

## Public Access to Redistricting Data in Minnesota

Peter S. Wattson  
Senate Counsel  
State of Minnesota

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### I. Introduction

The purpose of this paper is to describe Minnesota's open records law and how the Minnesota Legislature plans to make redistricting data available to the public while preserving to each member and caucus the right to develop redistricting plans in private.

### II. The Government Data Practices Act

Minnesota's open records law is called the Government Data Practices Act, Minnesota Statutes, chapter 13. It provides, in part, that:

All government data collected, created, received, maintained or disseminated by a state agency, political subdivision, or statewide system shall be public unless classified by statute, or temporary classification . . . or federal law, as nonpublic . . . . 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. . . .

Minn. Stat. § [13.03](#) , subd. 1.

The Act makes public all data not specifically classified otherwise and reserves to the Legislature the role of arbiter of disputes over what kinds of data need not be publicly disclosed. This has meant that every year there is a bill to amend the Government Data Practices Act to provide additional classifications of data as nonpublic, private, or confidential, and to refine the distinctions among similar kinds of data as to what is public and what is not. Some of the kinds of data that have been classified so far as not public include, in alphabetical order, data on: benefits, education, elected officials' correspondence, examinations, federal contracts, firearms, health, investigations, labor relations, libraries, licensing, medicine, personnel, property complaints, salaries, security, trade secrets, and welfare. There is not yet a section on redistricting data.

The Act applies to "state agencies, political subdivisions and statewide systems." Minn. Stat. § [13.01](#) , subd. 1. The Act does not say whether it applies to the Legislature, and legislators have frequently asserted that it does not, but they have also tried to avoid adverse publicity by making legislative records readily available to the public.

### III. Redistricting Data Base

#### A. Raw Data

The redistricting data base has three main elements: geographic data, population data, and election data.

The geographic data will be primarily the TIGER files from the Census Bureau. The population data will be

the Pub. L. No. 94-171 data on CD-ROM from the Census Bureau, also available by download from the Bureau's web site. The election data will be from our Secretary of State showing the results of statewide and legislative and congressional elections in 1992, 1994, 1996, 1998, and 2000. These data are all readily available to anyone else from the same sources.

## **B. Enhanced Data**

On the other hand, we do plan to make corrections and additions to these data, so we have had to consider how to make the enhanced data base available to the public.

### **1. TIGER Files**

There were various minor errors in the 1991 TIGER files. The most significant included precinct boundaries that did not follow municipal boundaries. This resulted from errors in digitizing the precinct boundaries as part of Phase 2 of the census. The Redistricting Office had to correct those errors so that there were not slivers of precincts showing up in the wrong municipality. A second source of irritation was census blocks around lakes or along rivers that needed to be split to provide a straight line for a legislative district boundary. There may be similar errors in the TIGER 2000 files. The Geographic Information Systems ("GIS") Office (as the Redistricting Office has been renamed) will correct them.

### **2. Pub. L. No. 94-171 Population Data**

With regard to the Pub. L. 94-171 population data, we expect to discover areas where the population is in dispute, as we did in 1981 and 1991. We expect to discuss each of those disputed areas with the Census Bureau and not to change our population counts until the Bureau concurs. The Bureau had a standard procedure for communicating corrections in 1981 and 1991. In 1991, the Bureau evaluated each request for a correction and sometimes confirmed that the official count was in error. The Bureau acknowledged what the correct count should have been, but did not issue a corrected count. We assume the Bureau will follow a similar procedure in 2001 and that the GIS Office will use the count acknowledged, but not issued, by the Bureau as correct.

### **3. Election Data**

We do not expect to make any corrections or updates to the election data we receive from the Secretary of State, and the public will be able to buy a copy directly from her.

We assume that the four caucuses will disagree about which election results are most useful for helping to create plans, and will each want to use different races to predict their partisan impact. The choice of races to use to judge a given plan will be up to the person creating the plan. Our redistricting system will tally both raw vote totals from a single race and a partisan index based on the combined results of several races. The identity of the races chosen by the user will remain confidential until disclosed by the user.

### **4. Corrected Data**

Copies of any corrected data will be made available to the public by download from the GIS Office web site (<http://www.commissions.leg.state.mn.us/gis/index.html>) and on CD-ROM from Minnesota Planning's Land Management Information Center ("LMIC"), to which the GIS Office will provide the corrected files. LMIC is a service bureau that maintains a statewide geographic information system and performs work for various state agencies and political subdivisions on a fee-for-service basis. LMIC will sell copies of the corrected geographic and population data bases to the public at their normal rates, sufficient to cover the cost of producing the CD.

## **IV. Redistricting Plans**

## A. In Preparation

Once the data base is in place, we will turn our attention to drawing plans.

In Minnesota, the final plans will be enacted by bill. The bill may list the counties, cities, and towns in each district, with a metes and bounds description of each boundary that divides a city, or it may incorporate a plan by reference to its name in the files of the GIS Office. The bill will not include a map, nor a tabular listing of the population of each district or its components. Maps and reports will be included in the supporting documentation that the members will be able to examine before voting on the bill. The maps and reports will be made available to members and the public via the GIS Office web site.

In Minnesota, a bill, or an amendment to a bill, does not become public until the author chooses to make it so by introducing it on the floor or in committee. This is an aspect of the political concept of legislative independence and the legal doctrine of legislative immunity that has been codified in the Speech or Debate Clause of our constitution, which says, in part, that "For any speech or debate in either house they shall not be questioned in any other place." Minn. Const. [art. IV, § 10](#) .

Because we have had occasion to litigate the extent of legislative immunity, we have written into our laws some specific protections for the right of a member to keep proposed legislation confidential. For example, Minnesota Statutes, section [3C.05](#) , subdivision 1, paragraph (a), prohibits employees of the revisor of statutes from disclosing bill drafting requests. It says:

(a) They may not reveal to any person not employed by the revisor's office the content or nature of a request for drafting services. The content of the request and documents and communications relating to the drafting service supplied is not public and is not subject to subpoena, search warrant, deposition, writ of mandamus, interrogatory, or other disclosure.

Another law, enacted in 1989 as an addition to our criminal code, Minn. Stat. § [609.891](#) , makes it a crime to intentionally and without authority penetrate a computer security system. This should help to guard against premature disclosure of redistricting plans. What may have been just enterprising staff work to discover another party's plans in the 1980s became a crime in the 1990s.

There is a special state Open Meeting Law that applies to the Legislature. It includes an exemption for "a caucus of the members . . . from the same house and political party [or] a delegation of legislators representing a geographic area or political subdivision." Minn. Stat. § [3.055](#) , subd. 1.

The redistricting plans will be developed by each of the four caucuses, focusing first on separate geographic areas and then later working to resolve conflicts as those areas are merged into a statewide plan. We assume that each caucus will gather additional information for its own confidential use in developing plans. Our law gives the caucuses statutory authority to develop these redistricting plans in private before they are introduced as a bill or offered as an amendment at a meeting of a committee.

## B. In Committee

The rules of the Minnesota Senate have provided since 1973 that "All meetings of the Senate, its committees and subcommittees are open to the public." [Rule 58](#) , Permanent Rules of the Senate. The House has a similar rule, [Rule 6.21](#) , Permanent Rules of the House, and the Joint Rules provide that "All Conference Committees shall be open to the public." Joint Rule [2.06](#) .

While redistricting plans and their supporting documentation are the confidential property of a member while the member is drafting them, they become public when introduced as a bill or moved in committee as an amendment.

Normal legislative procedures will be used to make available to the public paper copies of the legal descriptions and their accompanying maps and tables. One problem is how to make multiple copies of maps produced in color on the large-format plotters. Color plotters seem never able to make copies as fast as people want them.

The maps and reports describing the plans that have been published will be posted on the GIS Office's web site for viewing and download. Electronic copies of the plan file will be made available to the public in the form of a file equivalent to the Pub. L. No. 94-171 file, except that an additional field will be appended to the end of the block level records containing the district code for each block in the plan.

### **C. On the Floor**

For presenting the legislative plan on the floor in May 1991, a commercial printer produced several hundred copies of black and white "C"-size maps of the state and of the metropolitan area. They were distributed to the members in the chamber and to the public through the offices of the Secretary of the Senate and Chief Clerk of the House. For 2001 the maps and reports will be made available to members and the public during floor consideration via the GIS Office's web site.

### **D. After Enactment**

Once legislative and congressional redistricting plans have been enacted into law, the task of providing copies to the public will shift from the Legislature to the executive branch. In 1991, the Redistricting Office produced a series of large-format ("E"-size) color maps of each county that was split into more than one legislative district and sent them to the county auditor. They also sent the auditor a large-format color map of each city in the county that was split into more than one legislative or congressional district. The plan enacted in May 1991 was replete with technical errors. It was early September before all the maps were cleaned up enough to mail them to the county auditors.

In 1991, for those who wanted an electronic copy of the plan, the Redistricting Office provided a tape to the Land Management Information Center. LMIC sold tapes to the public. The cost of a tape containing an equivalency file showing the house, senate, and congressional district to which each census block was assigned was \$50. A few national groups bought a copy to complete their collection; not many copies were sold to local groups.

The State sold large-format, color maps of the completed plans through the Department of Administration's "State Bookstore" for \$30 for a statewide map and \$30 for a map of the Twin City metropolitan area, or \$50 for a pair. (The Redistricting Office sold them to the bookstore for the marginal cost for paper, ink, and plotter maintenance, about \$11, and the bookstore imposed their usual markup of 100 percent, rounded up.) The Redistricting Office later developed a combined map with insets for the standard metropolitan statistical areas that provided the purchaser everything they needed for \$30. The Redistricting Office also produced an atlas of legislative districts, letter-size in black and white, with one house district on each page. The bookstore sold hundreds of copies of that for \$5.95 each (production cost was about \$3.50). The Redistricting Office also produced an atlas of county commissioner districts statewide that the bookstore sold for about the same price as the legislative district atlas.

In 2001, the enacted plans will be available for viewing and download from the GIS Office web site and on CD-ROM from LMIC.

### **V. Conclusion**

In Minnesota, we have tried to accommodate both the right of the public to have access to government data and the right of individual members and caucuses to develop redistricting plans in private before they are presented to the public. While the details of that accommodation have not all been developed, I hope this

description has given you a general idea of where we are headed.

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Comments: [peter.wattson@senate.leg.state.mn.us](mailto:peter.wattson@senate.leg.state.mn.us)