd. 4
Medical Data	Data, including diagnosis, progress charts, treatment received, case histories, opinions of health care providers, laboratory reports, x-rays, prescriptions and prognosis pertaining to an individual maintained by an approved mental health clinic or center, an entity, or health care provider licensed for the purpose of providing medical services under applicable laws of the State of Minnesota; or	Minn. Stat. 13.46, Subd. 5 Minn. Stat. 144.33 Minn. Stat. 144.65
	Data collected because an individual was or is a patient or client of a hospital, nursing home, medical center, clinic, mental health center, health or nursing agency, or individual health care provider.	Minn. Stat. 13.42, Subd. 1(b)
Minor	An individual under the age of 18.	\$260.015, Subd. 10
Necessary Data	Data is deemed to be necessary if:	MN Rule, section 1205.1500, subp. 4.
	a. Required to carry out programs and functions that are expressly or indirectly authorized by a provision of state statute, federal law, or a local ordinance; and	
	b. Periodically examined, updated, modified, or referred to by the entity; or	
	c. The entity would be unable to fulfill its duties without undue or increased burden, if the particular data were not collected, stored, used, or disseminated; or	

- d. Retention of the particular data is required in the event that a legal action is brought against or by the entity; or
- e. Retention of the particular data is essential to comply with a state or federal requirements that data be retained for a specified period for the purpose of auditing, records retention, historical interest, and other similar purposes.

Nondisclosure Agreement

A signed agreement between a summary data requestor and an agency maintaining the requested private or confidential government data on individuals whereby the requestor agrees to comply with the requirements of the law in handling private and confidential data.

§13.05, Subd. 7
MN Rule, section 1205.0700, subp. 5.

It is also in the absence of a contract or agreement which specifies the sharing and handling of data, a document which an agency in the welfare system initiates with a service provider, volunteer, etc., which specifies what information will be shared, the limited access or release provisions, and other requirements to which the service provider or volunteer must adhere.

Nonpublic Data

Data not on individuals which are made by statute or federal law applicable to the data:
a) not public; and b) not accessible to the data subject.

§13.02, Subd. 9

Not Public Data

This includes private, confidential, non-public, and protected non-public data which by statute or federal law is not available to the public.

§ 13.02, subd. 8.a.

Person

Any individual, partnership, corporation, association, business trust, or a legal representative of an organization.

§13.02, Subd. 10

Person Outside	Any individual or person not employed or in anyway associated with an agency who: 1) requests summary data, or 2) any other individual or person designated by the data subject to receive the data.	MN Rule, section 1205.0700, subp. 2.B.
Political Subdivision	Any county, statutory or home rule charter city, school district, special district and any board, commission, district, or authority created pursuant to law, local ordinance, or charter provision. It includes any non-profit corporation which is a Community Action Agency organized pursuant to the Economic Opportunity Act of 1964 (P.L. 88-452) as amended, to qualify for public funds, or any non-profit social service agency which performs services under contract to any political subdivision, statewide system or state agency, to the extent that the non-profit social service agency or nonprofit corporation collects, stores, disseminates, and uses data on individuals because of that contract.	\$13.02, Subd. 11
	It includes those local government entities which are given powers of less than statewide effect by statute or executive order.	1205.0200, subp. 6.
Private Data on Individuals	Data which are made by statute or federal law applicable to the data: a) not public; but b) accessible to the individual subject of the data.	\$13.02, Subd. 12
Program	All activities for which authority is vested in a component of the welfare system pursuant to statute or federal law.	\$13.46, Subd. 1 (b)
Protected Nonpublic Data	Data not on individuals which are made by statute or federal law applicable to the data a) not public; and b) not accessible to the subject of that data.	\$13.02, Subd. 13

Public Data Not on Individuals	Data which are accessible to the public but in which individuals are not the subject of the data.	\$13.02, Subd. 14
Public Data on Individuals	Data which expressly identifies individuals but which are not classified by statute as private or confidential and which are accessible to the public in accordance with Minnesota Statutes, section 13.03.	\$13.02, Subd. 15 MN Rule 1205.020, Subp. 10
Reasonable Fee	That dollar amount charged a person by an agency for its costs involved to reproduce (and sometimes produce the data) the requested data and which includes cost of materials, labor, and any other special costs necessary to produce such copies of data from machine-based recordkeeping systems.	MN Rule, section 1205.0300, subp. 4. Minn. Stat. 13.03, Subd. 3.
Responsible Authority	The state official designated by law or by the Commissioner of Administration as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data. In any political subdivision, it means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law.	\$13.02, Subd. 16 MN Rule, section 1205.0200, subp. 13, 14, and 15.
	In the statewide welfare system the responsible authority for the various agencies is as follows:	13.46, subd. 10
	a. The commissioner of human services is the responsible authority for:	
	1. DHS central office 2. state hospitals 3. state nursing homes	

- b. The director is the responsible authority for the county welfare agency.
- c. The chairman of the board is the responsible authority for:
 - 1. human services board
 - 2. community mental health center board
 - 3. county welfare board
- d. For persons, institutions, or organizations under contract to any agency of the welfare system the responsible authority is the person specified in the contract.

Records Management Act	Means Minnesota Statutes, section 138.17.	MN Rule, section 1205.0200, subp. 11.
State Agency	Any entity which is given power of statewide effect by statute or executive order.	MN Rule, section 1205.0200, subp. 6.
Statewide System	Any recordkeeping and data administering system established by statute, federal law, administrative decision or agreement, or joint powers agreement in which data on individuals are collected, stored, disseminated, and used by means of a system common to one or more state agencies or more than one of its political subdivisions or any combination of state agencies and political subdivisions (such as the Statewide Welfare System).	§13.02, Subd. 18
Summary Data	Statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristics that could uniquely identify the individual are ascertainable. Summary data has been extracted from private and confidential data.	§13.02, Subd. 19 MN Rule, section 1205.0200, subp. 16.
Temporary Classification	Written permission granted to an agency by the Commissioner of Administration to classify data or types	§13.06, Subd. 1

of data on individuals as private or confidential, or data not on individuals as nonpublic or protected nonpublic, for its own use or for the use of other similar agencies, political subdivisions or statewide systems until a proposed statute can be acted upon by the legislature.

Tennessee
Warning

The notice which public agencies are required to provide individuals who are asked to supply private and/or confidential information about themselves. The notice must include (1) the purpose and intended use of the requested data within the collecting agency (2) whether the individual may refuse or is legally required to supply the requested data; (3) any known consequence arising from supplying or refusing to supply the data, and (4) the identity of other persons or entities authorized by state or federal law to receive the data.

§13.04, Subd. 2

Welfare
System

The Department of Human Services county welfare boards, county welfare agencies, human services boards, community mental health center boards, state hospitals, state nursing homes, and persons, agencies, institutions, organizations, and other entities under contract to any of the above agencies to the extent specified in the contract.

§13.46, Subd. 1(c)

CLASSIFICATION OF GOVERNMENT DATA

The Minnesota Government Data Practices Act defines government data as any information which is collected, created, received, maintained, or disseminated by public agencies.

All government data are presumed to be public and available to anyone, unless there is a federal law, state law, or temporary classification under (Minnesota Statutes, section 13.06), which classifies the data otherwise.

The law has a system of classifying data, which determines who will have access to data so classified.

All data are divided into categories:

1. Data Not on Individuals - Data maintained by government agencies in which individuals are not the subject of the data or individual identities are incidental to the data.
2. Data On Individuals - All government data in which an individual is or can be identified as the subject of that data.
3. Summary Data - Statistical records and reports derived from data on individuals but in which individuals cannot be identified.

Both data on individuals and data not on individuals are subclassified as follows:

Public - Accessible to anyone.

Private/Nonpublic - These data are accessible to the data subject and to government officials whose jobs reasonably require access to them. Data on individuals are private; data not on individuals are nonpublic.

Confidential/Protected Nonpublic - These data are accessible only to those government employees whose jobs reasonably require access to them. Data on individuals are confidential and data not on individuals are protected nonpublic.

The following diagram depicts this statutory classification:

GOVERNMENT DATA						
Data on Individuals		Summary		Data Not on Individuals		
C o n f i d e n t i a l	Private	Public	Public	Public	Nonpublic	P r o t e c t e d N o n p u b l i c

GENERAL REQUIREMENTS REGARDING GOVERNMENT DATA

1. All officers and agencies of the state, counties, cities, towns, school districts, municipal subdivisions or corporations or other public authorities or political entities within the state, shall make and preserve all records necessary to a full and accurate knowledge of their official activities (Minnesota Statutes, section 15.17, subdivision 1).
2. All government data collected, created, received, maintained or disseminated by a public agency is public data unless there is a statute or temporary classification which classifies the data as not public (Minnesota Statutes, section 13.03, subdivision 1). However, Minnesota Statutes, section 13.46, subdivision 2 declares that all data on individuals collected and disseminated by agencies of the welfare system is private unless there is a statute declaring the data other than private.
3. The responsible authority in every state agency, political subdivision, and statewide system must keep all records containing government data in such an arrangement and condition as to make them easily accessible for convenient use (Minnesota Statutes, section 13.03, subdivision 1).
4. The responsible authority or designee shall provide copies of public government data upon request. If the responsible authority or designee is not able to provide copies at the time of request, copies must be provided as soon as reasonably possible (Minnesota Statutes, section 13.03, subdivision 3).
5. The classification of data in the possession of an agency may change in order to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data (Minnesota Statutes, section 13.03, subdivision 4).
6. Collection and storage of public, private, or confidential data on individuals and use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the Legislature, local governing body, or mandated by the federal government (Minnesota Statutes, section 13.05, subdivision 3).
7. A responsible authority shall allow another responsible authority access to data classified as not public only when access is authorized or required by statute or federal law (Minnesota Statutes, section 13.05, subdivision 9).
8. Data shall have the same classification in the hands of the agency receiving it as it had in the agency providing it (Minnesota Statutes, section 13.03, subdivision 4).
9. A responsible authority shall allow another responsible authority in the welfare system access to data classified as restricted when access

in necessary for the administration and management of programs or is authorized or required by statute or federal law. (Minnesota Statute, section 13.46, subdivision 10.

10. Copies prepared from photographs, photostats, microphotographs, or microfilm are admissable as evidence in court and are considered the same as the original (Minnesota Statute, section 15.17, subdivision 10).

PUBLIC DATA

Definition: Public data are government data, either on individuals or not on individuals, which are accessible to anyone. The law presumes that all government data is public unless there is a state law or federal statute which provides otherwise (Minnesota Statutes, section 13.03, subdivision 1).

Criteria - data are public if:

1. A statute or federal law substantially requires that certain data be made available to the public.
2. A statute or federal law requires the collection of the data and does not classify the data as private, confidential, nonpublic, or protected nonpublic.
3. The data are collected without enabling authority and are not classified by either statute or federal law even though the data are necessary for administration and management.
4. The data are summary or statistical data derived from data on individuals and do not identify those individuals in any way.
5. Data become public in order to comply with either judicial or administrative rules pertaining to the conduct of legal actions. (Minnesota Statutes, section 13.03, subdivision 4), or are presented as evidence in court.

Examples of Public Data:

1. Personnel/staff records (to the extent specified in Minnesota Statutes, section 13.43).
2. Hospital directory information (Minnesota Statutes, section 13.42, subdivision 2).
3. Data describing the final disposition of disciplinary proceedings held by any state agency board or commission (Minnesota Statutes, section 13.65, subdivision 3).
4. Minutes taken during a meeting of a county board. (Minnesota Statutes, section 471.705.)

Release of Information:

Anyone may request access to public data, either on individuals or not on individuals, for any purpose.

The various agencies within the statewide welfare system may choose to use this policy and procedure to release records in lieu of their own policy classified as public.

Requesting Public Data:

1. Welfare publications. Publications, brochures, booklets and other documents produced in large volumes for general distribution are available upon request. Some of these are available at no cost to the requestor at local welfare system offices. Others may be available for a charge through the Minnesota State Documents Center, 117 University Avenue, St. Paul, Minnesota, 55155.
2. Rules and statutes. Copies of statutes and the rules adopted to implement statutes are available for a charge from the Minnesota State Documents Center, 117 University Avenue, St. Paul, Minnesota 55155.
3. Summary data. Any person may request that any agency of the statewide welfare system release or prepare summary data derived from private or confidential data on individuals collected by the welfare system. Such requests must be in writing and must specify explicitly and as concisely as possible what information is requested.
4. Other public government data. Access to copies of easily retrievable public information may be obtained either by verbal or written requests to the appropriate agency within the welfare system.
5. Unzoned data. Documents which contain some public information and some not public data on individuals may be inspected (by persons other than the data subject) in the following manner: A Department or agency employee will photocopy the pages containing the requested public information and will obscure any elements which constitute not public data on individuals.
6. Viewing data. Anyone who wishes to view public data maintained by the welfare system agencies may do so at the appropriate agency office during that office's regular business hours. Access may be limited by that office to specific hours in order to allow for regular business functions such as locating and re-filing of the requested information.

NONPUBLIC DATA NOT ON INDIVIDUALS

Definition: Nonpublic data not on individuals means data which are not public but are accessible to the subject of the data, if any. As used here the "subject of the data" means a person, such as a partnership, corporation, etc., but not necessarily an individual (Minnesota Statutes, section 13.02, subdivision 9 and 10).

Criteria - Data not on individuals are nonpublic if:

1. A state statute or federal law classifies the data as not public but accessible to the subject of the data, if any.

Examples of Nonpublic Data:

1. Examination Data (Minnesota Statutes, section 13.34).
2. Security Information (Minnesota Statutes, section 13.37, subdivision 2).
3. Housing Agency Negotiations with Property Owners (Minnesota Statutes, section 13.54, subdivision 4).

Release of Information - Nonpublic data not on individuals are accessible to:

1. The subject of the data, if any. (The "subject" of nonpublic data may be a company, business, or other organization, but generally is not an individual person.) The agency which receives the request must decide as to what corporation entity may receive the data. That decision should also become part of the written policy.
2. Personnel within the entity whose work assignment, as determined by responsible authority or the designee, reasonably require access.
3. Individuals, entities or persons authorized by state statute or federal law to gain access.
4. A court, pursuant to a valid court order.
5. Individuals, entities, or persons as otherwise provided for by law.

PROTECTED NONPUBLIC DATA NOT ON INDIVIDUALS

Definition: Protected nonpublic data not on individuals means data which are not public and not accessible to the subject of the data.

Criteria - Data not on individuals are protected nonpublic if:

1. A state statute or federal law classifies the data as not accessible to the public and not accessible to the data subject. (Data subject of protected nonpublic data may be a business or corporation, but is generally not an individual person.)
2. A "Temporary Classification" of specific government data as "protected nonpublic" has been approved by the Commissioner of Administration and has not expired.

Examples of Protected Non-public Data:

1. Investigative data about vendors of services to the extent specified in Minnesota Statutes, section 13.46, subdivision 3 (vendors are not defined as individual persons).

Release of Information - Protected nonpublic data not on individuals are accessible to:

1. Personnel within the entity whose work assignment, as determined by the responsible authority or the designee, reasonably require access.
2. Individuals, entities or persons authorized by statute or federal law to gain access.
3. A court, or parties to a lawsuit, pursuant to a valid court order.
4. Individuals, entities, or persons as otherwise provided for by law.

PRIVATE DATA ON INDIVIDUALS

Definition: Private data are that government data maintained on individuals in which the data subject is identifiable and which are accessible to the data subject and his authorized representatives.

Criteria - Data on individuals are private if:

1. A state statute or federal law expressly classifies the data as not accessible to the public but accessible to the individual subject of the data or his/her designated representative (MN Rule, section 1205.0200, subp. 9.A. and B.).
2. A Temporary Classification of private is pending or has been approved by the Commissioner of Administration and the Temporary Classification has not expired.
3. The law provides the data is confidential and the data subject may view the data at reasonable times (MN Rule, section 1205.0200, subp. 9.C.).
4. The law states the data is confidential and may be shown to the data subject at the discretion of the person holding the data but does not provide standards which limit the exercise of the discretion of the person maintaining the data (MN Rule, section 1205.0200, subp. 9.D.).
5. Data exchanged between governmental agencies shall have the same classification in the receiving agency as it had in the creating agency even though the data would not have a private classification if created by the receiving agency (Minnesota Statutes, section 13.05, subdivision 9).
6. A state statute or federal law classifies the data as confidential but by use makes it private. (For example, the Minnesota Treatment for Alcohol and Drug Abuse Act, Minnesota Statutes, section 254A and the Bill of Rights, Minnesota Statutes, section 144.651 talks about "confidential" records. However, since the data subject does have access to his/her records, those data are actually private.) (MN Rule, section 1205.0200, subp. 9.E.)

Examples of Private Data:

1. All welfare system agency case data about individual clients (Minnesota Statutes, section 13.46, subdivision 2).
2. Any financial record which indicates the amount of public assistance received or amount and type of services purchased for a specific client (Minnesota Statutes, section 13.46, subdivision 2).
3. County board meeting agendas which identify clients (Minnesota Statutes, section 13.46, subdivision 2).

4. Medical data on clients (Minnesota Statutes, section 13.46, subdivision 5, and Minnesota Statutes, section 13.42. providing that the criteria of Minnesota Statutes, section 144.335 have not been applied by the medical care provider).

Data Subject - Any individual has the right to know if he/she is the subject of any private data, and what those data are that any agency of the welfare system maintains. Individuals must request this information from the agency which maintains the information. (Minnesota Statutes, section 13.04, subdivision 3).

That agency will provide the data subject with instructions as to how to proceed with the request to obtain this information. These instructions will also include required procedures by which the agency verifies the requestor's identity. That procedure may include a requirement that the requestor appear in person with proper identification, notarized signature on the letter of request, or other procedure (MN Rule 1205.0400, Subp. 3) to provide sufficient information to enable the agency to verify the data subject's identity.

Release of Information - Private data maintained by agencies in the welfare system may be released under the following circumstances:

1. To the individual subject of the data or his/her authorized representative (Minnesota Statutes, section 13.04, subdivision 3 and MN Rule, section 1205.0400, subp. 2.).
2. To individuals, agencies or persons given express written permission by the data subject (Minnesota Statutes, section 13.05, subdivision 4(d)).
3. To personnel within the agency whose work assignment requires access in order to determine eligibility, amount of assistance, and need to provide services of additional programs to an individual (Minnesota Statutes, section 13.46, subdivision 2) (MN Rule, section 1205.0400, subp. 2.)
4. To individuals, agencies, or persons who are authorized by state, local or federal law to have access (Minnesota Statutes, section 13.05, subdivision 3 and MN Rule, section 1205.0400, subp. 2.).
5. To individuals, agencies, or persons who used, stored, and disseminated government data collected prior to August 1, 1975, with the condition that use, storage, and dissemination was not accessible to the public but accessible to the data subject. Use, storage, and dissemination of this data is limited to the purposes for which it was originally collected (Minnesota Statutes, section 13.05, subdivision 4(a)).
6. To a court, pursuant to a valid court order (Minnesota Statutes, section 13.46, subdivision 2(b)).
7. To parents or guardian of a minor (unless the minor specifically requests the data not be released and the responsible authority deems the nondisclosure in the best interests of the minor) (MN Rule, section 1205.0500, subp. 3.).

8. To guardian of an adjudged incompetent person (Minnesota Statutes, section 13.02, subdivision 8).
9. Individuals, entities or persons for which a state, local, or federal law authorizes a new use or dissemination of the data (Minnesota Statutes, section 13.05, subdivision 4(b)).
10. Individuals, entities or persons subsequent to the collection of the data and subsequent to the communication of the "Tennesen Warning" when specifically approved by the Commissioner of Administration as necessary to carry out a function assigned by law (Minnesota Statutes, section 13.05, subdivision 4(c)).
11. To a law enforcement person, attorney, investigator, or other agent of the welfare system acting for an agency of the welfare system in an investigation, prosecution, criminal or civil proceeding relating to the administration of a program (Minnesota Statutes, section 13.46, subd. 2(d)).
12. To administer federal funds or programs (Minnesota Statutes, section 13.46, subd. 2(f)).
13. Between personnel of the welfare system working in the same program (Minnesota Statutes, section 13.46, subdivision 2(g)).
14. To appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the individual or other individuals or persons (Minnesota Statutes, section 13.46, subdivision 2(j)).
15. There are also a number of information specific releases to specific agencies or departments which are dealt with in "Data Classification and Special Handling Procedures."

NOTE: These provisions do not apply to some mental health programs.

CONFIDENTIAL DATA ON INDIVIDUALS

Definition - Confidential data are government data about individuals which are restricted from access by the data subject and available only to those government employees whose jobs reasonably require access to the data (Minnesota Statutes, section 13.02, subdivision 3).

Criteria - Data on individuals are confidential if:

1. A state statute or federal law expressly provides that the data shall not be available to the data subject or to the public (MN Rule, section 1205.0200, subp. 3.).
2. A state statute or federal law provides substantially that the data shall not be available to anyone for any reason except employees in agencies which need the data for agency purposes (MN Rule, section 1205.0200, subp. 3.).
3. A Temporary Classification of confidential has been approved by the Commissioner of Administration and has not expired.
4. A state statute or federal law provides that the data may be shown to the data subject only at the discretion of the holding agency, and that statute provides standards which limit the exercise of the discretion of that agency (MN Rule, section 1205.0200, subp. 3.).

Examples of Confidential Data:

1. Adoption records. (Minnesota Statutes, section 259.27, subdivision 3).
2. Name of the child abuse reporter. (Minnesota Statutes, section 626.556, subdivision 11).
3. Investigative data referred to in Minnesota Statutes, section 13.46, subdivision 3.

Release of Information - Confidential data on individuals are accessible to:

1. Individuals, entities, or persons who are authorized by state, local or federal law to have access (Minnesota Statutes, section 13.05, subdivision 4(b)).
2. Employees of the holding agency whose work assignments require access (MN Rule, section 1205.0600, subp. 2.A.).
3. Individuals, agencies or persons to whom a state, local or federal law authorizes a new use or new dissemination of the data (Minnesota Statutes, section 13.05, subdivision 4(c)).
4. A court, or parties to a lawsuit, pursuant to a valid court order.

5. Individuals, entities, or persons who used, stored, and disseminated government data collected prior to August 1, 1975, with the condition that the data were not accessible to the individual subject of the data (Minnesota Statutes, section 13.05, subdivision 4(a)).
6. Individuals, entities, or persons subsequent to the collection of data and communication of the "Tennessee Warning" when specifically approved by the Commissioner of Administration as necessary to carry out a function assigned by law (Minnesota Statutes, section 13.05, subdivision 4(c)).

Data Subject - An individual has the right to know whether any agency within the welfare system maintains confidential information on him/her (Minnesota Statutes, section 13.05, subdivision 3). Upon request, the data subject may also receive the statute reference which classifies the data as confidential. The data subject will not be allowed to view or receive copies of confidential data.

To obtain this information, the data subject must contact the agency in which he/she suspects information to be maintained. That agency will provide the data subject with instructions as to how to inquire as to whether the agency maintains confidential information about him/her. (Minnesota Statutes, section 13.05, subdivision 8). These instructions will also include required procedures by which the agency verifies the requestor's identity. That procedure may include a requirement that the requestor appear in person with proper identification, notarized signature on the letter request, or some other procedure which the agency deems necessary to verify the requestor's identity.

Dual Classification - If statute classifies data as both private and confidential at the same time, the data is private (Minnesota Statutes, section 13.03, subd. 4).

SUMMARY DATA

Definition: Summary data are statistical records and reports derived from data on individuals in which individuals are not identified and from which neither their identities nor any other characteristics that could uniquely identify an individual are ascertainable (Minnesota Statutes 13.02, sub-division 19).

Criteria:

1. All data elements that could link the data to a specific individual have been removed, and
2. Any list of numbers or other data which could uniquely identify an individual is separated from the summary data and is not available to persons who gain access to or possess summary data.

Classification - All summary data are public data unless classified by a statute, federal law or temporary classification as not public (MN Rule, section 1205.0700, subp. 1.).

Examples of Summary Data:

1. DAANES (Drug and Alcohol Abuse Normative Evaluation System) summaries.
2. Statistics regarding the welfare recipient population totals and characteristics, but not names.

Release of Information - Preparation of summary data can be requested by any agency or individual. Summary data may be requested by a governmental entity if needed for the administration and management of authorized programs. All summary data requests must be in writing. (MN Rule 1205.0700, Subp. 4.)

When summary data requests are received, the responsible authority may:

1. Prepare the summary data as requested;
2. Delegate the power to prepare the summary data to another employee of the agency; or
3. Delegate this power to a person outside the agency. This person may be the summary data requestor or another person.

In order to delegate this power to a person outside the agency, two conditions must be met:

1. The person must set forth in writing the purpose for summarizing the private or confidential data and must agree not to disclose the private or confidential data to which he/she gains access. This is commonly known as a nondisclosure agreement, and

2. The agency must reasonably determine that the person's access to the data which is to be summarized will not endanger private or confidential data on individuals.

Requesting Summary Data (MN Rule, section 1205.0700, Subp. 4.) - The request must be in writing. The responsible authority or designee will respond within 10 days of his/her receipt of the request. The requestor will be informed of the estimated costs of the data, and be provided with:

1. The summary data as requested; or
2. A time schedule and cost estimate for preparing the requested summary data, if they are not available immediately. This time schedule will also include reasons why the data cannot be provided immediately; or
3. Access to the private or confidential data for the purpose of the requestor's preparation of the summary data (an agency of the welfare system should check with the Data Privacy Office in DHS before allowing researchers access to private or confidential data; or
4. A written statement to the requestor stating reasons why it has been determined that the requestor's access would compromise the private or confidential data.

Methods for preparing summary data include but are not limited to: (MN Rule, section 1205.0700, Subp. 6.)

1. Removing from a set of data, file, or record keeping system all unique personal identifiers.
2. Removing from the entity's report of any incident or from any collection of data similar to an incident report, all unique personal identifiers. Removing all unique personal identifiers includes:
 - a. blacking out personal identifiers on paper records;
 - b. tearing off or cutting out the portions of paper records that contain the personal identifiers;
 - c. programming computers in such a way that printed, terminal, or other forms of output do not contain personal identifiers.

Non-Disclosure Agreement - When the responsible authority or designee allows the requestor access to private and confidential data so that the requester can compile his/her own summary data, the responsible authority or designee will require the requestor to sign a non-disclosure agreement (Minnesota Statutes, section 13.05, subdivision 7).

The non-disclosure agreement shall contain, at minimum, the following: (MN Rule, section 1205.0700, Subp. 5.)

1. A general description of the private or confidential data which are being accessed to prepare the summary data.
2. The purpose for which the summary data are being prepared.
3. A statement that the requestor understands he/she/it may be subject to the civil or criminal penalty provisions of the Act in the event that he/she/it discloses private or confidential data.

FEEES FOR COPIES OF GOVERNMENT DATA

Unless otherwise provided for by federal law or state statute or rule, fees for copies of government data maintained by agencies in the welfare system are based on the costs of providing the services. Fees may vary among the agencies due to equipment used to make copies and personnel costs. All fees must be reasonable and consistent.

1. No Charge. When access is authorized, copies may be provided at no charge under the following circumstances:
 - a. Fees shall not be charged to persons or individuals who merely wish to view records.
 - b. The agency may choose not to charge for requests of copies, especially in circumstances when the total number of copies is two or less, or the charge is less than \$1.00.
 - c. The agency will not charge another government agency for copies usually provided as part of the normal course of business.
 - d. The agency may choose not to charge for copies it deems in its own best interests to provide.
 - e. The agency will not charge for records, documents, brochures, pamphlets, books, reports or other similar publications produced specifically for free public distribution.
2. Copies Provided With Charge. Some copies will be provided at a fixed rate when no additional compilation costs are involved or when these costs have been built into the price of the material. The acceptable charge for the DPW Central Office, State Hospitals, and State Nursing Homes, is outlined in the Procedures Manual. All other agencies will develop a flat rate schedule based on machine costs and material costs. This flat rate schedule must be available to the public by each agency. Copies which are available at the fixed charge are:
 - a. Publications, brochures, booklets and other documents produced in large volume and available through the Minnesota State Documents Center, 117 University Avenue, St. Paul, Minnesota 55155.
 - b. DPW manuals produced in limited volume and available through Special Services Division, Support Services Bureau, Centennial Building, St. Paul, Minnesota 55155.
 - c. Records, documents, pamphlets, books, and reports or other similar publications that are not normally provided or reproduced for distribution to the public.
 - d. Public data on individuals and public data not on individuals regardless of the requestor or the purpose, which are not routinely provided to the public.

- e. Private data and nonpublic data when the requestor is authorized access. (Except in situations such as l.b. above.)
3. Summary Data Costs. In addition to charging for the actual photocopies, agencies in the welfare system may charge additional labor costs to compile summary data. (MN Rule, section 1205.0700, subp. 7). Before providing the summary data, the agency will provide the requestor with an estimate of the costs associated with the preparation of the data and a time schedule in which to expect the data.
- a. Charges for summary data will be based on:
 - 1) The cost of the materials, including paper, used to provide copies.
 - 2) The cost of labor required to prepare the material.
 - 3) Any special costs necessary to produce such copies from machine based record keeping systems.
 - b. The agency will only charge for reasonable photocopying charges when the summary data requested only requires copying and no other preparation.
4. Special Charges. If a request for data involves the receipt of data which has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system which has been developed with a significant expenditure of public funds by the agency, the responsible authority or designee may charge a fee in keeping with the actual development costs of the information, in addition to the other costs allowed. The fee charged must relate to the actual development costs of the data. The responsible authority or designee must be able to provide documentation to explain and justify the fees (Minnesota Statutes, section 13.03, subd. 3).
5. Collection of Fees. If the agency determines fees for copies are necessary, all fees will be collected before releasing the copies.

The requestor must ascertain from the agency as to how payment should be made and to whom checks should be made payable. Checks for photocopying material by the state hospitals, state nursing homes, and DHS Central Office should be made out to "State of Minnesota."

INFORMED CONSENT FOR RELEASE OF INFORMATION

The informed consent for release of information is that aspect of the Minnesota Government Data Practices Act which gives the data subject the "right to control dissemination of data" about him/herself which government agencies maintain. Informed consent means that the data subject possesses and exercises sufficient mental capacity to make a decision which reflects an appreciation of the consequences of allowing the data requestor to use the data in a new way.

1. Content

- a. Usual. All consents for release of private information not provided for in statutes are required to be in writing (MN Rule, section 1205.1400, Subp. 4.B.) and (Minnesota Statutes, section 13.05, subdivision 4(d)) and must contain the following:

- . Be written in plain language;
- . Dated;
- . Designate the particular person or agencies the information will be released to (who will get the information);
- . Specify the information which will be released;
- . Indicate the specific person or agencies who maintain the information to be released (who will release the information);
- . Specify the purpose or purposes which the information will be used in the agency or by the person requesting it immediately and at any time in the future; and,
- . Contain a reasonable expiration date not to exceed one year.

This applies not only to the release forms an agency or division in the welfare system uses, but also to release forms they receive from other individuals, organizations, or agencies. The agency should not release any information unless the form complies with the above. If it does not, the agency should so inform the requestor of the requirements of the law, or obtain the data subject's consent on their own forms.

For a sample of a release, see the Samples of Forms.

- b. For Chemical Dependency. Consents for release of private information on individuals who are patients/clients of chemical dependency programs must follow the Federal data privacy requirements. The Federal requirements specify that the following be included: (48 CFR 2.31)

- . The name of the program which is to make the disclosure;
- . The name or title of the individual or the name of the organization to which disclosure is to be made;
- . The name of the patient;
- . The purpose of the disclosure;
- . How much and what kind of information is to be disclosed;

- . The signature of the patient, or (when required for a patient who is a minor) the signature of a person authorized to give consent;
- . The date on which the consent is signed;
- . A statement that the consent is subject to revocation at any time except to the extent that the program has already disclosed or received the data;
- . The date, event, or condition upon which the consent will expire if not revoked before that date, event, or condition. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

If the chemical dependency program is also an agency of the welfare system, such as a state hospital that CD program must also follow the Minnesota Government Data Practices Act. The requirements of the Federal and State consents are basically the same. Minnesota law requires that the consent expire in a maximum of one year which is compatible with the Federal requirement of specifying a date, event, or condition on which the consent will expire.

The provision of revocation contained in the federal CD regulations is not required under Minnesota law, but is one that would be beneficial to our own purposes.

For an example of a CD release, see the Samples of Forms.

2. Insurance Company Releases - (Minnesota Statutes, section 13.05, subdivision 4(d)(7)).

The law provides that authorizations given in connection with: 1) applications for life insurance; or 2) non-cancellable or guaranteed renewable health insurance have an expiration date not to exceed two years after the date of the policy. The law also states that the release must identify that it is for this purpose and it must also comply with the specifications outlined in #1 Content, above.

Staff in agencies in the statewide welfare system should be aware of these special provisions when they receive requests for information about employees, clients, or patients from insurance companies.

3. Valid Signers

- a. Minors - Although in most circumstances the parents or guardian will sign a consent for their minor child, the rules (MN Rule 1205.0500, Subp. 2a) provide that minors may sign consents for release of information. (They also have the right to request the nonrelease of data.) The procedure of having minors sign releases is not recommended since it may result in different interpretations by the agencies involved. An agency which receives a consent for release of information or is contemplating asking a minor to sign a consent for release of information must make a decision as to whether it is truly an informed consent. An informed consent is based on the criteria specified in the section Data

Classifications and Special Handling Procedures under "Minors." If the minor's ability to comprehend is questionable, then the agency staff should request the parent or guardian to sign the release.

Agencies should assume that both parents have access and signature authority for their minor children, even if the parents are divorced or separated, unless the agency is provided with a court document which specifies that a parent does not have access rights. If parental rights are terminated, access rights and signature rights are also terminated.

- b. Release Signed by Mentally Retarded Person - A mentally retarded person may sign a valid consent for release of information. A person is deemed to have sufficient mental capacity to sign an informed consent even if he/she is retarded. (See also next section on state wards, adjudged mentally incompetent and other valid signers.)
- c. Release Signed by State Ward, Adjudged Mentally Incompetent, or Person Under Personal Guardianship - The guardian must sign the consent for release of information.

Informed consent implies that the person has sufficient mental capacity to understand the meaning, purpose, and consequences of the release of the information (MN Rule, section 1205.1400, subp. 3.). In the case of a state ward, adjudged mentally incompetent or person under guardianship, the courts have determined that the person does not have this capacity. (See also Data Classifications and Special Handling Procedures.)

- d. Other Valid Signers - The law (Minnesota Statutes, section 13.02, subdivision 8) also allows "persons acting as parent or guardian in the absence of a parent or guardian" to sign the consent. Therefore, it is permissible for a stepparent, foster parent, or social worker to sign a release.

In the case of a state ward, the responsible county social worker may sign the consent form. If the social worker's authority is questioned, the social worker should be prepared to provide the person copies of the guardianship papers to prove that the client is a state ward.

NOTE: Be aware that the wording "in the absence of a parent or guardian" opens an area for agencies to question whether the parent is really absent. Therefore, when at all possible, agency representatives should seek the consent of the actual parent or guardian in instances of release of information about minors instead of relying on consents signed by stepparents or foster parents.

4. Confidential Information - The data subject cannot authorize the release of confidential information. The release or sharing of confidential data is allowable only among those agencies who are authorized by statute or federal law to have access (MN Rule, section 1205.0600, subp. 2.B.). Staff in agencies in the welfare system who receive a request for confidential data but who are unsure whether the requestor is entitled access should check with their responsible authority, agency attorney, or the Data Privacy Office in the Department of Human Services.

5. Duration - The data subject may revoke the consent for release at any time, as long as the requested release has not yet occurred. If an individual requests revocation of the release after the data has been released, he/she may be told that the accuracy or completeness of the data can be challenged but the data will not be destroyed simply because he/she revoked his/her consent after the release has occurred.

The effective time period for the release can be less than one year, but not exceeding one year (Minnesota Statutes, section 13.05, subdivision 4(d)(7) except in the case of insurance releases. (See section on Insurance Company Releases.)

6. Implied Consent - (MN Rule, section 1205.1400, Subp. 4.C.). This provides that agencies may use data for a new or different purpose if reasonable efforts to contact the data subject to request that individual to sign an informed consent have failed. Failure to contact does not mean the data subject's rejection or refusal to sign a consent. Reasonable efforts shall include:

a. Depositing in the United States Mail at least two communications requesting informed consent, postage prepaid and directed to the last known address of the data subject.

b. Waiting for a period of not less than 60 days for a response to the second request.

7. Partial Release - A person may consent for the release of some but not all of the requested data (MN Rule 1205.1400, Subp.4.D.) described in the consent for release.

8. Duress - A consent for release of information must not be forced, (MN Rule, section 1205.1400, Subp. 4.A.). The agency representative is required to fully explain to the data subject whether obtaining or releasing the data is necessary for receiving services and any consequences of it, but may not pressure, threaten, cajole, or mislead a data subject into giving consent.

9. Consequences - Prior to asking an individual to sign an informed consent for the release of information, the agency representative must explain to that individual the consequences of giving the informed consent (MN Rule, section 1205.1400, Subp. 4.B.).

TENNESSEN WARNING

The Tennessean Warning is a statement which must be provided to data subjects any time they are asked to provide private or confidential information about themselves (Minnesota Statutes, section 13.04, subdivision 2). It is analogous to the Miranda Warning given by law enforcement agencies and was named after the Minnesota senator who originally sponsored the Data Practices Bill. It is also called a Privacy Rights Statement. The Tennessean Warning is a provision in the Data Practices Law which deals with the individual's "right to know" what a government agency does with the information that the agency collects about that individual and who it routinely shares it with. It informs the individual as to which agencies authorized by statute, federal law or temporary classification will receive the data.

1. Content - A proper Tennessean Warning consists of five elements. It must tell the data subject:
 - a. The purpose of the data within the requesting agency (why the data is being collected.)
 - b. How the data will be used within the agency collecting the data;
 - c. Whether the data subject may refuse or is legally required to supply the data requested;
 - d. The consequences to the data subject of supplying or refusing to supply the data; and
 - e. The identity of other persons or entities authorized by state or federal law to receive the data. (Who will have access to the data.)

The Tennessean Warning may take one of two forms. It may be a: 1) program or activity specific Tennessean or it may be a 2) broader version designed to deal with all programs or activities of the collecting agency.

An example of the broad version is found in the Samples of Forms. This type of Tennessean Warning informs the data subject of all of the agencies with whom information may be shared under all programs. The staff person should explain the specific information which is authorized by statute to be disclosed to applicable agencies on the list. For example, the Tennessean Warning does not give the welfare agency authority to share information about adoptions with the U.S. Department of Agriculture. Rather, the information which may be shared with the Department of Agriculture relates to specific information regarding the Food Stamp Program (7 CFR 271-293). Food stamps is a Department of Agriculture program administered by welfare.

2. Requirement - The importance of giving an individual the Tennessean Warning ^{is} reinforced as the law forbids any agency to collect, store, use, or disseminate private or confidential data on an individual for

any purpose except those stated to the individual at the time the data was collected (Minnesota Statutes, section 13.05, subdivision 4). In other words, if the agency has failed to notify a data subject of the use or dissemination of a particular piece of data even if there is statutory authority for the dissemination the data may not be used or disseminated for that purpose (unless a signed consent for release is obtained or another safety valve applies.)

3. Safety Valves - The law provides several safety valves if a proper Tennessen Warning was not given: (Minnesota Statutes, section 13.05, subdivision 4)
 - a. Data which was collected, used, and disseminated for specific purposes prior to the effective date of the Data Practices Act (August, 1975) may still be collected, used, and disseminated for those purposes.
 - b. Agencies may apply to the Commissioner of Administration for new use of data permission.
 - c. Data may be disseminated in a new way if a new statute is passed, subsequent to the collection of the data which mandates a new use of the data. The agency Tennessen Warning should also be revised to reflect that new use.
 - d. The agency may obtain an informed consent signed by the data subject which authorizes the agency to use the data in a way not previously communicated on the Tennessen Warning.
4. Conditions - The law requires that anytime an individual is asked by any staff person in any agency of the statewide welfare system to provide private or confidential information about himself/herself a Tennessen Warning must be given to that individual (Minnesota Statutes, section 13.04, subdivision 2). Certain conditions must be met as follows:

Give Tennessen

- . Data subject is individual
- . Data is private or confidential
- . Data is requested
- . Data is about individual data subject

Do Not Give Tennessen

- . Data subject is corporation, business, or other non-individual
- . Data is public, nonpublic, or protected nonpublic
- . Data is volunteered
- . Data is about third party

5. Examples of typical incidents when a Tennessen Warning must be given are:
 - a. At the beginning of each and every interview or counseling session with a client.
 - b. During telephone conversations, if the person is asked to provide private information about himself/herself.
 - c. To data subjects at the beginning of a child or vulnerable adult abuse investigation.

- d. To persons who apply for adoption services.
 - e. To persons who apply for a license under any one of the authorized welfare licensing programs.
6. Relationship to Informed Consent - The Tennessee Warning and the informed consent for release of information are similar in that they both deal with the release of data. The informed consent for release of information, however, provides the data subject with an opportunity to control disclosure of information about him/her maintained by government agencies. The Tennessee Warning, on the other hand, is an attempt to provide the individual with basic information as to what an agency does with the data it maintains about him/her and who it routinely shares that data with. A signed consent for release of information must be obtained when there is no statutory basis for the release of data. A signed consent for release of information should also be obtained when there is statutory authority but the agency has not provided the individual with a Tennessee Warning. Data may only be used by an agency in accordance with the purposes it informed the data subject when the data was collected.
7. Personnel - Responsible authorities must provide all job applicants and employees with a Tennessee Warning. This Tennessee Warning must provide the same four elements of information as that given to clients about private information collected from them. These four elements are:
- a. The purpose and use of the information.
 - b. The legal authority for requesting the information.
 - c. The consequences to the individual of either providing or failing to provide the information.
 - d. The identity of other individuals or entities authorized to receive the data.

Some of the information which should be considered in an employee Tennessee Warning are contained in the form found in the section entitled "Samples of Forms" at the end of this document.

8. The Format - The form of the Tennessee Warning will alter depending upon the circumstances. At the time of an individual's first in-person contact with an agency that person should be provided with the complete, written version of the Tennessee Warning. If emotional, physical, or mental condition or lack of communication skills of the person prevents or greatly interferes with that person's ability to comprehend, the Tennessee Warning should be given verbally or distributed to the relative, significant other, or other person accompanying the data subject.
- a. Verbal Communication - An verbal communication is the only method of providing a Tennessee Warning in telephone conversations. It is also an acceptable way when the person has reduced communica-

tion skills such as being blind or unable to read. It may also be used during subsequent contacts with an individual as a reminder that current information requested is also covered by the original Tennessee Warning. If the individual data subject does not remember the original Tennessee Warning, the agency employee should provide him/her with a Tennessee Warning. Case file should contain a notation of why the Tennessee Warning was given verbally and that it was, in fact, given.

A suggested format for a verbal Tennessee Warning which can be used either over the phone or in subsequent personal contacts with persons is as follows:

Before you provide information, we would like to inform you that the information you provide is generally private. You are not required to answer the questions asked, but obviously, we cannot help you or investigate the matter if you do not provide us with some information. The information you provide may be shared with other staff in the statewide welfare system whose jobs require access and with staff in other agencies as provided by law. The information you give us will be used to provide the service you request or investigate the situation you report.

- b. Written with Signature - The law does not specify that the Tennessee Warning be in writing or signed, but this method is obviously the preferred method since it is concrete proof the Tennessee Warning was given. If this method is used, one copy should be placed in the data subject's file and the data subject should be given another copy to take home.
 - c. Written without Signature - This means provides the second best protection against lawsuit, especially if the case file contains a notation that the Tennessee Warning was given and the agency privacy policy outlines the circumstance under which the Tennessee Warning is given.
9. Forms - All forms which ask for private or confidential information must contain a Tennessee Warning (MN Rule, section 1205.1300, Subp. 4.B.). If the Tennessee Warning cannot be included on the form, then the individual should receive a Tennessee Warning on a separate sheet at the same time he/she is asked to complete the form.
10. Chemical Dependency Programs - Public chemical dependency treatment agencies in the statewide welfare system are required to give their patients a Tennessee Warning whenever they ask their patients for private or confidential information about themselves. However, due to the restrictions on the release of chemical dependency patient data, the substance of this Tennessee Warning will vary considerably from the format of the Data Privacy Tennessee Warning. It should specify the potential recipients of data under Minnesota CD law, and those agencies

and conditions of release of data if the CD agency has entered into a qualified service organization agreement with the local county welfare department.

The Federal Regulations on Confidentiality of Alcohol and Drug Abuse Records also require a type of Tennessee Warning which they call "Notice to Patients of Federal Confidentiality Requirements." Although the purpose of the Federal Notice and the State Tennessee Warning are approximately the same, the required content differs and conditions for use differs. The Federal regulations require that the Notice must be given to the patient at admission or as soon thereafter as the patient is capable of rational communication. The Tennessee Warning on the other hand, must be given whenever you ask for private or confidential data from your client. This includes the time of admission if you ask for private or confidential data from your patient, as well as at any other time during the patient's treatment.

The Tennessee Warning should also be added to all forms used by CD agencies in the welfare system on which you ask your client for private or confidential information. It is possible that the Tennessee Warning requirements could be included in the Federal Notice. It may not be practical to include the combined Federal Notice and Tennessee Warning on all forms.

The Federal Notice to Patients of Federal Confidentiality Requirements must include: (48 CFR 2.22)

1. A citation to the Federal CD law and regulations;
2. A description of the limited circumstances under which a program may disclose outside the program information identifying a patient as an alcohol or drug abuser;
3. A description of the limited circumstances under which a program may acknowledge that an individual is present at the facility;
4. A description of the circumstances under which alcohol and drug abuse patient records may be used to initiate or substantiate criminal charges against a patient.
5. A statement that information related to a patient's commission of a crime on the premises of the program or against personnel of the program is not protected.
6. A statement that the Federal law and regulations do not prohibit a program from giving a patient access to his or her own records.
7. A statement of the criminal penalty for violation of the Federal law and regulations.
8. An address where suspected violations of the Federal law and regulations may be reported.

A sample of a Notice to Patients of Federal Confidentiality Requirements, with the incorporated Tennessee Warning, is in the Sample of Forms section.

WELFARE SYSTEM RESPONSIBILITIES

Responsible Authority - Each agency is required to either appoint a responsible authority or to determine what official of the agency is legally required to be the responsible authority. The glossary on page 10 identifies the responsible authorities for the various agencies in the welfare system. If the responsible authority for an agency is not specifically listed, the Minnesota rules governing data practices contain guidelines to assist in making a determination as to whom is the responsible authority. The responsible authority is the individual who is responsible for assuring that the agency complies with the Minnesota Government Data Practices Act.

Service - It is the policy of the DHS and all agencies comprising the state-wide welfare system that its employees handle all information requests promptly, courteously, and as conveniently as possible for the requestor. The law requires the responsible authority in every state agency, political subdivision and statewide system to keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use (Minnesota Statutes, section 13.03, subdivision 1).

Identifying Private or Confidential Data - Each agency is required to review all of the types of data on individuals it maintains to determine which types of data are classified as private or confidential according to state statute or federal law (Minnesota Rules, 1205.0800, Subpart B). A form for this procedure is included in the Data Practices Act Rules, 1205.2000, Subp. 5.

Public Access Procedure - Each agency is required to establish procedures to ensure that requests for access to public government data maintained by the agency are received and complied with in an appropriate and prompt manner (Minnesota Statutes, section 13.03, subdivision 2).

The Data Privacy Office will publish access procedure brochures. Copies of these are available from DHS Forms Supply, Centennial Office Building, St. Paul, Minnesota 55155. Any agency in the welfare system is encouraged to use these brochures if they meet their needs. The responsible authority of the agency must review the information given to ensure that the procedure described corresponds with his/her agency procedure. If there are discrepancies, the responsible authority must devise an access brochure for his/her agency.

Tennessee Warning - Tennessee Warning is the title given to the notice described in Minnesota Statutes, section 13.04, subdivision 2, which requires each agency to give individuals when the agency collects private or confidential information from them. A complete discussion of the Tennessee Warning is found on page 34. The Tennessee Warning provides individuals with the following information:

1. Why the data is being collected and how it will be used within the agency collecting it;
2. Whether the individual is legally required to provide the data or may refuse to do so;

3. What the consequences are to the individual of either providing or not providing the data; and
4. The identities of other persons and agencies who have a legal right to have access to the data being provided.

The DHS has developed a sample Tennessee Warning which was designed to meet the requirements for most programs of the welfare system. This form is a model. Agencies may choose to use it for their own or may choose to develop their own. The form is NOT stocked by DHS Forms Supply. Samples of these forms are distributed in informational bulletins. Additional copies may be obtained from the Data Privacy Office.

The responsible authority must determine how the Tennessee Warning will be given by staff in his/her agency. It can appear on all data collection forms, be a separate document, or other method. It may be a signed, carbonated form, or it may be verbal (preferably only for telephone conversation).

The agency then must take appropriate steps to ensure that the data collected is used and disseminated consistent with what was stated in the Tennessee Warning (Minnesota Statutes, section 13.05, subdivision 4).

Individual Access Rights - Each agency must develop a written procedure to ensure that individuals who are the subjects of government data are provided with certain rights (Minnesota Statutes, section 13.04). Individuals have the right to:

1. Be informed that the agency is maintaining data about them and whether the classification of the data is public, private, or confidential;
2. Have access to public and private data about him/her at no cost to the individual;
3. Receive copies of data at reasonable cost; and
4. Challenge the accuracy of information maintained about them by an agency, including the right to be notified of their ability to appeal any adverse decision regarding their challenge to the Commissioner of Administration.
5. Access is restricted to only those persons who have access rights.

Each agency must prepare a public document which describes how the rights of data subjects is handled in the agency. The document must include a description of the specific procedures which are in effect in the agency to ensure that individuals gain access to public or private data about them.

The DHS publishes a brochure which describes this procedure. It is available from DHS Forms Supply. Centennial Building, St. Paul, Minnesota 55155. As with the Public Access Brochure, the responsible authority must review the procedure to see to it that it conforms to his/her own agency procedure. If it does not, the agency must develop its own document.

Public Document Describing Data - Since August 1, 1977, each agency has been required to prepare and update annually on August 1, a document to be made available to the public which describes the data maintained by the agency which are classified as private or confidential (Minnesota Statutes, section 13.05, subdivision 1).

The DHS helps agencies prepare this document by developing a master document containing the forms mandated by DHS. Agencies must then add their unique forms to this document, attach copies of the forms, and have the document available to the public.

Summary Data Procedure - The Minnesota Government Data Practices Act and the Minnesota rules require each agency to establish procedures to handle requests for access to or preparation of summary data (Minnesota Statutes, section 13.05, subdivision 7).

This procedure is described in the access brochures available from DHS Forms Supply. Each agency responsible authority must ensure that the procedure described reflect his/her agency procedure. If it does not, the responsible authority must develop his/her agency procedure for access to or compilation of summary data.

Responsible authorities shall permit historians, scholars, and other researchers full convenience (including desk space, if available) and comprehensive accessibility to government data. Private or confidential data will have restricted access, but summary data and public data will be available (Minnesota Statutes, section 13.03, subdivision 2). Researchers who desire to summarize private or confidential data may be permitted access to this data if they sign a nondisclosure agreement (Minnesota Statutes, section 13.05, subdivision 7) and the designee determines that access will not compromise the data.

All agencies and divisions in the statewide welfare system will prepare summary reports from private and confidential data maintained by them upon request. The request for summary data must be in writing. The person requesting the summary data must pay for it in advance. Costs of summary data will be based on labor and materials needed to produce the report. In some cases the agency designee will allow a person outside the agency to compile his/her own summary data if the person sets forth, in writing, his/her purpose and agrees not to disclose the private or confidential data, and the agency reasonably believes that the access will not jeopardize the private or confidential nature of the data (MN Rule, section 1205.0700, subp. 4). (See Nondisclosure Agreement on page 26.)

Notice to Minors - Rules require each agency to establish a procedure to ensure that minors on whom the agency maintains private data, are notified that they have the right to request that the data about them be withheld from their parents (MN Rule 1205.0500). The agency must have procedures in place to handle these requests from minors and to make a determination to comply with the the requests. This determination is based on what is in the "best interest" of the minor (which is described in the section on Special Handling, page 71).

Data Review Plan - Each agency must prepare a plan to review all of the data on individuals collected and maintained by the agency. The rules require this plan to have been completed by March, 1983. The objective of this plan is to determine whether or not the continued collection and maintenance of data is necessary. The rules contain guidance on what constitutes "necessary data." Once the agency makes the determinations of what constitutes "necessary data," the rules require the agency to cease collecting unnecessary data and to lawfully dispose of previously collected unnecessary data (MN Rule 1205.1500, Subp. 1).

Costs - Agencies within the welfare system may choose to charge for photocopying and other preparation costs. The fee for these services will vary among agencies but will be based upon material costs, labor costs, mailing costs and/or other special charges incurred by that agency (Minnesota Statutes, section 13.03, subdivision 3). Fees charged by the State DHS, State Hospitals, and State Nursing Homes, are based on determinations outlined in the Procedures Manual. Other agencies of the welfare system will establish their own fees in accordance with MN Rule, section 1205.0300, subp. 4.

Explanation - Agencies must, upon request, explain the meaning of data which are unclear, contain acronyms, or are coded in any form (Minnesota Statutes, section 13.03, subdivision 3).

Reasons for Denial - When the responsible authority determines that requested data are not accessible, the responsible authority shall inform the requestor verbally (if the request is in person) at the time of the refusal or in writing as soon thereafter as possible. If the person requests a written denial, this written denial must include the statute, federal law, or a temporary classification upon which the denial was based (Minnesota Statutes, section 13.03, subdivision 3). See Samples of Forms for a sample of a denial of access form.

Storage and Security of Records - The responsible authority or designee in each agency or division of the statewide welfare system has the responsibility to ensure that only those employees whose jobs require access to private and/or confidential data on individuals have access. It is also the responsible authority or designee's responsibility to ensure the security of private and confidential data (Minnesota Statutes, section 13.05, subdivision 5). This may be done by any or all of the following means (or other means):

1. Locking storage file
2. Secured work area
3. Library style check out system.

Transfer of Data - Data which is transferred to state agencies, political subdivisions, or statewide systems by another state agency, political subdivision, or statewide system must maintain the same classification in the receiving agency as it had in the creating agency (Minnesota Statutes, section 13.03, subdivision 4).

Copyright - Agencies in the statewide system may obtain copyrights or patents for computer software programs or components of a program created by them. If a patent or copyright is obtained, the data is maintained as non-public data (Minnesota Statutes, section 13.03, subdivision 5).

Time Limits - The responsible authority shall see to it that the time limits imposed by the Act are strictly adhered to.

1. Copies of public data shall be provided "as soon as reasonably possible" (Minnesota Statutes, section 13.03, subdivision 3). This does not mean that requests for public data can be ignored until all other work is accomplished. Work on compiling copies should begin immediately. As a matter of courtesy the responsible authority should send a letter to the public data requestor which: 1) acknowledges receipt of the request, and 2) gives the requestor an estimate of the time schedule needed to comply with the request, if the request cannot be honored immediately.
2. The law states that private records will be available to the data subject whenever new data has been added. An agency may choose to limit access to once every six months if no new information has been added to the file. If there is a dispute pending or judicial proceedings in progress, the client and his legal representative may have access to the record as frequently as requested (Minnesota Statutes, section 13.04, subdivision 3).
3. All requests for copies of private data must be acknowledged within five days of the date of the request. If the request cannot be granted within five days (excluding Saturdays, Sundays, and legal holidays), the responsible authority must inform the requestor of the delay. The responsible authority then has an additional five days (excluding Saturdays, Sundays, and legal holidays) in which to comply with the request (Minnesota Statutes, section 13.04, subdivision 3).
4. The responsible authority has 30 days in which to respond to a request which contests the accuracy or completeness of private data. The individual subsequently has 60 days to appeal the responsible authority's decision if the responsible authority has informed the individual of his/her right to appeal. If the responsible authority has not informed the individual of his/her right to appeal a contest of accuracy or completeness to the Department of Administration, that individual has 180 days in which to file an appeal (Minnesota Statutes, section 13.04, subdivision 4).
5. The responsible authority must acknowledge requests for summary data within 10 days of the receipt of the request. If the summary data cannot be provided within 10 days, the responsible authority must so inform the requestor and provide an estimated time as to when the data will be provided (MN Rule 1205.0700, Subp. 4).

Training - The responsible authority shall:

1. Prepare training programs whose objective is to familiarize agency personnel with the requirements of the act (MN Rule 1205.1100 B.).
2. Direct staff that private or confidential data collected prior to August 1, 1975, shall not be used, stored, or disseminated for any purpose, unless that purpose was authorized by the enabling authority which was in effect at the time the data was originally collected (MN Rule 1205.1300, Subp. 2.C.).
3. Educate entity personnel as to the authorized purposes and uses of data (MN Rule 1205.1300, Subp. 5.A.).

The Data Privacy Office of the Department of Human Services will conduct training in data privacy for agencies of the statewide welfare system upon request from the responsible authority, but will not be responsible for fulfilling the responsible authority's obligations in this area.

DATA COMPLAINTS, CONFLICTS, APPEALS AND LAW SUITS

All employees of the welfare system are charged with the responsibility of maintaining complete, accurate, current, and necessary data (MN Rule, section 1205.1500, subp. 2. and 4.). However, conflicts and disagreements may arise regarding the content and/or handling of data. Responsible authorities and designees are urged to handle these conflicts promptly and equitably at the local level so appeals and lawsuits can be kept to a minimum.

If the local agency or division cannot resolve the dispute, the law provides the individual data subject various means to insure that the data are maintained according to law. (NOTE: The law does not provide that nonindividuals such as corporations be allowed to contest the accuracy or completeness of data.)

Contest the Accuracy and Completeness (Minnesota Statutes, section 13.04, subdivision 4.)

1. Notification - If a data subject who views the data about himself/herself feels that the data maintained by an agency or division within the welfare system are inaccurate or incomplete, that person may write to the responsible authority. A detailed description of the nature of the disagreement must be included. Since the data subject cannot view confidential records, he/she may not contest the accuracy or completeness of these records without securing a valid court order.
2. Reply - The responsible authority must reply within 30 days of the receipt of a contest of accuracy or completeness of data.
 - a. If the conflict arises in an agency of the welfare system of which the Commissioner of Human Services is not the responsible authority, the responsible authority or designee will review the data and the complaint. The responsible authority or designee may wish to consult the agency attorney or the Data Privacy Office in DHS. A decision will be made in accordance with (1) or (2) below:
 - b. If the conflict arises in a state institution or DHS Central Office, the institution or bureau will consult the Attorney General's Office and/or the Data Privacy Office. A decision will be made in accordance with (1) or (2) below.
 - (1) Action Agreement - If the agency agrees the information is unnecessary, it will destroy the information which is contested in accordance with approved records destruction procedures. If it agrees that the data are inaccurate or incomplete, it shall correct the data and make reasonable effort to notify past recipients of the data corrections made. The data subject can specifically request that these notices be sent to specific agencies or individuals.

- (2) Dispute - If the agency is convinced that the contested data are accurate, complete and correct, the data subject will be informed of this decision. The data in dispute shall be disclosed to third parties only if the individual's statement of disagreement is included with the disclosed data.

Administrative Appeal (MN Rule, section 1205.1600)

The law provides for an appeal process (after step 2.b.(2) above) if the responsible authority and the data subject cannot agree that the data are accurate and complete. The data subject has 60 days to file an appeal after he/she is informed about the agency's decision and his/her right to appeal. If the agency has not informed the data subject about his/her right to appeal, he/she may have 180 days in which to file an appeal.

This appeal should be submitted in writing to:

Commissioner of Administration
50 Sherburne Avenue
St. Paul, MN 55155

Although the law does not require it, it would be beneficial if a carbon copy is sent to:

Data Privacy Office
Commissioner of Human Services
Fourth Floor, Centennial Office Building
St. Paul, MN 55155

A carbon copy should also be sent to the agency involved in the dispute.

The appeal should contain the following information:

- a. Data subject's name, address and phone number.
- b. The name and address of the Commissioner of Human Services. In cases where the dispute involves an agency of the welfare system, the agency designee's name and address should be included.
- c. Description of the dispute and the data which gave rise to it.
- d. Remedy sought.

Complaints

Any person who wishes to complain about the manner in which his/her request for government data was handled may file a written complaint with the responsible authority or designee of the agency which maintains the information. Complaints about the handling of data in the state hospitals, state nursing homes, or in the central office of the DHS should be submitted to:

Data Privacy Office
Special Services Division
Fourth Floor, Centennial Office Building
St. Paul, MN 55155

Complaints about the handling of data in other agencies in the welfare system should be addressed to the responsible authority of that agency.

Complaints arising from concerns about program issues not specifically dealing with data practices issues should be addressed in accordance with the complaint procedures established for that program. Program complaint procedures are available from the agency providing the service.

Lawsuits (Minnesota Statutes, section 13.08)

The law authorizes lawsuits:

- a. To seek damages resulting from violations of the Government Data Practices Act.
- b. To prohibit the agency from conduct allegedly in violation of the statute.
- c. To compel the agency to comply with the provisions of the statute.

The data subject may want to seek the services of a private attorney in order to pursue a lawsuit.

Penalties (Minnesota Statutes, section 13.09)

The law provides that in cases of willful violation a political subdivision, statewide system, or state agency may be liable for exemplary damages of not less than \$100, nor more than \$10,000 for each violation (Minnesota Statutes, section 13.08, subdivision 1). Willful violation of the statute by a public employee is just cause for suspension without pay or dismissal. (Minnesota Statutes, section 13.09)

A person who suffers damages as a result of the violation may be awarded compensation for the damages, costs, and reasonable attorney fees. On the other hand, if the court determines that the suit is frivolous and without merit, it may award reasonable costs and attorney fees to the responsible authority.

FORMS

There are several areas of concern when forms are used to collect data on individuals. These concerns are:

- A. Collecting data which is truly necessary for administering a program;
- B. Maintaining data that is accurate, complete, and current for the purposes for which it was collected;
- C. Including the Tennessee Warning on any form which collects private or confidential data on individuals;
- D. Keeping data in such a fashion that it is convenient for easy use; and
- E. The requirements of the Federal Privacy Law when Social Security numbers are requested.

A. Necessary Data

Minnesota Statutes, section 13.05, subdivision 3 states, "Collection and storage of public, private, or confidential data on individuals and use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the Legislature, local governing body, or mandated by the federal government." Stated simply, if you don't need a particular data item, don't ask for it. It is the responsible authority's duty to insure that all agency data are reviewed to determine that each data element is required to carry out the associated program or activity.

Minnesota Rule, section 1205.1500, subp. 4. gives guidelines for determining whether a data item is necessary:

1. Data are necessary if the particular data are both required to carry out programs and functions that are expressly or indirectly authorized by a provision of state statute, federal law, or a local ordinance; and periodically examined, updated, modified, or referred to by the entity; or
2. Data are necessary if the entity would be unable to fulfill its duties without undue or increased burden or expense, if the particular data were not collected, stored, used, or disseminated; or
3. Data are necessary if retention of the particular data are required in the event that a legal action is brought against or by the entity; or
4. Data are essential if retention of the particular data are essential to comply with a state or federal requirement that data be retained for a specified period for the purposes of auditing, records retention, historical interest, and other similar purposes.

There are a variety of methods to determine which data are necessary and which are not.

1. Determine which agency forms collect data on individuals. These forms should be listed on the forms inventory which is required by the Act to be updated every August 1.
2. Review each data item which is requested on each form.
 - . Do any seem out of place, redundant, or unnecessary?
 - . Are there any blank spaces labeled "comment" or "remarks" where these are clearly not needed?
 - . Are questions or items worded in such a way that people would normally divulge more data than the agency requires for its purpose?
 - . Are questions or items generally objective (factual) in nature, rather than subjective (calling for conclusions, judgments, opinions, etc.)?
3. Forms which use the foregoing questionable data collection practices should be separated from those which are acceptable. Questionable items on forms should be reviewed with those agency personnel who use the form regularly to determine the necessity and relevancy of the data elements in question. Can these items be reworded or eliminated entirely?

Ultimately, the "necessity" question is a judgment call, and the process can even involve checking statutes and rules to determine the legitimate goals of a given program. It is essential that these questions be raised for any new or existing form in order to keep agency data collection to that necessary for program purposes.

4. After going through steps 1-3, you should have a list of data elements or questions which should be revised or eliminated on your agency's forms. This list should be given to those who are responsible for ordering forms to be reprinted. These people should ensure that the requested changes are incorporated into the revised form. If the changes or deletions are extensive, you may find that the form can be reprinted in a different format with potential savings to your agency.

The DHS requires all central office forms requestors to complete a form which asks these questions. This form must be completed before a form is ordered. After reviewing your data collection techniques, and program purposes, you may find some data that you feel unnecessary to maintain. This data should be disposed of according to your agency's records disposition procedures.

B. Accurate, Current, and Complete Data

Minnesota Rule 1205.1500, subp. 2, defines these terms as follows:

1. Accurate means the data in question is reasonably correct and free from error.

2. Complete means that the data in question reasonably reflects the history of an individual's transactions with the particular entity. Omissions in an individual's history that place the individual in a false light shall not be permitted.
3. Current means that the data in question must be logically related to the entity's required and actual use of the data in its day-to-day operations.

Although these questions apply themselves most readily to the data review plan required under the Data Practices Act, they also have implications about how questions are phrased on forms. Questions should be worded to encourage accurate and complete answers.

C. Tennessean Warning

The Data Practices Act requires that a Tennessean Warning be given before private or confidential data is collected from an individual. Although the rules do not specify that Tennessean Warning be included on each form, the easiest way to satisfy this requirement is to print the necessary warning on each form which collects private and confidential data. Forms which collect such a great amount of data that inclusion of the Tennessean Warning would make the form unworkably long, should include a reference to the separate Tennessean Warning which must be concurrently provided when the individual is asked to complete the form.

The elements needed to be included in a Tennessean Warning are:

1. The purpose and intended use of the requested data within the requesting agency. For example the purpose for much of the data collected within the welfare system is: a) determine eligibility for benefits, b) apply for services, c) grant a license, or apply for employment.
2. Whether he/she may refuse or is legally required to provide the information. There is actually very little information requested which is mandated by statute.
3. Any known consequence of providing or refusing to supply the information. This, of course, provides agencies with the coercion they need which they don't have in #2 above. Obviously, if the data subject doesn't supply the information requested, he/she may be denied benefits, social services, licensure, or employment.
4. The identity of other persons, agencies, or individuals authorized by state or federal law to receive the data. This information should be available from the Forms Inventory which every agency is required to complete and update by August 1 annually.

D. Convenient Use

The responsible authority in every state agency, political subdivision, and statewide system shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. (Minnesota Statutes, section 13.03, subdivision 1).

The implication for forms design, of course, is where forms ask for public and not public information that like data elements (i.e., all questions which ask for public information, or all questions asking for private information) be grouped together so that the accessible information can be easily accessed if an agency receives a request to view it or photocopy it. This keeps the necessity of using elaborate templates for photocopying data to a minimum.

E. Social Security Number

The Federal Data Privacy Law requires that whenever an individual is asked to supply his/her Social Security Number, that individual must be informed:

1. Whether the disclosure is voluntary or mandatory.
2. If the disclosure is mandated, the statutory authority which requires the disclosure.
3. The uses to be made of the social security number.

The Tax Reform Act of 1976 provides that the Social Security Number may be required from an individual when that individual requests public assistance. Public Law Number 97-98 mandates the collection of the Social Security Number in order to receive food stamps. Social services programs do not have statutory authority to demand social security numbers.

For employment purposes, the Social Security Number is mandated in order to implement the income tax and Social Security tax programs.

F. Data Review Plan

Responsible authorities are charged with a responsibility to provide for the review and analysis of the data administration practices of their agencies (MN Rule 1205.1500, Subp. 1). This means that all data collection devices (i.e., forms) must be reviewed to insure that the data being collected are accurate, current, complete, and necessary for the purposes for which they were collected. If they aren't, the forms need to be redesigned so that they do.

COMPUTER RECORDS

The Data Practices Act applies to all data regardless of storage media. Computers are also used to store data about individuals. The data on individuals stored on computer tapes or disks of agencies of the welfare system are generally classified as private or confidential data. Data stored on computers requires special mention for two reasons: (1) the amount of data accessible once the computer user has accessed the file, and (2) the availability of high technology has made it possible for even home computer users with a modem to gain access to government and industry's private and often confidential data bases. As more schools are teaching computer use, and more private citizens are buying relatively complex machines, agencies can no longer assume that the average person cannot operate a computer.

Penalties for Computer Theft

In 1982, the Minnesota Legislature recognized the increasing problems that the proliferation of computers was creating. That year it passed a computer damage and theft law which provides: (Minnesota Statutes, section 609.87-.89.)

1. Imprisonment for not more than 10 years or payment of a fine of not more than \$50,000 or both if the damage, destruction, alteration, or theft to the owner, his agent, or lessee results in a loss of more than \$2,500.
2. Imprisonment for not more than five years or payment of a fine of not more than \$5,000 or both if the damage, destruction, alteration, or theft to the owner, his agent, or lessee is more than \$500 but less than \$2,500.
3. Imprisonment for not more than 90 days or payment of a fine of not more than \$500, or both in all other cases.

This law should provide employees disincentives from "snooping" in unauthorized computer files. It should also provide agency management incentive to provide measures so that "intentional" snooping cannot be argued as "accidental" snooping because of inadequate security measures.

Computer Security

Computer security encompasses two chief elements - the physical security of the installation and the integrity of the data. The forms index in this manual contains a sample of a nondisclosure agreement for employees who work with computer data. The following represent some of the ways these problems can be addressed.

1. Private network. If a private network of computers is created which involves any agency within the welfare system (such as those developed in courthouses for all county agencies housed there) one person should be responsible for the system. It is that person's responsibility to

make any organizational arrangements necessary to assure continuing attention to the fulfillment of security precautions. The Department recommends that agencies develop contracts with the other computer services agencies which specify the security provisions in accordance with the classification of the data, provide for nondisclosure agreements, and which insure that the data will have the same classification and handling in the agency receiving it as it had in the agency creating it (Minnesota Statutes, section 13.05, subdivision 9) if data is maintained by another government agency.

2. Limited accessibility. In order to insure security of computer records, not public data should be assigned an access code known only to those persons who: 1) work on the computer, and 2) work on that particular computer file. Computers should also be stored in secure areas which have limited accessibility. Specific hours of use should also be limited.
3. Back-Up Files. In order to ensure against tampering with computerized data, back-up files should be stored in a secure, remote area.
4. Accuracy. Persons whose responsibility includes the input and maintenance of data into the computer system must insure that data on individuals maintained on the computer system are accurate, complete, and necessary. They also insure that inaccurate, incomplete, and obsolete data is eliminated.

Copyrights - The Data Practices Act allows agencies to obtain copyrights and patents for computer software programs or components of programs created by them. These copyrights and patents of computer programs are classified as private if it is data on individuals and nonpublic if it is data not on individuals (Minnesota Statutes, section 13.03, subdivision 5).

Fees - The Act also allows government agencies to charge a reasonable fee in addition to the costs of making, certifying, and compiling copies of public data that: (1) has commercial value, and (2) is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds. The fee charged, however, must relate directly to the actual development costs of the information. In addition, if the recipient of the data questions the relationship, the agency must be able to provide sufficient documentation which explains and justifies the fee charged (Minnesota Statutes, section 13.03, subdivision 3).

Explanation - The Act requires that agency staff explain the meaning of data that is unclear (Minnesota Statutes, section 13.03, subdivision 3; and section 13.04, subdivision 3). Therefore, if data is written in computer language, the agency must be prepared to explain the data's meaning.

Convenient Use - The Act requires agencies to maintain records so that they are easily accessible for convenient use (Minnesota Statutes, section 13.03, subdivision 1). The implication for computer records is that computers must be programmed to allow extrapolation of individual data without reproducing the whole computer file.

WORD PROCESSING RECORDS

The author of a private or confidential document has the responsibility of insuring that document's privacy or confidentiality. In agencies which have word processing centers, the author must inform staff at the word processing center regarding the classification of the document submitted to the center for typing so that security procedures can be followed.

Word Processing Center staff should have the following procedures in order to insure the privacy and security of documents typed:

1. Disks, cassettes, or other storage medium of not public documents are maintained in a secure area when not in use.
2. Each document is assigned a code which limits access.
3. Operating instructions for the word processing machines are limited to word processing staff.
4. Private and confidential documents are returned to the author in envelopes marked "PRIVATE".
5. Processors who are actively working on not public documents keep the pages of those documents face down on their desks in order to avoid reading by passers-by.

COURT ORDERS, WARRANTS, SUBPOENAS

All statewide welfare system employees are to contact their appropriate attorney before acting on any court order, warrant, or subpoena. Central office and state institutions employees should contact their assigned representatives of the attorney general's staff. County employees should contact the county attorney. City employees should contact the city attorney. Employees of private organizations should contact their private attorney.

Warrants:

A search warrant is an order issued by a court of competent jurisdiction which may entitle the law enforcement official to whom it is entrusted to search for information in the agency's possession. This searching includes unlocking rooms and file cabinets, and reviewing files.

An arrest warrant is an order which authorizes the law enforcement officer to arrest the person if found. It does not authorize the agency to disclose information which would facilitate the law enforcement officer in locating the subject of the arrest warrant.

Subpoena:

Occasionally, an agency will receive a subpoena duces tecum (a writ directing a person to appear in court with certain records, under penalty of law). The attorney should be consulted before the employee is scheduled to appear in court.

If a subpoena is issued before the court can be made aware of the applicable state and federal regulations, the subpoena should be honored insofar as appearing in court to respond to it. At that time, the court should be fully advised of the data privacy considerations, so that its further actions are based on complete information. If the court still orders production of the record, then the court order must be obeyed. See also Data Classification and Special Handling Procedures, Chemical Dependency, page 59.

Court Orders:

A court order is the direction of a court or judge made or entered in writing and not included in a judgment which demands certain activity or the abstention of an activity. A warrant and a subpoena are types of court orders. A divorce decree which stipulates parental access rights is also a court order.

Instructions for Testifying:

- a. Testimony in court - Any employee testifying in court about a data subject should respond fully to all questions involving public data. As soon as the employee/witness is asked a question which seeks a reply that is arguably within the bounds of private or

confidential data, the employee or the employee's attorney should turn to the judge and state a reasonable facsimile of the following:

"Your honor, the information which counsel seeks constitutes not public data under the Minnesota Government Data Practices Act. I have been instructed by my agency attorney to respond to such questions only if you expressly order me to do so."

- b. Testimony at a Deposition - Testimony taken at a deposition is taken before a court reporter out of the presence of a judge. Accordingly, the employee/witness should decline to answer questions which call for the disclosure of private or confidential data and should cite the Minnesota Government Data Practices Act, section 13.46, subdivision 12, to justify the refusal to answer. Information can be given at a deposition if the employee has received a consent for release of the information signed by the client.
- c. Testimony at Administrative Hearings - At the beginning of a hearing which might impel the disclosure of private information, the data subject should be asked to state on the record his or her consent to the disclosure of information necessary for the settlement of the pending questions.
- d. Testimony Involving a CD Patient is limited. Consult your agency attorney before testifying.

See also Data Classifications and Special Handling Procedures, "Discovery."

DATA CLASSIFICATIONS AND SPECIAL HANDLING PROCEDURES

It is the policy of the statewide welfare system that all employees comply both with the letter of the law and the clear legislative intent that government information is handled in such a way to promote the public freedom to information about government activities, but which also safeguards the privacy of the individual about whom it maintains records.

In order that employees of the statewide welfare system properly handle data maintained by them, it is necessary for them to have a basic understanding of the various laws which classify welfare data, provide for changes in classification, and which allow for release of the data. Although the list below is not meant to be all inclusive, it does give a description of the data classifications, release provisions, special provisions, and special problems which welfare system employees may encounter regarding releasing data maintained by the welfare system. For a more accurate and complete understanding, staff are encouraged to refer to the statutes listed, or consult with their agency attorney.

Abused Child - The records maintained by the welfare agency or law enforcement agency relative to the report and investigation of the abuse of a child are private (Minnesota Statutes, section 626.556, subdivision 13). Written copies of reports maintained by other agencies are confidential (Minnesota Statutes, section 626.556, subdivision 7). The name of the reporter is confidential, but accessible to the individual subject of the record if ordered by the court (Minnesota Statutes, section 626.556, subdivision 11).

Investigations: Minnesota Statutes, section 626.556, subdivision 13 provides that all child abuse records are private. However, due to the potentially volatile nature of the data involving child abuse, all employees of the statewide welfare system should use discretion in releasing child abuse investigation data. Attorneys of the agency should be contacted before the information is released.

Reports from Chemical Dependency Treatment Centers: The Minnesota child abuse reporting law (Minnesota Statutes, section 626.556) and the chemical dependency treatment laws (federal 42 CFR 2.1 and state 254A.09) conflict. A staff person in a chemical dependency treatment center may report child abuse under any of the following circumstances:

1. A report may be made pursuant to a court order;
2. The report does not identify the patient as a CD abuser;
3. The patient consents in writing (see sample of form in Forms section);
4. A report may be made pursuant to a qualified service organization agreement; or

5. A report may be made to medical personnel if it is done for the purpose of treating the child for a medical emergency.
6. A report may also be made if the staff person confronts the patient, whether that patient is the victim or perpetrator, and involves the reporting of the abuse as a part of the treatment plan of the patient with the patient becoming a self-reporter.

Except in chemical dependency programs where one of the above six steps has not been taken, if the data subject has been provided with an appropriate Tennessee Warning, data relating to child abuse may be disseminated to:

- a. Other employees in the statewide welfare system whose jobs require access (Minnesota Statutes, section 13.46, subdivision 2).
- b. Local law enforcement agency or sheriff staff involved in the investigation (Minnesota Statutes, section 626.556, subdivision 11).
- c. County attorney or other prosecuting authority (Minnesota Statutes, section 626.556, subdivision 11).
- d. Reporter of the abuse. The law specifies that the person who reports the abuse may receive a concise summary of the disposition of the report, unless release would be detrimental to the best interests of the child (Minnesota Statutes, section 626.556, subdivision 3).
- e. Juvenile/Probate court (Minnesota Statutes, section 626.556).
- f. Foster care facilities (Minnesota Statutes, section 260.171, subdivision 5).
- g. Multidisciplinary case consultation teams (Minnesota Statutes, section 626.558).

Adoptions - The case record and court report of the Commissioner of Human Services, county welfare board, or child-placing agency of the adoption of any individual are confidential. However, the presiding judge may disclose any report or record to a prospective adoptive parent or his/her attorney if the recommendation is not in favor of the adoption (Minnesota Statutes, section 259.27, subdivision 3).

The actual adoption court hearing is also confidential and shall be held behind closed doors. The only persons allowed to attend are the petitioners, their witnesses, the Commissioner of Human Services or an appropriate agency of the welfare system, or their authorized representatives, attorneys and persons entitled by court order to attend (Minnesota Statutes, section 259.31).

The actual adoption case file is to be kept on a permanent basis in a protected system which ensures its continued confidentiality (Minnesota Statutes, section 259.46, subdivision 3).

Adopted persons, age 21 years, who were placed for adoption by a Minnesota agency on or after August 1, 1982, may obtain the name, birth date, birth place, and last known address of the genetic parent unless that parent had filed affidavit objecting to release of part or all of the identifying information. More complete procedure is described in Minnesota Statutes, section 259.47, subdivision 3.

An adopted person who is 21 years old may obtain a copy of his/her original birth certificate information from the Minnesota Department of Health, Section of Vital Statistics, if the parents named on it consent to the release. If the parents cannot be located, the information may be released by court order if the person was adopted prior to August 1, 1977. No court order is needed for the release if a person was adopted after August 1, 1977 and the natural parents cannot be located. For a more complete procedure regarding this provision, refer to Minnesota Statutes, section 259.49.

Data regarding adoptions may be shared with:

- a. Clerk of Court (Minnesota Statutes, section 259.27, subdivision 1)
- b. Probate Court (Minnesota Statutes, section 259.27, subdivision 1)
- c. Attorneys representing the individuals (Minnesota Statutes, section 259.31.
- d. State human services department and county welfare agency (Minnesota Statutes, section 259.27, subdivision 1)
- e. State Department of Health to the extent specified in Minnesota Statutes, section 259.49.

Attorneys - Attorneys have no more rights to see private data than the rest of the public unless they are authorized representatives of the data subject. If they are representing a data subject, they must present evidence of that attorney/client relationship through the presentation of a valid, informed consent for release of information, letter of request for services, etc., signed by the client they represent.

The only exception to this is release of private information to attorneys (specially county attorneys) who are acting as agents of the welfare system in order to conduct investigations, prosecutions, etc., relating to the administration of welfare programs, and the data subject has been made aware of the sharing via the Tennessee Warning. This release is provided for under Minnesota Statutes, section 13.46, subdivision 2(e). The agency which is confronted by an investigating attorney must still verify that the attorney is in fact conducting an investigation.

Auditors - Information may be released to state and federal auditors in order to audit federal funds or programs, or according to other statutory provisions (Minnesota Statutes, section 13.46, subdivision 2). Before releasing private information about clients, agency staff should check with their agency attorney to insure that the release is appropriate.

Census - Authority for census activities is in Chapter 13 of the Code of Federal Regulations. Generally, the state institutions are the only welfare system agencies which will actually be involved with the completion of forms for patients unable to do so because of physical, mental, or emotional incompetence. However, other welfare system agency staff may complete forms for clients if the the client requests them to do so.

Chemical Dependency - (Minnesota Statutes, section 254A.09 and 42 CFR 2.1-67.1) Individual data collected by treatment/research facilities dealing with drug abuse and chemical dependency are private. The federal statute uses the term confidential, but by use the data is private (Minnesota Statutes, section 1.202(D)(1)(e)) since the federal statute allows the data subject access.

Alcohol and drug abuse records may be shared with medical personnel to meet a medical emergency, with qualified personnel conducting scientific research, management audits, financial audits, or program evaluations (45 CFR 2.1e).

Chemical dependency data on individual clients collected for research, evaluation, and treatment purposes cannot be disclosed for other purposes. Subpoenas involving data on chemical dependent patients in treatment centers should be honored to the extent of appearing in court to inform the court of this provision in the law.

Data about patients in chemical dependency treatment centers can be revealed to other agencies or persons if that patient signs a consent for release of information and the information released is in the patient's best interests.

Commitment - Probate court proceedings relating to the commitment of any person as mentally ill, mentally retarded, or drug dependent, neglected, delinquent, or dependent are open to those persons whom the court deems interested parties. The court records relating to commitment of adults are public (Minnesota Statutes, section 382.16), the records relating to minors are private (Minnesota Statutes, section 260.161).

Commodity Program/Food Shelves - The authority for agencies of the welfare system to disseminate private data on individuals to commodity distribution/food shelves programs was received via a request for new use of data approved by the Commissioner of Administration on February 24, 1982.

Contracts/Grants - All contracts and grants which agencies of the welfare system initiate or otherwise enter into must contain a clause dealing with the applicability of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (1982). The wording of that clause will vary, depending upon the extent to which contractors will have access to government data. What government data will be exchanged should be specified in the contract. If the data to be exchanged is data on individuals, the contract should specify the classification of the data, a description of the data, the purposes for which it will be used and shared and who will have access. The contract should also specify the responsible authority for the contract.

If the contractor will not have access to private or confidential data, the following clause should be used:

It is expressly agreed that the contractor (grantee) is not a member of or included within the welfare system for purposes of the Minnesota Government Data Practices Act as a result of this contract. If the contractor (grantee) is independently required to comply with any requirement of the Minnesota Government Data Practices Act, the contractor (grantee) acknowledges that the state, county, or agency shall not be liable for any violation of any provision of the Minnesota Government Data Practices Act indirectly or directly arising out of, resulting from, or in any manner attributable to actions of the contractor (grantee). The contractor (grantee) agrees to indemnify and save and hold the state, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions of this agreement.

If the grantee or contractor will have access to private or confidential data, the following clause should be used:

For the purposes of executing its responsibilities, and to the extent set forth in this contract/grant, the contractor/ grantee shall be considered part of the welfare system as defined in Minnesota Statutes § 13.46, subdivision 1. The contractor's/grantee's employees and agents shall have access to private data maintained by the DHS contractor/ grantor to the extent necessary to carry out its responsibilities under this contract/grant. The contractor/grantee agrees to comply with all the requirements of the Minnesota Government Data Practices Act in providing services under this contract/grant. (Specify individual official of contracting/ granting agency) is the designated authority in charge of all data collected, used, or disseminated by the contractor/ grantee in connection with the performance of this contract/grant. Contractor/grantee accepts responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained, or used in the course or performance of this contract/grant shall be disseminated except as authorized by statute, either during the period of this contract/grant or thereafter. The contractor/grantee agrees to indemnify and save and hold the state, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions of this agreement.

County Welfare Boards - The welfare board members have access to private records maintained by the staff in the county welfare offices and some private records maintained by other agencies who become part of the welfare system because of their contractual relationship with the county welfare board. This release is provided in order for them to administer and manage programs specifically authorized by law. Although it is rare when the county board actually needs names and other private data on individuals in order to administer a program, the decision is to be made by the board members, not the contracting agency. In order to eliminate confusion about

what information the county welfare board members have access to (which is maintained by contracting agencies), the information which will be available to them is to be stated clearly in the contract. (See section on Elected Officials.)

Creditors - The DHS may release information to creditors about a client's assistance status so that the creditor may establish whether that client is eligible for exemption of garnishment under provisions of Minnesota Statutes, section 550.37, subdivision 14, which states:

"All relief based on need, and the wages or salary of a person who is a recipient of relief based on need, shall be exempt from all claims of creditors including any contractual set off or security interest asserted by a financial institution. Relief based on need shall include Aid to Families with Dependent Children, Supplemental Security Income, Medical Assistance, Minnesota Supplemental Assistance, and General Assistance. The salary or wages of any debtor who is or has been a recipient of relief based on need, or an inmate of a correctional institutions shall, upon his return to private employment after having been a recipient of relief based on need, or an inmate of a correctional institution, be exempt from attachment, garnishment, or levy of execution for a period of six months after his return to employment and after all public assistance has been terminated. He may take advantage of such six months salary or wage exemption provisions only once in every three years. The exemption provisions contained in this subdivision shall also apply for 60 days after deposit in any financial institution. In tracing said funds, the first in first out method of accounting shall be used. The burden of establishing that funds are exempt rests upon the debtor. Agencies distributing relief and the correctional institutions shall, at the request of creditors, inform them whether or not any debtor had been a recipient of relief based on need, or an inmate of a correctional institution, within such period of six months."

Custody - Parental rights to access of their children's private records is sometimes dependent upon the custody arrangement if parents are separated or divorced. Access is effected if there is an order of the court or other legally binding instrument like a dissolution agreement which specifies that a parent is not to have access (MN Rule 1205.0500, Subp. 2.B.). If parental rights are terminated, all parental rights to access are also terminated (Minnesota Statutes, section 260.241, subdivision 1).

Dead People - MN Rule 1205.0200, Subp. 8 defines an individual as a living human being. There is currently no clear statutory provision for data on dead people, but it is assumed that that data on individuals becomes public when that person dies. The classification and access rights to data on dead people remains confusing, except in a few instances.

- . Medical examiner data - Unless specifically classified otherwise by state statute or federal law, the following data created or collected by a medical examiner or coroner on a deceased individual is public: name of the deceased; date of birth; date of death; address; sex; race; citizenship; height; weight; hair color; eye color; build; complexion; age; if known, or approximate age; identifying marks; location of death, including name of hospital where applicable; scars and amputations; a description of the decedent's clothing; marital status; name of spouse; whether or not the decedent ever served in the armed services; social security number; occupation; business; father's name; mother's maiden name; birthplace; birthplace of parents; cause of death; cause of cause of death; whether an autopsy was performed, and if so, whether it was conclusive; date and place of injury, if applicable, including work place; how injury occurred; whether death was caused by accident, suicide, homicide, or was of undetermined cause; certification of attendance by coroner or medical examiner; name and signature of coroner or medical examiner; type of disposition of body; burial place name and location; date of burial; cremation, or removal; funeral home name and address; and name of local register or funeral director. All other data on deceased individuals used by the medical examiner is private except that involved in an active investigation is confidential (Minnesota Statutes, section 13.83).
- . Medical Data - May be disclosed to the surviving spouse or next of kin of a deceased patient or client (Minnesota Statutes, section 13.42, subdivision 3(d)).
- . The superintendent of any state hospital shall give to the next of kin of any inmate thereof immediate notice of that patient's death (Minnesota Statutes, section 253.10).

The DHS recognizes the potentially sensitive nature of data on dead people. If the data is not medical data subject to the provisions above, release of the data should be limited to the administrator of the estate, the surviving spouse or next of kin. This policy does not have statutory authority, but it is believed that the privacy of the individual even in death is first priority.

Discovery - Minnesota Rule 1205.0100, Subp. 5 provide that the discovery procedures available to any party in a civil or criminal action or administrative hearing shall not be limited by the Minnesota Government Data Practices Act or the applicable rules.

Attorneys generally use subpoenas, depositions, and interrogatories in order to obtain information in the discovery process. All agency staff should consult their agency attorney before responding to these. (Refer to page 55)

Duty to Warn - Case law allows doctors, nurses, psychologists and various other health care providers to warn the data subject, victim, law enforcement agencies, or other medical personnel of situations where imminent risk of serious harm exists. For example, a psychologist who hears from a client during a counseling session that the client intends to murder someone, that psychologist is allowed to warn the intended victim, law enforcement, or both. When statutory provisions of privacy conflict with duty of care, it is preferable to breach privacy. Social workers do not have this legal responsibility, but release of information to the victim or to law enforcement officials under emergency circumstances is permitted under Minnesota Statutes, section 13.46, subdivision 2.(j).

Elected Officials - Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient (Minnesota Statutes, section 13.33).

In cases where a U.S. Congressman, Mayor, Alderman, Legislator, or other political representative calls or requests information on behalf of a client, the client's written consent should be obtained. A signed letter from the client to the political representative requesting help may be considered "consent" if the content of the letter meets the standards for an informed consent.

Elected officials in each county, including the county welfare board members are the responsible authorities for their respective positions (MN Rule 1205.0200, Subp. 14). They must establish procedures to implement the provisions of the Data Practices Act and may be sued individually for violations of it.

Financial disclosure statements of elected or appointed officials which by requirement of the political subdivision are filed with the political subdivision, are public data on individuals (Minnesota Statutes, section 13.60).

Emergencies - Staff in agencies of the welfare system may release data in an emergency if the information is necessary to protect the health or safety of the individual or other individuals. Staff must use their best judgment as to what information should be released, and to whom. (Minnesota Statutes, section 13.46, subdivision 2(j)). Certain mental health center staff who are excluded from the provisions of this statute (and other medical personnel in agencies of the welfare system) have a limited authority to release data in emergencies under Minnesota Statutes, section 13.42, subdivision 3. (See Medical Data, Mental Health Centers)

In cases of emergency, information may be released to appropriate parties without a written consent if:

- a. Client requests the agency to perform a specific activity which requires the release of private information about himself/herself, and a signed consent is not able to be obtained until after the fact.

- b. Client is experiencing a medical or psychiatric emergency of such a nature that the release of private information is necessary to preserve his/her life or to prevent him/her from harming others.
- c. Client is unable to provide an informed consent for treatment because his/her medical or psychiatric conditions interfere with communications abilities.
- d. Client or other individual may possibly be effected by the activities of another individual which may endanger the health or safety of the client or other individual.

Disclosure should be limited to appropriate medical or mental health professionals, the potential victim, law enforcement authorities, (including firemen), family of the data subject, or utility vendor (in the case of shut-off of heat or electricity). The agency staff should discuss the release with the data subject as soon as feasible following the resolution of the crisis. The emergency should be documented in the client record, including:

- . Date and time of disclosure
- . Nature of emergency
- . What information was disclosed
- . To whom the information was disclosed
- . Name of the professional who made the emergency release
- . Statement about how the client was informed about the circumstances
- . In case of CD data, the details of the attempt to verify the medical personnel status of the recipient of the data

Foster Care Licenses - All information relative to foster care license applications is public, except personal financial and personal information about the applicants and licensees which is private (Minnesota Statutes, section 13.46, subdivision 4). (See section on Licensing)

Information collected in the process of investigating violations of the licensing act is confidential or protected nonpublic until it is presented to a hearing examiner or court in an administrative or judicial proceeding (Minnesota Statutes, section 13.46, subdivision 3).

Information about a foster child's family background and other pertinent information may be released to a foster home if the birth parents have been provided with a Tennessee Warning to that effect (260.171, subdivision 5).

Gossip - Use and dissemination of not public data on individuals within an agency is limited to those employees whose jobs require access. Thus, dissemination of data to an employee in order to have case notes typed is an acceptable use of the data. Dissemination of data about a child abuse incident to an employee merely because the employee is a neighbor of the alleged perpetrator is not an acceptable use of the data. Agency employees should refrain from discussing data about individuals in hallways, elevators, or other public areas where unauthorized persons may overhear. Needless gossip about clients may subject the employee to disciplinary action.

Guardian, Conservator, Power of Attorney - Whether this person has rights under the Minnesota Data Practices Act depends upon what the legal documents say. Agencies involved with these individuals should request copies of the court orders in order to verify that individual's authority.

If a person is appointed the guardian of an adjudged incompetent adult, dependent, neglected child, or incapacitated adult, basically the court has made the decision that the individual does not have sufficient mental capacity to manage his or her own personal affairs and therefore the guardian can be considered part of the definition of "individual" for purposes of the Act.

However, if a person has been appointed as guardian of the estate and not the person, it is assumed that the individual still retains the ability to act for him/herself under the Act.

A conservator is a more limited appointment by the court than that of a guardianship. A conservator's specific duties should be indicated in the court document. Agencies which must deal with a conservator should request a copy of the order of appointment in order to decide whether that conservator has the authority to make decisions regarding the exercising of the data subject's privacy rights.

Guardian ad litem are appointed with the full powers of a guardian but whose activities are limited to a particular situation, such as the guardian ad litem appointed in a child abuse case.

Power of attorney is a different type of arrangement where an individual appoints another person to act for him or her. Since the individual who appoints the power of attorney is presumed to be competent in order to make the appointment, then the person acting as power of attorney generally does not have the authority to act for the individual in data privacy matters. The agency dealing with the person who has been appointed power of attorney should request a copy of the appointment in order to ascertain for sure that the person has or has not authority to act for the individual.

Illegitimate Births - Records regarding illegitimate births are private (Minnesota Statutes, section 144.225), but the record of the illegitimate birth is only available to the data subject after he/she becomes an adult. If the illegitimate child in the record is adopted, the original birth certificate is confidential. These records are open to the Commissioner of Human Services without a court order.

Intake/Reception - Intake and receptionist duties present unique data privacy problems. Liability of clerical staff is probably less than for those employees who provide direct service. In spite of that, dissemination of private and confidential data by clerical staff should be kept to a minimum, both because of their physical location which may facilitate others overhearing their conversations and because of their unfamiliarity with the specifics of the case. Questions whose answers may reveal private or confidential data should be referred to those professional staff who have expert knowledge of the case and the program. This referral should be done in a way that avoids admission that the individual is a client. For

example, the following may be used, "I cannot answer questions regarding financial eligibility for programs. One moment and I will refer you to a financial intake worker" to refer the call to the client's actual worker without admitting that the client is a client.

Clerical workers who receive telephone calls may find themselves in a position to give a Tennessee Warning when they must ask for information from an individual. Clerical workers must also be aware that the parent and the minor child are considered the same. A Tennessee Warning must be provided to the parent who is asked to provide private information about a minor child. If a Tennessee Warning is necessary, it should be activity specific. For example, "Thank you for calling. In order to refer you to the proper staff person who can assist you, I will need to ask you a few questions. You are not required to answer these questions, but I cannot help you unless you do," may be sufficient. In this case, the purpose for asking for the information is to refer the individual to the appropriate staff person. There is no legal requirement but the consequences are that the individual cannot be helped unless the information is provided. Sharing will take place only with the appropriate staff person to whom the individual is referred.

Another unique problem intake workers or receptionists must deal with is how to respond to inquiries from an individual's family, or the person who gave the individual a ride to the appointment. Acknowledging the person's presence would imply that the person is a client. It is recommended that clients expecting a call or likely to be called be asked to sign a consent for release of information about their presence in the office on the day of the appointment and which will expire the same day. Recommended wording may be:

"I authorize (Wright County Human Services) to acknowledge my presence to my children, other family members, my attorney, my driver, or other persons who inquire about my whereabouts while I am here. I understand that the information regarding my presence will be released only to persons who need to contact me and that this authorization will expire after my appointment today. (Signature and date)

It is recommended that agencies post a notice to this effect in the lobby so that clients can ask for this release when necessary.

Investigations - Some agencies in the statewide welfare system have the authority to conduct investigations on individuals, persons, vendors, and facilities. Investigations which are program related are generally classified under Minnesota Statutes, section 13.46, subdivision 3. If these investigations are done on individuals, they are classified as confidential. If the investigations are done on vendors, facilities, or other non-individuals, the investigations are classified as protected nonpublic.

Vulnerable adult abuse investigations are conducted under the authority of Minnesota Statutes, section 626.557 and are confidential.

Child abuse investigations are conducted under the authority of Minnesota Statutes, section 626.556. The data accumulated by the welfare agencies and law enforcement agencies are classified as private (Minnesota Statutes, section 626.556, subdivision 13), but the data accumulated by other agencies who may be involved in the investigation are confidential (Minnesota Statutes, section 626.556, subdivision 7).

Investigations which are not program related (such as those involving civil rights, affirmative action, and other employee related matters) are confidential if they are conducted on individuals and protected nonpublic (such as an investigation of a contractor for services to the agency not in relation to a program) if the investigation is about a nonindividual. The statutory authority for the classification of these records is Minnesota Statutes, section 13.39.

Investigative data may be released under the following circumstances.

- . A valid court order;
- . To a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense;
- . Individuals or agencies specifically authorized access to the data by state, local, or federal law;
- . A request for new or different use or dissemination of the data has been approved by the Commissioner of Administration and has not expired; or
- . A law enforcement person, attorney, investigator, or other agent of the welfare system who is conducting the investigation for the agency.

Only that data collected as part of an active investigation (not the whole file) may be classified as confidential or protected nonpublic. Data maintained by an agency, and not being used in an active investigation, cannot be classified as confidential or protected nonpublic. The agency in which the investigative authority is located determines whether or not an active investigation is in process. It is also that agency's responsibility to be able to prove that an active investigation is being conducted if a question about the same should arise. Generally, an investigation is deemed to be completed when a recommendation is submitted to the prosecuting authority or in the cases of abuse, when a report is submitted as unsubstantiated, or false, substantiated, or cannot be substantiated.

Law Enforcement - Sharing of private data obtained solely for program purposes, is not permitted without the client's consent, unless there is a statute that provides otherwise. If the law enforcement persons are acting as an agent for the welfare system in the investigation of programs, then data may be released without the client's consent, providing that the client has received a Tennesen Warning. This provision does not apply to those mental health centers described in Minnesota Statutes, section 13.46, subdivision 7.

The Child Abuse Reporting Law (Minnesota Statutes, section 626.556) and the Vulnerable Adult Abuse Reporting Law (Minnesota Statutes, section 626.557) require that reports of abuse be shared with appropriate law enforcement officials.

Library - All data maintained by libraries within agencies of the welfare system which links: (1) a borrower's name with the library books, magazines, or other material requested, or (2) a borrower's name with the subject matter of the material that the borrower has requested is private data. A borrower includes both clients or patients and staff members of the welfare system (Minnesota Statutes, section 13.40, subdivision 2).

Licensing - All data pertaining to residential and nonresidential facilities licensed or registered under the authority of the Commissioner of Human Services are public (Minnesota Statutes, section 13.46, subdivision 4). Personal and personal financial data about applicants and licensees for home day care and family foster care program are private.

The following information ^{about} ~~submitted by~~ licensees for home day care and foster care is considered private: letters of reference, insurance information, fire marshal/OSHA inspection report, data about additional family members, health examination reports, agency inspection report and the narrative study of the home which may include information about family life, history of medical, social or psychological problems, attitudes toward self, education, religion, discipline, problem solving, and types of children preferred. It may also include the agency staff appraisal of the family members, types of social problems, and strengths or weaknesses of the home situation. Information about the applicants and licensees which is maintained as public by other agencies (such as marriage and birth records, arrest and conviction records, etc.) should also be maintained as public information.

Mailing Lists - Mailing lists create a unique problem for agencies of the welfare system. Generally, the welfare section of the Data Practices Act states that "data on individuals collected, maintained, used, or disseminated by the welfare system is private data" (Minnesota Statutes 13.46, subdivision 2). Since mailing lists contain data about individuals, then mailing lists maintained by agencies within the welfare system are private data.

Furthermore, mailing lists are not freestanding. They are generally created by an agency for a particular function. Separated from that function, they lose much of their value. Therefore, by association, a mailing list created by a particular agency must be considered to contain names of service receivers or clients. If it is a mailing list of employees, Minnesota Statutes, section 13.43, makes it clear that employees' home addresses are private data.

There are some qualifications to this provision, however:

1. Minnesota Statutes 393.07, subdivision 4, provides that the Commissioner of Public Welfare has the authority to adopt and enforce rules concerning the use and publication of lists of public assistance recipients. As of yet, the Commissioner has not developed any procedure regarding this and has not delegated this authority to anyone else.

2. Contractors/Grantees. The activities of private vendors under contract or grant to any agency of the welfare system, must ensure that any mailing lists about clients or other individuals generated because of their contract or grant also be maintained as private data. Any mailing lists generated by the contractor or grantee which are independent of the contract or grant are not governed by the Minnesota Government Data Practices Act. If the contractor is deemed to be personnel of the system pursuant to Minnesota Statutes, section 13.43, subdivision 1, the home address of that contractor is private.
3. Vendors of Services. Vendors of services are not classified as individuals pursuant to Minnesota Statutes, section 13.46, subdivision 1. Therefore, mailing lists of vendors of services are public.

Media - Agency attorneys should be consulted before releasing ANY data on individuals to newspaper reporters, television reporters, or other publications. This includes the release of data on individuals generally classified as public. The release of public data (i.e., licensing data) on individuals may inadvertently release private or confidential data about other individuals (i.e., the addresses of clients who are receiving services from that licensed facility).

The release of this kind of public data may have to involve some artful negotiation or instruction to the media of the potential consequences of the release.

Medical Data - Medical data about clients are private data (Minnesota Statutes, section 144.335-.651; 13.46, subdivision 5; 245.69; 253B.03, subdivision 8 and others). However, Minnesota Statutes, section 144.335 provides that access to medical records may be denied to a data subject if the medical provider has determined that the information is detrimental to the physical or mental health of the patient or is likely to cause the patient to harm himself or another. The data, however, may be provided to a third party who may release the data to the patient.

It is a routine practice for many medical care vendors to routinely stamp "confidential" on medical data about patients. This should be ignored, unless the vendor has provided in writing, that he/she has determined that patient access to the information is: (1) detrimental to the physical or mental health of the patient; or (2) is likely to cause the patient to harm himself or another. Any agency of the welfare system which receives medical data about a client on which either of these criteria has been met must refuse to supply that data to the data subject, if the data subject requests to see it.

Medical care providers who may classify data as confidential under the provisions described above include the following professionals:

1. Physicians, surgeons, osteopaths
2. Chiropractors
3. Registered and licensed practical nurses
4. Optometrists
5. Physical therapists

6. Psychologists
7. Dentists
8. Pharmacists
9. Podiatrists

It also includes the following facilities licensed by the Department of Health:

1. Nursing homes
2. Mobile health clinics
3. Any hospital, sanatorium, or other institution for the hospitalization and care of sick or injured human beings.
4. Clinic
5. Medical center
6. Health service

Medical data, including the financial data about a patient of a medical facility may be released under the following circumstances (Minnesota Statutes, section 13.42).

1. To communicate a patient's condition to family members or other appropriate persons.
2. To next of kin or surviving spouse of a dead patient.
3. To administer federal funds or programs.
4. In response to a valid court order.
5. In accordance with other statutory provisions.
6. In response to a consent for release of information signed by the data subject.

Medical personnel have limited authority to release data on individuals in emergency situations under the authority of #1 above. (See also Duty to Warn)

- a. Emergency - Release of medical information about minors or adults may be made without a valid informed consent for release of information if that release is necessary because the medical condition is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment (Minnesota Statutes, section 144.344 and 253B.03, subdivision 6 and Minnesota Statutes, section 13.42, subdivision 3(e)).
- b. Mental Health Centers - Community mental health centers are part of the statewide welfare system (Minnesota Statutes, section 13.46, subdivision 1). Community mental health centers, mental health divisions which are units of departments of a county, and agencies under contract to agencies of the welfare system to provide mental health services are exempt from the provisions of the statute. There is a conflict between Minnesota Statutes, section 13.46, subdivision 2, and section 13.46, subdivision 7. The Department's interpretation is that Minnesota Statutes, section 13.46, subdivision 7 takes precedence because it is more specific. The mental health agencies described above may share data with other agencies of the welfare system under the following circumstances:

1. Pursuant to a court order;
2. Pursuant to a valid signed consent for release of information;
3. Pursuant to a statute which specifically authorized access, such as the Child Abuse Reporting Act, Vulnerable Adults Reporting Act, etc.; or
4. Pursuant to request for new use of data approved by the Commissioner of Administration.

Minnesota Statutes, section 13.46, subdivision 2 does not apply to these. Since their staff may also include medical personnel as defined in Minnesota Statutes, section 144.335, and records are composed of the type of information defined as medical data, they may release data in emergencies described above and withhold it in accordance with Minnesota Statutes, section 144.335.

- c. Public Hospitals - Most medical data about individuals maintained by public hospitals are private (Minnesota Statutes, section 144.335) and access is the same as that for other medical data. A public hospital is one that must comply with the Data Practices Act because it is a political subdivision of the government.
- d. Directory Information - Directory information maintained by a public hospital is public unless it is directory information about a voluntary admission patient who has requested that the data be maintained as private. It includes: name of patient, admission date, general condition, and date released (Minnesota Statutes, section 13.42, subdivision 1, 2). A voluntary patient has the right to request that the information not be released if he/she is not hospitalized pursuant to a commitment. Although an individual has requested that directory information be private, the hospital may release directory information to a law enforcement agency pursuant to a lawful investigation pertaining to the individual. Although not required, it is recommended that notice of this provision be included in the medical facility's Tennesen Warning to clients.

Directory information about a chemically dependent patient can be released only if the release of data will not identify the individual as a chemical dependency patient, or the patient has signed a consent for release of information.

- e. Medical Care Provider Data Privacy Procedure Exemptions - Private medical care providers (including private mental health centers) under contract to an agency of the welfare system who must comply with sections 13.02 to 13.07 of the Minnesota Government Data Practices Act, are exempt from the provisions of Section 13.04, subdivision 3. (NOTE: Community mental health centers under contract to an agency of the welfare system do not qualify for this exemption.) Private medical care providers under contract to an agency of the welfare system do not need to do the following:
 1. Inform a requestor whether he/she is the subject of stored public, private, or confidential data, and what statute classifies the data;

2. Allow a data subject to view private data about himself/herself;
3. Provide access to data at least every six months upon the subject's request and more frequently if the data is contested;
4. Explain the meaning of data which the data subject does not understand;
5. Provide copies of private data to the data subject;
6. Respond to all inquiries regarding private data within five days of the request.

Mental Health Centers/Bill Collections - The authority for mental health centers to disseminate data to the courts in order to pursue overdue accounts was received via a request for new use of data approved by the Commissioner of Administration on May 10, 1982. Dissemination of data to the courts for this purpose prior to May 10, 1982, for this purpose is prohibited.

Minors - Parents and guardians have access to data on their minor children and can authorize other persons access to these records unless:

1. The minor children have requested in writing that the data not be shown to the parents and the agency has concurred that the denial of parent access is in the best interests of the child. (See Sample of Forms for suggested form.) In making this decision the agency should be guided by at least the following:
 - a. Whether the minor is of sufficient age and maturity to be able to explain the reasons for and to understand the consequences of the request to deny access;
 - b. Whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical emotional harm;
 - c. Whether there is ground for believing that the minor data subject's reason for precluding parental access are reasonably accurate;
 - d. Whether the data in question is of such a nature that disclosure of it to the parent could lead to physical or emotional harm to the minor data subject; and
 - e. Whether the data concerns medical, dental, or other health services provided pursuant to Minnesota Statutes, section 144.335 through 144.347. If so, the data may be released only if failure to inform the parent would seriously jeopardize the health of the minor.

2. The parents are separated or divorced, and the custody document or other legally binding order specifically states that the parent is not to have access. Parents do not have access to their children's records if parental rights have been terminated.
3. Medical, dental, mental and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when in the professional's judgement, the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment (Minnesota Statutes, section 144.344).

In most cases, a parent must provide consent for medical treatment of their minor children, unless that minor child is emancipated (living apart from the parents and managing his/her own financial affairs). Any minor may give his/her consent for treatment of pregnancy, venereal disease, alcohol, or drug abuse. Parental consent is needed in these cases only if the pregnancy treatment selected by the minor is abortion (Minnesota Statutes, section 144.343).

Multiple Data Subject Files - Case records which contain data about a number of different people are multiple data subject files. An individual may not view data about other data subjects. Data included in the file which is about a family member other than the requestor must be removed before the requestor may view the record. Parents, however, may view records of their minor children, unless the children have requested that the data be withheld, and the agency decides that the request is in the best interests of the minor. Screening may be accomplished by:

1. Making a photocopy and obliterating the unauthorized data with a heavy pen.
2. Making a photocopy and tearing from the page the data which the requestor does not have access.
3. Using a template to photocopy only those sections of data which the requestor is authorized to see.

Agency personnel should be aware that the screening process cannot be accomplished if the agency has received a subpoena for a record. A record cannot be altered after a subpoena is received. The agency should contact the judge who issued the subpoena and inform the judge that release of the record may be an invasion of the privacy rights of other data subjects whose records are contained in that family case (multiple data subject case file). The judge may then allow for the viewing of the record "in camera" (private) in order to maintain the privacy of the individuals who are not involved in the court action.

Open Meeting - All public agencies in the welfare system must comply with the Minnesota Open meeting Law (Minnesota Statutes, section 471.705). To be in compliance with this law agencies must:

1. Hold all meetings open to the public (except as described below);

2. Keep minutes of those meetings available to the public; and
3. Make available to the public copies of all written material which the members of the governing body have available to them at the meeting.

There are certain exceptions to this law. Meetings of the board of pardons and corrections are exempt. Meetings, or portions of meetings, exercising quasi-judicial functions involving disciplinary proceedings, strategy for labor negotiations, or discussion of other not public data which cannot be made public through the use of summary data may be declared closed to the public to discuss the not public data.

County welfare boards agendas which will be used to make decisions regarding opening and closing of cases, changes in amounts of grants, and other private and confidential data should use numbers or other summary data rather than actual case names wherever possible in order to avoid a potential conflict with the open meeting law.

Minutes and meetings of the county welfare board are public and open (Minnesota Statutes, section 471.705). However, in an opinion established by the Attorney General's Office (Op. Atty. Gen. 125-a-64, December 4, 1972) county boards may declare that portion of its meeting private if the subject matter involves the discussion of individual clients whose identity would be recognized. This provision also covers those situations when the board discusses private personnel data.

Override of Statutes - In circumstances where laws are in conflict regarding the handling of data, the agency's attorney should be consulted. However, there are three rules which attorneys generally use in deciding which law takes precedence.

1. Federal vs. State - In general the Federal law takes precedence over the state law if the laws are in conflict.
2. Most Recent - The more recently enacted statute generally takes precedence over the older statute if two statutes are in conflict.
3. Most specific - The more specific statute generally takes precedence over the more vague statute if two statutes are in conflict.

Ownership of Records - Data on individuals collected by an agency in providing aids or services to that individual are the property of the agency which collected or created the data, NOT of the staff person who works with the individual. Staff persons are not permitted to take individual client or employee records with them when the staff person terminates his/her employment with an agency. Staff persons found guilty of this may be found guilty in a court of law of: (1) willful violation of the Data Practices Act; (2) theft of government records; (3) professional misconduct resulting in revocation of licenses, if that person is a licensed professional (i.e., licensed psychologists); or (4) misconduct of public employee.

Mental health centers and other medical facilities may have agreements with professional, licensed staff (i.e., physicians, psychologists, nurses) that provide for the client to be given the choice of professional therapist when an employee leaves his/her employment. If that client chooses to continue to receive services from the professional who is leaving, the client should be asked to sign informed consents for release of information to enable the professional to take a summary or photocopy of the client's records from the facility when he/she leaves the employment of that facility. The original file must be maintained by the center.

Parents and Guardians - See section on minors.

Personnel

Definitions - The law classifies information kept on individuals who work for agencies of the system. The following people are classified as "employees" and data maintained about them by agencies of the system must be administered according to the Act (Minnesota Statutes, section 13.43, subdivision 1).

- . Paid employees
- . Volunteers
- . Private individuals under contract
- . Members of advisory boards or commissions

Exceptions - Personnel data of mental health, physical health, counseling, day activity centers, and other nonprofit social service agencies under contract to any agency of the welfare system to provide services to individuals are excluded from the provisions of the Act (MN Rule 1205.0100, Subp. 4). (The data that those agencies collect on the clients they serve, however, is covered by this Act, if the contract provides that the nonprofit social service agency collect, create, store, use and disseminate data on individuals.)

Applicants - The following data about applicants for public employment are public: veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. The names of applicants shall be private data unless they are certified eligible for appointment to a vacancy, or are considered to be finalists for a position in public employment (Minnesota Statutes, section 13.43, subdivision 3).

Employees - The following data about public employees are public: name; actual gross salary; salary range; contract fees; actual gross pension; value and nature of employer paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee; whether or not the complaint or charge resulted in disciplinary action; the final disposition of any disciplinary action and supporting documentation; work location; work telephone number; badge number; honors and awards received; payroll time sheets that are only used to account for employee's work time for payroll

purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data; and city and county of residence (Minnesota Statutes, section 13.43, subdivision 2).

Private Personnel Data - All other personnel data on individuals are private, except pursuant to a valid court order (Minnesota Statutes, section 13.43, subdivision 4). The following is also private data:

- . Data on individuals who participate in employee assistance programs (Minnesota Statutes, section 13.43, subdivision 7).
- . Information which would reveal the identity of an undercover law enforcement officer (Minnesota Statutes, section 13.43, subdivision 5).

Access by Labor Unions - Agencies may disseminate private data on personnel if the responsible authority of the agency determines that the dissemination is necessary for the labor union to:

- . conduct elections
- . notify employees of fair share fee assessments
- . implement the provisions of the Labor Relations Act (Minnesota Statutes, chapter 179)

The Act further provides that if an agency is not certain that the dissemination of private information is legal and justified, that the responsible authority may contact the director of the Bureau of Mediation Services for a determination if the dissemination is authorized.

Investigations - Investigations of personnel of an agency for employee misconduct such as embezzlement, abuse, unethical conduct, etc., are confidential (Minnesota Statutes, section 13.43, subdivision 2~~6~~⁷). Only the data necessary for the conduct of an investigation is confidential, not the whole employee personnel file.

Volunteers - An agency of the welfare system should require a volunteer to sign a nondisclosure agreement if the agency and the volunteer do not have a formal agreement or contract which provides that the volunteer will have access to private or confidential data on individuals and which provides that private and confidential data is handled in accordance with the Minnesota Government Data Practices Act.

Photographs - Photographs are identifying information about individuals, and therefore, are private data, and subject to the provisions of the law. All newsletters, publications, news releases, etc., should use photographs only if a consent for release of information has been obtained, or if the photograph has been taken at such an angle that identification of the individual is not possible.

Photographs of children whose stories will be published in the Adoption Exchange is permissible under the following conditions.

1. The Commissioner of Human Services has granted permission to use identifying information of state wards under his supervision since he feels that the release of this identifying information is in the children's best interests.
2. Consents for release of information have been obtained from the parents if parental rights have not been terminated.

Revenue - The Commissioner of Human Services and the Commissioner of Revenue will cooperate with the federal Department of Health and Human Services in any reasonable manner as may be necessary to qualify for reimbursement under the Aid to Families with Dependent Children Program for costs incurred in the provision of the supplemental housing allowance (Minnesota Statutes, section 256.879).

If a district or county court finds that a person is delinquent in making child support payments, it can order the Department of Revenue to withhold that portion of the income tax refund (Minnesota Statutes, section 290.50, subdivision 6) necessary to pay the debt.

The Department of Revenue may request the amounts of cash public assistance and relief paid to welfare recipients, including their names and Social Security numbers, in order to administer the property tax refund law, supplemental housing allowance, and the income tax (Minnesota Statutes, section 13.46, subdivision 2.h.).

However, in spite of the fact that this provision exists in Minnesota Statute, the actual release of this information is not currently allowed as it may conflict with federal regulations which take precedence. Federal regulations allow the release of client data for program purposes, our program not another agency's. Since the property tax refund, supplemental housing allowance and the income tax programs are Department of Revenue programs, clarification must be received from the Department of Health and Welfare before this information may be released. The data about MSA, General Assistance, and other non-federally funded programs may be released.

Services to the Blind - Data on individuals collected, used, and maintained by State Services to the Blind is generally classified as private. Medical data may be classified as confidential if the medical care provider has clearly indicated that the criteria specified in Minnesota Statutes, section 144.335 have been applied. Federal regulations (34 CFR § 361.49 (c)) however, impose certain restrictions regarding the release of SSB data for program purposes only. Consents for release of information signed by the client should be honored to the extent the information is to be used for rehabilitation purposes only. If there is question about this, the information should be released directly to the client who can provide it to the third party.

Upon request, State Services to the Blind must furnish to the Department of Public Safety information regarding the identity and location of all persons who have applied for services because they are blind or have reduced vision (Minnesota Statutes, section 171.31).

Social Security Benefit Data - Information including Social Security number, type of benefit, amount, date of eligibility, etc., is private data. Federal law allows the Social Security Administration to release this information to the welfare department in order to:

1. Administer state supplemental payments (SSI)
2. Determine Medicaid eligibility
3. Enroll welfare recipients for supplemental medical insurance
4. Determine assigned Social Security numbers of applicants for Aid to Families with Dependent Children
5. Provide treatment for drug addicts or alcoholics
6. Administer the Food Stamp Program

Reciprocal sharing from welfare department to Social Security Office is permitted for program purposes.

Social Security Number - The Federal Privacy Act of 1974 makes it unlawful for any Federal, State, or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security number unless 1) the disclosure is required by Federal statute, or 2) the requirement existed prior to January 1, 1975, and was enforced through local statute or regulation prior to that date.

In addition, the Act requires any Federal, State, or local government agency which requests an individual to disclose his Social Security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

The Tax Reform Act, however, allows the mandatory disclosure of the social security number in order to receive public assistance or food stamps and to administer the income tax and social security tax programs.

Spouses - Individual spouses do not have the authority to view private data about each other, unless the spouse has received a signed consent for release of information from the other spouse.

State Hospital and Nursing Home Records - Records relating to patients at state hospitals or state nursing homes may be private data pursuant to Minnesota Statutes, section 13.46 or confidential data pursuant to Minnesota Statutes, section 144.335. In order to be classified as confidential, the medical care provider must indicate in writing that the criteria of Minnesota Statutes, section 144.335 have been applied. However, since much of the data maintained in those facilities is medical, release may be governed by the provisions of the release of medical data. (See section on medical data.)

Telephone - All employees whose jobs necessitate giving or receiving private information over the telephone must be sure that they don't unknowingly give out private information kept by the agency. The fact that an individual is a client of the agency or is known to the agency is private data and should

not be disclosed. They must give that person a Tennessee Warning before they ask that person to provide private or confidential about himself/herself. (See also section on Intake/Reception)

Calls within the welfare system - Staff members who receive requests for client information from agency staff of another agency within the welfare system should provide data only when satisfied by the caller's identity as a staff member and his/her need to know. Community mental health center staff may not release data about individuals without a signed, informed consent for release of information.

Client calls - If a client requests information, the receptionist should take the caller's name and information requested and refer the request to the assigned staff worker for action. Professional workers must also verify identity of the caller before giving out any private information.

Third party calls - Care should be taken not to identify the staff worker assigned to a client, as such information indicates that the client is indeed a client. The receptionist should simply tell the third party caller that that information cannot be released.

Third Party - Information obtained from a third party about the data subject is available to the data subject. However, information provided by an individual (including information about a spouse or family member) in a counseling situation is actually data about that individual if the data represents that individual's feelings or attitudes about the spouse or family member. Tennessee Warnings do not need to be given to individuals who provide information about a third party.

If a third party requests confidentiality of the information he/she supplies about the data subject, that third party should be told it is private data about the data subject and will be available to the data subject. If the information the third party provides is really an expression of his/her own thoughts or feelings, that is private information about the third party and probably should not be recorded in the data subject's file. It may be recorded in the third party's case file if that third party is a client and the data is relevant to the third party's care or services.

Persons supplying information about a specific client should be advised that the client will have access to the name of the person who supplied the information, unless the information has been supplied anonymously. Names of reporters of child abuse or vulnerable adult abuse are confidential, unless the data is submitted to a court in an administrative or judicial proceeding.

Medical, psychiatric or other reports obtained from third parties become the property of the agency which collects and stores the data. If the client requests access to it, he/she must be given access to it by the agency; the agency cannot refer the client to the originator of the data for this purpose. There is one exception to this if a medical care provider clearly restricts access under the criterion specified in Minnesota Statutes, section 144.335. Agencies holding this data cannot request the client to obtain the data from the originator.

Vendors - If the identity of a medical vendor has been established, information regarding a client's medical assistance ID number, effective date of assistance and expiration date of assistance card may be given to the medical vendor as this information release is needed for proper program administration as well as Minnesota Statutes, section 550.37, subdivision 14. Requests for more specific information should be denied.

Videotapes - Videotapes of clients are classified as private data on individuals and therefore subject to the same conditions of collection, maintenance, and dissemination. Use of videotapes of clients for other than therapeutic purposes is discouraged. Videotapes made for staff training, public information, or to support hypothesis presented to professional organizations or conferences is discouraged since it is difficult to develop a consent for release of information specific enough to describe all the potential recipients of the information. It may also be difficult to locate all copies of a videotape if the client decides to revoke consent. All individuals whether they are staff or clients, who are identified on a video tape must give consent to have the data released.

Volunteers - Data on individuals who serve as volunteer workers, interns, or student workers for agencies in order to supplement that agency's staff capabilities are deemed personnel data and treated accordingly. Volunteers should also be given the agency Tennessee Warning developed to be given to employees.

Vulnerable Adult Abuse Records - Records involving vulnerable adult abuse generally are private or confidential depending on the activity status and data subject. There are also specific provisions for sharing the data.

Active investigation - All data on individuals obtained during an active investigation are confidential. Data obtained on vendors or agencies which is not data on individuals is protected nonpublic (Minnesota Statutes, section 13.46, subdivision 3).

Completed investigation - Data on individuals collected during an investigation becomes private data when the investigation is complete, unless it is submitted to a court involved in prosecuting the alleged perpetrator. If it is submitted to court or hearing examiner, it becomes public.

Name of reporter - The name of the reporter of vulnerable adult abuse is confidential and shall be disclosed only when the court finds the report false and made in bad faith. (Minnesota Statutes, 626.557, subdivision 12)

Investigative memorandum - Upon termination of the investigation, each licensing agency must prepare a public report of the agency's investigation which includes the name of the facility, the nature of the reported abuse, pertinent information obtained from medical or other records, the investigator's name, a summary of the investigative findings, and a statement of any determination made or action taken by the agency. (Minnesota Statutes 626.557, subdivision 12)

Name of the victim and name of the perpetrator - While the investigation is active the names of the victim and perpetrator are confidential. The names become private when the investigation terminates. (Minnesota Statutes, section 626.557, subdivision 12).

Sharing - The data obtained in the investigation of the abuse of a vulnerable adult may be shared as follows:

- a. To facilitate the investigation (Minnesota Statutes, section 626.557, subdivision 13):
 1. Local welfare department.
 2. Local law enforcement agency.
 3. Department of Health.
 4. Department of Human Services. (MN Rule 9555.7700)
- b. To assist the victim to obtain appropriate care and services subsequent to the abuse (Minnesota Statutes, section 626.557, subdivision 10) (MN Rule 9555.7300, Subp. 4.)
 1. Shelter care facility involved.
 2. Medical personnel, if necessary.
 3. Sexual abuse counselor.
- c. Prosecuting authority (Minnesota Statutes, section 13.46, subdivision 2(d)).

Chemical Dependency - The abuse of a vulnerable adult who is in a treatment facility for chemical dependency or drug abuse may be reported if:

- a. A report is made pursuant to a court order;
- b. The report does not identify the patient as a CD patient;
- c. The patient gives written consent;
- d. The report is made to a qualified service organization;
- e. The report is made to medical personnel for the purpose of treating the patient for a medical emergency; or
- f. The patient makes a self-report.

Welfare System - The statewide welfare system is a loosely structured group of agencies bound together by statute and which provide similar interrelated services to the public. The agencies included in the statewide welfare system are:

- . State Department of Human Services
- . County Welfare Boards
- . County Welfare Agencies
- . Human Services Boards

- . Community Mental Health Center Boards
- . State Hospitals
- . State Nursing Homes
- . Persons, agencies, institutions, organizations, and other entities under contract to one of the above.

The welfare system was created by statute to allow for the exchange of data among its agency components which is necessary to accomplish the varied activities mandated by law.

If a Tennessee Warning has been given to the data subject and statutory authority exists for the sharing, private and confidential information may be shared among these agencies, without a signed, valid consent for release of information if that information is necessary:

- a. To determine eligibility for aids or services.
- b. To determine amount of assistance.
- c. To determine the need to provide services of additional programs to individuals.
- d. To administer federal funds.
- e. To administer federal programs.
- f. To enable employees working in the same program to do their jobs.
- g. To conduct investigations of programs and their participants.

Working Papers - Any files employees keep in their possession separate from the official file have the same classification as the official file and shall be subject to the same access procedures (Minnesota Statutes, section 13.04, subdivision 3). The intention of the Minnesota Government Data Practices Act is to promote openness in government and that there are no secret files.

RECORDS RETENTION AND DESTRUCTION

The State of Minnesota has enacted a records management law (Minnesota Statutes, section 138.163-.20). This law directs the creation, maintenance, storage, and destruction of records maintained by government agencies.

Definition - Government records are defined as all information or documentary material regardless of physical form or characteristics, storage media, or condition of use. Records may be:

- | | |
|-------------------|----------------|
| 1. cards | 7. papers |
| 2. correspondence | 8. photographs |
| 3. disks | 9. recordings |
| 4. maps | 10. reports |
| 5. memoranda | 11. tapes |
| 6. microfilm | 12. writings |

Exclusion from Definition - The definition of records does not include:

1. Library and museum material made or acquired and kept solely for reference or exhibit purposes.
2. Extra copies of documents kept only for convenience of reference.
3. Processed documents, bonds, coupons, or other obligations or evidences of indebtedness which destruction is covered by other laws.
4. Data and information which does not become part of an official record.

Agency staff should be aware that the Records Management Law and the Data Practices Act treat "working papers" differently. Working papers under the Data Practices Act carry the same classification and access provisions as the official record. Working papers, however, do not need to be included on an agency's records retention schedule and can be destroyed on an ongoing basis.

Applicable Agencies - Those agencies which must adhere to the provisions of this act are:

1. State, county, city, town, school district, municipal subdivision, or corporation or other public authority or political entity within the state.
2. All departments, offices, commissions, boards, or any other agency, however styled or designated of the executive branch of state government.
3. State legislature.
4. State and local courts.

Excluded Agencies - Agencies of the statewide welfare system which are not covered by this act are those private agencies under contract to one of the agencies of the welfare system including private mental health centers.

Destruction Criteria - The law provides that records may be destroyed if they have fulfilled their legal retention requirements, they are no longer needed for reference, and:

1. The holding agency has submitted a records retention schedule which has been approved by the records retention panel. Agencies which have an approved records retention schedule may destroy records according to that schedule without obtaining additional approval.
2. The holding agency has submitted a request to destroy specific records on the approved forms and which has been approved by the records retention panel.

Procedure - The procedure outlined below for the destruction of government agency records is essentially the same as that included in the DHS Administrative Manual. Procedures have been added for the private agencies included in the welfare system.

All agencies within the statewide welfare system shall develop a records management policy and procedure which ensures:

- . Destruction of records no longer useful for care and treatment, licensing, audit, legal, or other requirements.
- . Data which are complete, accurate, and current and necessary are retained. Data which are incomplete or inaccurate must be corrected. Data which are not current should be updated or destroyed in such a manner to maintain data security.
- . The privacy/confidentiality of records is maintained when they are destroyed. The destruction should be witnessed. Approved methods of destruction include:
 - a. Shredding or tearing into paper sizes which are not feasible to be reconstructed;
 - b. Burning;
 - c. Melting method of paper recycling;
 - d. Erasing tapes, etc.

Disposing of Records Maintained by County Welfare Departments

- A. Records covered by the records retention schedule.
 1. Records to be destroyed must be described to the county board. The county board must give its permission to destroy county welfare records.

2. Requirements, if any, of the county auditor must be met. Minnesota Statutes, section 384.14 provides a ten year retention period for most of the data maintained by the county auditor as listed in this statute.
 3. The board must appoint one of its members or a responsible staff person to supervise the destruction of records.
 4. The appointed person must ensure that the records are destroyed or shredded in such a way that their private/confidential nature is preserved.
- B. Records not covered by the records retention schedule.
1. County welfare agencies must obtain specific approval to destroy any record not covered by the records retention schedule.
 2. Application to destroy records must be made to the records disposition panel (Attorney General, Public Examiner, director of the Minnesota State Historical Society) in accordance with Minnesota Statutes, section 138.17.
 3. Form PR-1, Application for Authority to Dispose of Records, is the form to use. Write Minnesota Historical Society, 1500 Mississippi Street, St. Paul, Minnesota 55155 for a supply of this form.
 4. Once permission to destroy has been obtained, you must follow the steps listed in "A" above.

Disposing of Records Maintained by Private Agencies Within the Welfare System

Nongovernmental agencies are not covered by the records retention statutes applicable to county agencies or other governmental units. Destruction of records must be accomplished when retention is no longer necessary to meet care or treatment, licensing, audit, legal or other requirements. Although not required by law, the agency is encouraged to develop a records retention schedule which includes the title and other identifying information of each record maintained, retention period, and the statutory requirement (if any) for the retention period. Development of a records retention schedule would be a timesaving device which would eliminate confusion. The compilation and maintenance of this records retention schedule should be assigned to a particular person. Records which become due for destruction according to the schedule should be destroyed as follows:

1. A list of records to be destroyed should be presented to the agency board. The board should give approval for the destruction of records.
2. The board should appoint one of its members or a responsible staff person to supervise the destruction of records.
3. The appointed person must make arrangements for the destruction of the records which insures that the records' private or confidential nature is maintained.

4. The appointed person will report back to the board and the board will cause to have entered in the board minutes the destruction date and titles of the records which were destroyed.

Disposing of Central Office Records Containing Data on Individuals

- A. Central Office records listed on the Minnesota Records Retention Schedule (RM-00058-02), are to be disposed of when the retention period has expired. The designee responsible for the record must supervise the destruction in order to protect the privacy or confidentiality of any private or confidential data. Notify the Department's Records Manager when records have been destroyed. (296-2945)
- B. Central Office records not covered by the Minnesota Records Retention Schedule can be disposed of only when approved by the records disposition panel via the use of Form PR-1.

Disposing of State Institution Records Containing Data on Individuals

- A. Records covered by the Minnesota Records Retention Schedule.

Records covered by the retention schedule should be destroyed once the retention period has expired. 2 MCAR 1.214 specifically requires the disposition of all data no longer necessary.
- B. Records not covered by the Minnesota Records Retention Schedule.

State institution records not covered by the Minnesota Records Retention Schedule can be disposed of only when approved by the records disposition panel upon their receipt of Form PR-1. All designees must make application for destruction of records no longer necessary.

The Records Manager in the Department of Human Services (telephone 612/296-2945) may be contacted for answers to specific data/records management and destruction questions.

SAMPLES OF FORMS

DENIAL NOTIFICATION

NAME OF REQUESTOR	DATE OF REQUEST
ADDRESS	
CITY STATE ZIP	
DATE REQUESTED	

CLASSIFICATION OF DATA

- PRIVATE
- CONFIDENTIAL
- NON-PUBLIC
- PROTECTED NON-PUBLIC

OUR RECORDS SHOW THAT YOU REQUESTED THE ABOVE INDICATED DATA ON THE DATE INDICATED. THE CLASSIFICATION OF THAT DATA IS CHECKED ABOVE AND CANNOT BE RELEASED TO YOU. THE STATUTE UPON WHICH THE CLASSIFICATION AND THE SUBSEQUENT DENIAL OF ACCESS IS AS FOLLOWS:

IF YOU HAVE QUESTIONS ABOUT THIS DENIAL OR REQUEST FURTHER INFORMATION REGARDING THIS NOTIFICATION PLEASE CONTACT

NAME OF RESPONSIBLE AUTHORITY OR DESIGNEE	DATE
NAME OF AGENCY	PHONE NUMBER
ADDRESS	
CITY STATE ZIP	

MINOR'S REQUEST TO WITHHOLD PRIVATE DATA FROM PARENTS

Name of Minor	Name of Agency
---------------	----------------

Being a minor, I understand that the Minnesota Government Data Practices Act gives me the right to request that private and/or confidential data kept about me by the above-named agency not be released to my parents or guardian.

I also understand that my request may be denied if the agency finds that it is in my best interests for this data to be released to my parents or guardian.

I am requesting that the following data about me be withheld from my parents or guardian because of the following reasons (please specify what data and the reasons you wish it to be withheld).

Signature of Minor	Date
Signature of Agency Staff Worker explaining rights to minor	Date
Designee Signature	Date

To be completed by agency:

Disposition of request: Approved Denied

If denied, indicate reasons: _____

RESEARCHER/SUMMARY DATA REQUEST

A. To be completed by researcher:

Name of researcher:	Signature of researcher:
Address:	Date of request:
City, state, zip:	Telephone number of researcher:
Description and purpose of the information requested:	

Methods to be used to assure continued protection of data:

B. To be completed by agency:

Name of agency:	Disposition of request: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	
Responsible authority/designee signature	Procedure approved: <input type="checkbox"/> Researcher access <input type="checkbox"/> Agency compile	
Date:	Estimated cost of agency work:	Estimated time for Agency to compile:
Classification of data: <input type="checkbox"/> Private <input type="checkbox"/> Confidential	<input type="checkbox"/> Nonpublic <input type="checkbox"/> Protected nonpublic	
If data access request is denied, state reasons:		

C. Agreement - To be completed if request is granted:

Agency compile:
I understand and agree that the agency has granted my request but has determined that it will do the compilation of the data. I understand that I will be responsible for the costs involved to compile this data. Payment for the labor and materials must be made in advance and check or money order made payable to:
Name check should be made out to:

Researcher Access:
I understand that access to data which I have described above is being granted to me in order that I may compile my own data. I understand that collection and dissemination of this data is governed by Minnesota Statutes, Chapter 13, as amended, and Minnesota rule, Chapter 1205. I agree that in consideration of the release of this data to me, that I am liable for the civil and criminal penalties in the law if I subsequently release this data in violation of the Act.

Signature of researcher:	Signature of responsible authority:
Date:	Date:

CONSENT FOR RELEASE OF INFORMATION

INSTRUCTIONS TO AGENCY STAFF

- . Complete boxes 1-4.
- . Complete Box 5 only if this release is to expire in less than one year.
- . Complete the address and other name boxes only if necessary to identify the data subject.
- . Parents may sign for their minor children, but minor data subjects may also sign for themselves. Signatures of minor data subjects should be witnessed by non-agency staff.
- . A guardian or witness signature should be obtained if it is questionable that the data subject understands the purpose and consequences of this release of information.

1. Name of agency or person maintaining the data

2. Description of data to be released

3. Name of agency or person to whom the data will be released

4. Purpose the data will be used for

5. Date or event on which this release expires

INSTRUCTIONS TO DATA SUBJECTS

I have been instructed as to what information will be released, the purposes and intended uses of the information, who will receive the information, and any known consequences of this release. I have been informed of my right to refuse to release this information and the consequences of my refusal. I understand that I may revoke this consent upon written notice (not retroactive) and that this consent will automatically expire one year from the date of my signature if an earlier date is not specified in box 5 above.

Signature of Data Subject	Maiden or Other Name
Address	Date
City State Zip	Signature of Parent or Guardian or Witness

CONSENT FOR RELEASE OF INFORMATION

INSTRUCTIONS TO AGENCY STAFF

- . Complete boxes 1-4.
- . Complete Box 5 only if this release is to expire in less than one year.
- . Complete the address and other name boxes only if necessary to identify the data subject.
- . Parents may sign for their minor children, but minor data subjects may also sign for themselves. Signatures of minor data subjects should be witnessed by non-agency staff.
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INSTRUCTIONS TO DATA SUBJECTS

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Signature of Data Subject	Maiden or Other Name
Address	Date
City State Zip	Signature of Parent or Guardian or Witness

MOOSE LAKE STATE HOSPITAL
MOOSE LAKE, MN 55767
218/485-4411

Client Name
Date of Birth

AUTHORIZATION FOR RELEASE OF INFORMATION

I authorize the Moose Lake State Hospital to release the following information about me: (Check applicable boxes. Line out those that don't apply.)

- | | |
|--|---|
| <input type="checkbox"/> Brief Summary of My Record | <input type="checkbox"/> Chemical Dependency Evaluation and Therapy Information |
| <input type="checkbox"/> Discharge Summary | <input type="checkbox"/> Medical Reports |
| <input type="checkbox"/> Discharge and Aftercare Planning/
Aftercare Service Plan | <input type="checkbox"/> DVR Information |
| <input type="checkbox"/> Meeting Dates | <input type="checkbox"/> Other (Specify) _____ |
| <input type="checkbox"/> Copy of My Whole Record | _____ |
| <input type="checkbox"/> Psychological Testing Results | _____ |

To the following agencies or individuals: _____

- | | |
|---|---|
| <input type="checkbox"/> Planning and/or Continuing My Care and Treatment | <input type="checkbox"/> Satisfying Probation, Parole, or Furlough Requirements as Follows:

_____ |
| <input type="checkbox"/> Determining Eligibility for Insurance Benefits | _____ |
| <input type="checkbox"/> Determining Eligibility for Social Security Benefits | <input type="checkbox"/> Other (Specify) _____ |

I understand that the information will be used for the purposes specified and will not be disclosed to other sources unless specifically authorized by law. I understand that I may refuse to release this information and the consequences of this refusal have been explained to me.

I understand that I may revoke this consent at any time (not retroactive) unless my participation in this program is a condition of probation, parole, furlough, or other court order. In that event, I understand I may not revoke this consent until the conditions have been satisfied or after 60 days, whichever is later. I further understand that this revocation must be in writing.

This consent will automatically expire one year from the date of my signature, unless other conditions for expiration have been met at an earlier date.

Signature of Client	Signature of Witness
Date of Signature	Signature of Parent or Guardian

Conditions upon which this consent will expire (if not applicable, indicate NA)

AUTHORIZATION TO DISCLOSE
PRESENCE IN FACILITY

Name of Patient	Name Of Facility
-----------------	------------------

I authorize the above-named facility to acknowledge my presence in this facility to the following individuals:

The purpose of this disclosure is to provide information to family, friends and other individuals who are personally interested in my whereabouts.

This authorization may be revoked at any time, not retroactive, and in any event will expire one year from the date of my signature or the date which I specify, whichever comes earlier.

Date or condition on which this consent expires:

Signature of Client/Patient:	Date:
Signature of Witness:	Date:
Signature of Parent, Guardian, or Legal Representative:	Date:

Specify relationship:

YOUR PRIVACY RIGHTS*

(* Tennessee Warning)

Information about your rights under the Minnesota Data Practices Act

The Minnesota Government Data Practices Act seeks to protect the privacy of the individuals about whom government agencies, their subdivisions, and agencies under contract with them collect data. The Minnesota Government Data Practices Act also facilitates the release of information which is public. The information on this sheet applies to your current and future contacts with this agency, whether the contact is in person, by mail or by phone.

That Act requires that whenever we ask you to provide us with private or confidential information about yourself that you be told:

- . The purpose and intended use of the data within this agency;
- . The legal requirements, if any, of providing information;
- . The consequences of providing or refusing to provide the information requested; and
- . The identity of other persons or agencies authorized by statute to receive the information.

Purposes

The purposes of the information we collect from you are listed below. Because this list of purposes covers a variety of programs, some of the purposes listed may not apply to you. Details about the purposes of the information we collect from you are often listed on the forms you are asked to complete. Depending upon the program you are in, the data we collect from you may be used for the following purposes:

- . Determine your eligibility for goods or services provided by this agency;
- . Provide effective care and treatment of medical/social/psychological problems;
- . Establish the amount of financial aid for which you are eligible;
- . Enable us to collect federal, state, or county funds for aids and services;
- . Determine if you or your facility meets licensing standards;
- . Determine your ability to pay for medical treatment or other aids and services provided to you or to other persons for whom you are responsible;
- . Prepare statistical reports and evaluations;
- . Obtain AFDC school aids authorized by law;
- . Investigate facility complaints or reports of abuse, fraud, or misconduct;
- . Determine foster home needs or suitability;
- . Ascertain applicant's eligibility for adoption services;
- . Conduct program and financial audits;
- . Collect reimbursement from other agencies or individuals for services or assistance we give you;
- . Determine whether you or your children need protective services;
- . Research;
- . Evaluate license applications.

Legal Requirements

In most cases, you are not legally required to provide the information requested. If you are legally required to supply the information requested, you will be informed of the law which requires it.

If you do not provide the information requested, we may not be able to determine your eligibility for the services or aids you request. In some cases, giving you the aids or services will be delayed or otherwise hindered if you refuse to provide the information. Most license applications will be denied if you do not provide the information requested.

Minors

If you are a minor, you have the right to request that private data about you be kept from your parents. You must make this request in writing. You must explain why you wish this data to be withheld and what you expect the consequences of this activity will be. If the agency agrees that withholding the information from your parents is in your best interests, it will not be shown to your parents.

Sharing Information

The information you provide will be shared with other employees or agents of the statewide welfare system only when programs require access. Agencies in the statewide welfare system are:

- . State Department of Human Services;
- . County welfare boards;
- . Human services boards;
- . Community mental health boards;
- . State hospitals;
- . State nursing homes;
- . Persons, agencies, institutions, organizations, and other entities under contract to one of the above, only to the extent of the contract.

The information will also be shared under the following circumstances:

- . To individuals, persons, agencies, institutions, or organizations you authorize sharing via a valid consent for release of information;
- . To a court via a valid court order;
- . To administer federal funds or programs;
- . To appropriate law enforcement personnel who are acting in an investigation, prosecution, criminal or civil proceeding relating to the administration of a program;
- . To appropriate parties in an emergency.

By law some other government and contractor agencies have access to certain information about you if they provide a service to this agency which requires access to your records. The type of data released and to whom depends upon the program effected. The agencies that may have access are:

- . The U.S. Department of Health and Human Services, Labor, Agriculture, and the Social Security Administration;
- . The Minnesota Departments of Economic Security, Labor and Industry, Revenue, Veteran's Affairs, Corrections, Human Rights, and Human Services;
- . State, county, or local health departments and other health care providers;
- . Attorney General, county attorney, or other law enforcement officials, if necessary for program purposes;
- . Creditors;
- . School districts, if necessary for program purposes;
- . Community food shelves or commodity programs;
- . Relatives who may be financially responsible for you;
- . Multidisciplinary case consultation teams.
- . Legislative auditor, and other state and federal program auditors;
- . To parents, guardians, conservators of minors or adjudged incompetent adults and persons you give powers of attorney, to the extent of the appointment.

Details about how the information will be shared may be provided on the forms you will be asked to complete. Additional information is also available from the staff persons assisting you.

Other Rights

- . You have the right to know what information is maintained about you.
- . You have the right to view all public and private information about you maintained by this agency. This includes the right for you to authorize other persons or agencies to view it.
- . You have the right to have data to which you have access explained to you.
- . You have the right to request copies of the information to which you have access. You may, however, be required to pay for the cost of those copies.
- . You have the right to challenge the accuracy or completeness of any private information in your records. If you want to challenge any information, write to the responsible authority of the agency which has your records. You may also talk to the person at this agency who works with you. Your challenge will be answered in 30 days.
- . You have the right to insert your own explanation of anything you object to in your records. That explanation will be attached any time that information is shared with another agency.
- . You have the right to appeal decisions made by the responsible authority about the accuracy or completeness of your records. To file an appeal write to:

Commissioner of Administration
Data Privacy Office
State of Minnesota
50 Sherburne Avenue
St. Paul, MN 55155

Your appeal should include:

- . Your name, address, and telephone number;
- . The name of the Commissioner of Public Welfare;
- . The name of the agency involved in your appeal;
- . A description of the nature of the dispute, including a description of the data.

You must file this appeal within 60 days of the action being appealed.

Whom To Contact

If you do not understand this document or if you have further questions, please discuss these with the agency staff person who provided you with this statement. You may also contact: Data Privacy Office, Minnesota Department of Public Welfare, 4th Floor, Centennial Office Building, St. Paul, MN 55155. You may call 612/297-3173.

I have read this explanation of my privacy rights and understand the purposes and consequences of giving the information and who is authorized to use it.

Signed _____

Date _____

Tennessee Warning for Employees

In accordance with the Minnesota Government Data Practices Act, we are required to inform you of your rights as they pertain to the private information we collect from you. The information we collect from you is classified by law as either public (any one can see it), private (the public is not given access, but you are), or confidential (even you cannot see the information). As a public employee or an applicant for public employment, most of the data we maintain about you is public according to Minnesota Statutes, section 13.43, subdivisions 2 and 3.

The information we request from you may be used for one or more of the following purposes:

- . To distinguish you from all other applicants or employees and identify you in our personnel files;
- . To determine your eligibility for employment or promotion;
- . To contact you or other significant persons in an emergency;
- . To enroll you and your family members for health insurance;
- . To enroll you for pension plans;
- . To account for wages paid;
- . To justify travel expense reimbursement;
- . To account for other employer paid fringe benefits;
- . To compile Equal Opportunity and Affirmative Action reports.

Information which you are asked to provide generally is not required by statute. However, it generally is to your benefit to provide it. Without the requested information, this agency may not be able to determine your eligibility for employment or promotion, compute your wages, or grant you other fringe benefits.

Federal law permits government agencies to require an individual to provide his/her social security number for the administration of any tax. Please be aware that when you are asked to give your social security number on Revenue forms, this collection is mandated by section 1211 of the Tax Reform Act of 1976 and also Minnesota Statutes, section 270.66. This information will be shared with the State Department of Revenue, the Internal Revenue Service, and the Federal Department of Health and Welfare for the purposes of administering the income tax and social security tax programs. In most other cases the disclosure of your social security number is voluntary. If it is required by law, we will inform you of the statute which requires collection.

If you are a minor, your parents or guardian will have access to the information in your personnel file unless you specifically request in writing that this information not be shown to your parents or guardian. You must explain why you wish this data withheld and what you expect the consequences of this activity will be. If the agency agrees that withholding the information from your parents or guardian is in your best interests, the information will not be shown to your parents or guardian.

The information you provide may be routinely shared with agency personnel office staff who require the information to do their jobs, agency accounting/payroll staff, insurance contractors, Minnesota Merit or Civil Service System, PERA or MSRS, IRS, and the State Departments of Revenue, Finance, Economic Security, Employee Relations, and Labor and Industry.

Information may also be shared with other agencies authorized by law to receive specific data relating to:

1. Absent/nonsupporting parents;
2. Civil/human rights complaints;
3. Worker's Compensation;
4. Unemployment Compensation;
5. Labor contracts (to the extent specified in Minnesota Statutes, chapter 179);
6. Employee assistance programs;
7. Child/vulnerable adult abuse.

If you have any questions about this notice, personnel office staff will explain it to you. The information on this form applies to your future contacts with this agency whether the contact is in person, by mail, or by phone.

Tennessean Warning for Public CD Facilities

The privacy of alcohol and drug abuse patient records maintained by this program are protected by various Federal and State laws and regulations. Among these are:

- . 42 U.S.C. .290dd-3
- . 42 U.S.C. .290ee-3
- . 42 CFR Part 2
- . Minnesota Statutes, chapter 13, as amended
- . Minnesota Statutes, chapter 254A.
- . 12 MCAR § 2.037 and § 2.043

The information you are asked to provide will be used to plan and provide treatment to you, compile statistical reports, and evaluate programs.

In most cases you are not legally required to provide the information requested. However, failure to provide the requested information may mean that we will be unable to provide the services you request. If you are here because of a court order or because of probation or parole conditions, failure to provide the requested information may result in a revocation of the conditions of your probation or parole.

Information about you may be disclosed outside the program or to those not assisting the program in the provision of services under the following circumstances:

1. The disclosure does not identify you as an alcohol or drug abuser in any way;
2. You consent in writing;
3. The disclosure is allowed by a court order based upon a finding of good cause;
4. The disclosure is made to medical personnel for a medical emergency or to qualified personnel to conduct scientific research, management audits, financial audits, or program evaluation, but those qualified personnel may not redisclose any information which would identify you.
5. The disclosure is made to a qualified service organization which provides services such as data processing; bill collecting; dosage preparation; laboratory analysis; legal and medical accounting, or other professional services; and child abuse or neglect treatment or prevention.

Your alcohol or drug abuse patient record may not be used to initiate or substantiate any criminal charges against you unless that crime occurred on the premises of the program or against personnel of the program or consisted of your threat to commit such a crime.

Under the state law and regulations, this program must allow you to inspect and copy your record unless other laws and regulations prohibit patient access.

Both the Federal and State laws provide criminal penalties for violation of the requirements of privacy of patient records. The Federal law and regulations provide for a fine of not more than \$500 for the first offense and not more than \$5,000 for subsequent offenses.

Suspected violations may be reported to:

Director, National Institute on Drug Abuse
Director, National Institute on Alcohol Abuse and Alcoholism
5000 Fishers Lane
Rockville, Maryland 20857

or

United State Attorney
Fourth Judicial District
District of Minnesota
110 South 4th Street, Room 514
Minneapolis, Minnesota 55401

The state laws and regulations provide that you may challenge the accuracy and completeness of information in your record. This challenge must be answered by the responsible authority of the agency holding your record within 30 days. (The responsible authority is generally the director of the agency where you receive treatment. However, it may be different for different facilities. You may obtain the name of the responsible authority from staff where you receive treatment.) If you disagree with the responsible authority's decision, you may appeal that decision to the State Department of Administration. Your appeal should specify:

1. Your name, address, and telephone number;
2. Name and address of the agency and responsible authority which maintains the records involved in the dispute;
3. Description of the dispute and the data which gave rise to it;
4. Remedy sought.

The state law also provides for civil damages of not less than \$100 or more than \$10,000 for each willful violation. It also provides for penalties under the criminal code.

TENNESSEN WARNING FOR MENTAL HEALTH CENTERS

The Minnesota Government Data Practices Act requires that whenever we ask you to provide us with private or confidential information about yourself that you be told:

- . The purposes for which the information will be used;
- . The legal requirements, if any, of supplying it;
- . The consequences to you of providing the information or refusing to supply it; and
- . The identity of other persons or agencies authorized by statute to secure the information.

Purposes - Basically, the information we ask from you will be used to establish diagnosis; determine treatment plans and goals; and to provide the services you request. The information will also be used to establish your ability to pay for those services or collect reimbursement for services from third party payors such as insurance companies or social services agencies.

Legal Requirements and Consequences - You are not legally required to provide any of the information we request. In most cases it is to your benefit to provide the information since we will be unable to provide some services to you. In other situations, the giving of those services will be hindered. If you are here because of a court order and you refuse to provide information, that refusal may be communicated to the court. If you do not provide the information we request regarding financial responsibility, you may be responsible for all costs of services we provide to you.

Sharing - Information we maintain about you may be shared with other agencies or individuals under the following circumstances:

- . Pursuant to a consent for release of information signed by you;
- . Pursuant to a court order;
- . Pursuant to a statute authorizing release, including the Vulnerable Adults and Child Abuse Reporting laws;
- . Pursuant to an application for new use of data approved by the Commissioner of Administration;
- . Pursuant to a contract authorizing access. This provision may include the release of data to various accrediting firms;
- . To personnel within this agency whose work assignments require access;
- . To communicate your condition to a family member or other appropriate person in accordance with acceptable medical practices. This includes the release of information in emergency situations;
- . When your account is severely delinquent, to obtain reimbursement through small claims court or a collection agency.

Minors - If you are a minor, you have the right to request that private data about you be kept from your parents. You must make this request in writing and explain why you wish this data to be withheld and what you expect the consequences of this withholding will be. If this agency agrees that withholding the information from your parents is in your best interests, it will not be shown to your parents.

Access - Most of the data we maintain about you is private. You may view the data if you request. Data will not be shown to you if it is classified confidential in accordance with Minnesota Statutes, section 144.335, or classified as confidential investigative data.

If you feel any information we maintain about you is inaccurate or incomplete, you have a right to file a letter of disagreement. The information will not be subsequently released without your letter of disagreement attached. You have the right to contest the accuracy and completeness of data in your file. The responsible authority of this agency will answer your contest within 30 days of the receipt of your contest.

You have the right to file an appeal of the decision of the responsible authority if your contest to the accuracy and completeness of data is not settled to your satisfaction. This appeal should:

- . Include your name, address, and phone number.
- . The name and address of this agency and the director's name.
- . Description of the dispute and the data which gave rise to it.
- . Remedy sought.

Your letter of appeal should be sent to:

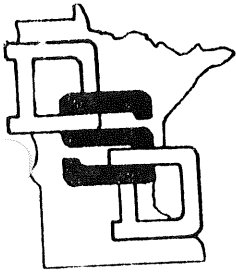
Commissioner of Administration
Attention: Data Privacy
50 Sherburne Avenue
St. Paul, Minnesota 55155

PLANNING YOUR TREATMENT - You have the right and responsibility to participate in helping determine your treatment plan. If you feel you have not been allowed to help in this process, please advise your counselor or contact the responsible authority of this agency to discuss your concerns.

PROGRAM APPEAL - If you feel you have been unfairly denied or excluded from a service program, or not given your choice of service, you may appeal for a fair hearing. An appeal form may be obtained from the County Welfare Agency or from the Appeals Office, Department of Human Services, 4th Floor - Space Center, 444 Lafayette Avenue, St. Paul, Minnesota 55101.

CIVIL RIGHTS - You have the right to file a complaint if you feel you have been discriminated against because of race, religion, national origin, sex, marital status, color, creed, disability, or status with regard to public assistance. Complaints may be made to the Department of Human Rights, 240 Bremer Building, 7th and Robert Streets, St. Paul, Minnesota 55101, or the Department of Health and Human Services, Washington, DC 20201.

This statement of rights applies to your current contact with this agency and all future contacts whether the contact is in person, on the telephone, or by mail. If you have any questions about this statement or any of your rights as described, you may discuss them with your counselor or any other staff person. Specific information about how you can access data, contest accuracy and completeness of data, request summary data, etc., is available upon request.



Deaf
Services
Division

DEAF SERVICES DIVISION
Department of Human Services
Fourth Floor, Centennial Office Building
St. Paul, MN 55155
612/296-3980 (voice or TTY)

DATA PRIVACY

YOUR RIGHTS UNDER MINNESOTA'S DATA PRACTICES ACT AND DATA PRIVACY RULES

Federal and state law require this agency:

- TO PROTECT YOUR PRIVACY
- TO LET YOU SEE THE INFORMATION WE HAVE ABOUT YOU
- TO EXPLAIN OUR NEED FOR INFORMATION ABOUT YOU
- TO EXPLAIN ABOUT HOW WE WILL USE THIS INFORMATION ABOUT YOU
- TO EXPLAIN YOUR RIGHTS ABOUT THIS INFORMATION

PRIVACY

Most of the information we collect about you will be categorized as "private". Private means you and the government agencies who need the information can see it; others cannot see it. Sometimes statistics (numbers) and other anonymous data will be taken from the information we collect from you. This is called "public" and open to anyone, but it will not give your name or identify you in any way.

ACCESS BY YOU - HOW CAN YOU SEE YOUR RECORDS?

You can see all public and private records about yourself and your children. (see the part about children under age 18.)
To see your file:

1. Go to the office where it is kept.
2. Ask to see your records. Getting this information may take a few days. Ten working days is the longest you must wait.
3. You may also give permission for anyone else to see your records.
4. You can see your records without cost. You may have to pay for copies of your records.
5. Remember to bring identification (Social Security card, driver's license, etc.) with you when you go to see your records or you cannot see them.

ACCESS BY GOVERNMENT - WHO ARE YOU GIVING PERMISSION TO SEE YOUR RECORDS?

Employees of this agency will be able to see information about you when their work requires it. There is a law that allows some other government agencies to have permission to see certain information about you. Those agencies can see information about you if:

1. They provide services for you, or
2. They provide service to our agency that involves you and your records.

The other agencies that may see information about you are:

- . Social and human service agencies under contract to this agency;
- . The Minnesota Department of Human Services;
- . Division of Vocational Rehabilitation (part of the Minnesota Department of Economic Security);
- . The Regional Service Center for Hearing Impaired People (a joint program of the Minnesota Department of Economic Security and Human Services);
- . The welfare or human services agency of any county where you live;
- . Any individual or agency you give permission to see your records.

Staff people who work with you can explain exactly what we use your information for.

PURPOSES - HOW WILL WE USE YOUR INFORMATION?

The reasons we collect information from you, or the reasons that you give us permission to collect information from others, are listed below:

- . To help you get services provided by the agencies listed;
- . To make service plans and recommendations to get you the right kind of service;
- . To evaluate existing programs and services available to you;
- . To collect statistical (numbers) information about people who are deaf or hard of hearing;
- . To keep you informed of services and other information useful to you.

OTHER RIGHTS

State and Federal laws give you other rights when you give information to a government agency.

- . You have the right to refuse to give any information; (If you do not give requested information you will probably not be able to receive the quality of services you are requesting or we may not be able to help you;
- . You have the right to question if the information in your records is right (this question must be answered in 30 days);
- . You have the right to write your own explanation of anything you think is wrong with your records;
- . You have the right to appeal the decisions about your records.* To file an appeal, you can contact the staff person at this agency who works with you, or write directly to: Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul MN 55155. Your appeal letter should have these things included:

- . Your name, address, and phone number, if any;
- . A statement in your letter saying that the person responsible for your records is the Commissioner of Human Services;
- . The name of the agency involved in your appeal;
- . A summary of what you disagree with;
- . The exact words you do not agree with;
- . What you want to happen by appealing.

* If you want to appeal the decision about your records, your letter must be written and mailed within 60 days of that decision.

MINORS - WHAT ABOUT PEOPLE UNDER AGE 18?

If you are a minor (under age 18), you have the right to ask that your parents not be allowed to see information about you. This request should be written. This request should explain:

1. The reasons for keeping information from your parents, and
2. Show that you understand what can happen by doing this.

In a few cases, the law permits us to keep information from your parents without a request from you, for example:

1. If the information is about the treatment of drug abuse or venereal disease, or
2. If you are married.

If you have any questions about this, ask the staff person who works with you.

WHOM TO CONTACT

If you have any questions about the Data Practices Act or do not understand some of this information, write to: Commissioner of Human Services, 4th Floor, Centennial Office Building, St. Paul MN 55155, Attention: Data Privacy Office. You may call 612/297-3173 (voice).

If you want to write a letter of complaint or ask a question directly to this agency, contact the director responsible for the records of this agency:

Dwight Maxa, Director
 Deaf Services Division
 Department of Human Services
 Fourth Floor, Centennial Building
 St. Paul MN 55155
 612/ 296-3980 (TTY/voice)

The person responsible for all records within the Department of Human Services central office and all state hospitals and state nursing homes is Leonard W. Levine, Commissioner, Department of Human Services, St. Paul MN 55155.

I have been informed of my rights about the Data Practices Act.

Client Signature	Date	Staff Signature	Date
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**DEAF SERVICES DIVISION
 REGIONAL OFFICES LOCATED AT THE
 REGIONAL SERVICE CENTERS FOR HEARING IMPAIRED PEOPLE**

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> . Government Services Building
320 West 2nd Street, Suite 611
Duluth, MN 55802
218/723-4962 (voice or TTY) | <ul style="list-style-type: none"> . 709 1/2 South Front Street
Mankato, MN 56001
507/389-6517 (voice or TTY) | <ul style="list-style-type: none"> . Friedell Building
1200 South Broadway
Rochester, MN 55901
507/285-7295 (voice or TTY) |
| <ul style="list-style-type: none"> . Lincoln Center, Suite #7
125 West Lincoln Avenue
Fergus Falls, MN 56537
218/739-7589 (voice or TTY) | <ul style="list-style-type: none"> . 309 - 2nd Avenue North
3rd Floor
Minneapolis, MN 55401
612/341-7100 (voice or TTY) | <ul style="list-style-type: none"> . 54 - 28th Avenue North
St. Cloud, MN 56301
612/255-2224 (voice or TTY) |

Nondisclosure Agreement

For Employees

Who Have Access To Computer Data

In your employment with the DHS your duties may require that you work with records containing private or confidential data/information or be given special access to work areas, computer files, or proprietary material. This data, access, or ownership is protected by law, policy or agreements regarding disclosure both at work and outside of the office. The following sections are intended to acquaint you with the nature of these restrictions and to confirm your understanding of these provisions. Your signature records your agreement to honor these requirements.

DATA PRIVACY AND CONFIDENTIALITY RESPONSIBILITIES

In the course of my employment for the DHS, I may be working with and acquire information about other persons from recipient eligibility files, claims for medical services, and other welfare records which are private and/or confidential welfare data. Under Minnesota law, data on welfare clients is private and may only be shared or disclosed as provided in the law. I will refer all inquiries to my supervisor unless I have clear written authority from my supervisor to provide any such information to anyone other than employees of DHS who need such information to administer programs.

Minnesota Statutes, section 13.08-13.09 provides for employee disciplinary action and criminal penalties for unlawful disclosure or sharing of private data. Disclosing data includes using information obtained in connection with my employment in any manner different from the scope of my specified duties.

I will not remove recipient/client or medical provider data from the premises except as is necessary to administer the program with which I am working, and only with my supervisor's permission.

PHYSICAL - ACCESS

If I have possession of keys, badge, cards, or any other security device used by the DHS, I am authorized to use the key, badge, card, or other device only in the course of my employment. I understand that any keys, cards, or other security devices issued to me are for my use only and that I may not allow anyone else to use or duplicate them.

I will surrender any keys, badges, cards, or other security devices issued to me immediately upon separation from employment from the Minnesota Department of Human Services.

A password required to access computer files is a security device.

I will protect and not share my passwords with anyone.

I will notify my supervisor when I lose any security device (including passwords) or have reason to believe that any security device or method has been improperly used.

TAX DATA

In the administration of the AFDC Housing Allowance, employees may have some access to tax data about individuals. The following statute relates to disclosure of such information.

290.61 PUBLICITY OF RETURNS, INFORMATION

"It shall be unlawful for the commissioner of revenue or any other official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this chapter, or any information concerning, the taxpayer's affairs acquired from his or its records, officers, or employees while examining or auditing any taxpayer's liability for taxes imposed hereunder, except in connection with a proceeding involving taxes due under this chapter from the taxpayer making such return and except as provided in section 290.361. The commissioner may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income, if such taxpayer is required by the laws of the United States or of such state provide substantially for the same secrecy in respect to the information revealed thereby as is provided by our laws. The commissioner and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission, or official of the United States or of any other state in respect to the income of any person as to required by this section in respect to information concerning the affairs of taxpayers under this chapter. Nothing herein contained shall be construed to prohibit the commissioner from publishing statistics so classified as not to disclose the identity of particular returns or reports and the items thereof.

Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

PURCHASED SOFTWARE

Much of the software acquired by the DHS is proprietary and is subject to a licensing agreement or other restrictions. Therefore, any state employee or contractor who has access to, or occasion to use such software, is subject to said licenses and restrictions.

Such restrictions include prohibitions on:

1. Copying the software for other than use on the specific computer(s) for which it was licensed.
2. Disclosure of any technical information about the software based upon access to it or related manuals to anyone except another DHS employee who has (a) authorization to use the produce; and (b) has also signed this agreement.
3. Reproducing either the software or documentation and making it:
 - a. available to any third party; or
 - b. available for use on any non-DHS owned or operated computer.
4. Altering the software in any way.
5. Use of the software for purposes not directly related to employment by DHS.

COMPUTER CRIME

Minnesota Statutes, section 609.87-.89 define two type of computer crime. One is to, intentionally and without authorization, physically damage or alter computer hardware, computer software, stored data or a computer network. A second type of computer theft is the unauthorized access to a computer or computer network, as well as unauthorized possession of computer hardware, software, or data from a computer. Penalties, for both types of crime, range up to ten years imprisonment and/or \$50,000 in fines.

STATEMENT OF UNDERSTANDING

I hereby acknowledge that I have read and understand the conditions stated in Sections I through V above and will comply with these conditions. I further understand that violation of the conditions shall make me subject to disciplinary action by my employer as well as prosecution under the provisions of Minnesota Statutes, section 609.87-.89 relating to computer theft, Minnesota Statutes, section 13.01 - 13.87 and MSA 290.61 relating to data privacy.

Signature of Employee	Date
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