

Greenwood Township Supervisors Special Meeting

DATE: 6/20/2024

6:30PM

You may call the Conference Call number below for remote access.

Dial-in number - 1-701-802-5306

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CALL TO ORDER – Chair Roskoski

PLEDGE OF ALLEGIANCE

ROLL CALL - Chair Lois Roskoski / Vice Chair Paul Skubic/ Supervisor Craig Gilbert/ Supervisor Rick Stoehr/ Supervisor John Bassing / Treasurer Jeff Maus / Clerk Debby Spicer

Agenda: Minnesota Government Data Practices Act (MGDPA)

Discussion:

Motion-

MOTION TO ADJOURN

TIME: _____

MINNESOTA GOVERNMENT DATA PRACTICES ACT

The Data Practices Act (Minnesota Statutes, Chapter 13) presumes that all government data are public. State or federal law must specifically classify data for the government to limit access. The Act also describes government's duty to respond to data requests made by a member of the public or by the subject of the data.

WHO?

- The Data Practices Act applies to government entities
- in Minnesota, but does not apply to the Legislature or
- to the courts. Anyone can make a request to view or
- receive copies of government data. Public data are available to anyone for any reason and private or nonpublic data are available if the requester is the subject of the data being requested. Confidential or protected nonpublic data are available only to those government employees who require access to it for work-related reasons.

WHEN?

- Government must respond to a request from a
- member of the public within a reasonable amount
- of time. Government must respond to requests
- from data subjects for data about themselves immediately or within ten business days.

HOW?

- **Step 1:** A person submits a data request to the
- Responsible Authority for the government entity that
- maintains the data. If the request is for private
- information, the government entity may ask for proof of identity.

Step 2: The government entity retrieves the responsive data, if it has any.

Step 3: The entity reviews the requested data. If the government entity denies access to any of the requested data, it must inform the requestor of the specific law that justifies the denial.

Step 4: The government entity provides access to the data and collects copy costs, if copies are requested.

WHAT?

- "Government data" means all data collected, created,
- received, maintained or disseminated by state or local
- government, regardless of its physical form, storage
- media, or conditions of use. Paper documents, email, CD-Roms, videotape, and computer files are all forms of "government data."

WHY?

- The Act seeks to balance three principles:
- **1)** Government's need to have data to do its work; **2)** The
- need to maintain an accountable and transparent
- government; and **3)** The need to protect individual privacy rights.

HOW MUCH?

- Government may charge limited amounts for
- copies. Inspection of government records is always free.
- Government may never charge for the cost of separating
- public and not public data (i.e. redaction).

For members of the public: If the request is for 100 or fewer printed black and white pages: no more than \$0.25 per page.

For all other requests (including electronic data): Actual cost of searching and retrieving the data, and for making the copies.

For data subjects: For all requests: Only the actual cost of making the copies. Government may not charge for search and retrieval time.



OVERVIEW OF THE MINNESOTA GOVERNMENT DATA PRACTICES ACT

Throughout the process of governing, townships create and use information that is sometimes of interest to the public. In the interest of promoting trust in government, the Legislature adopted a data practice law that applies to most government units in the State of Minnesota. That law is the Minnesota Government Data Practices Act (MGDPA), which provides the public with access to most government data. This resource provides a brief overview of data practices topics. It is not a comprehensive resource that will allow a township to comply with the Data Practices Act. Data practices is a complicated topic that requires organization of data, attention to a large body of state law, adoption of local policies, and careful administration of those policies.

I. APPLICABILITY TO URBAN TOWNSHIPS

The MGDPA applies to so-called “urban townships” (as defined by Minn. Stat. § 368.01), located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington County.¹ Townships in those counties exercising the powers of Chapter 368 must comply with the MGDPA, found in Minn. Stat. Chapter 13. It also applies to each committee or sub-group created by those townships.² Townships usually will need the help of their town attorney to properly administer these laws.

Townships outside the seven-county metro area or those inside it and not exercising powers under Chapter 368 are not subject to the MGDPA. The exclusion of those townships is based on several factors. First, townships outside the seven-county metro area tend to engage in few activities that are data-intensive. Townships primarily manage gravel roads, administer local elections, and play a role in the local property tax assessment process. Towns may engage in other activities, but they tend to be on a smaller scale affecting fewer people. In effect, most towns do not create data the MGDPA is aimed at making available. Second, the MGDPA is notoriously difficult and expensive to administer, requiring dedicated staff and attorneys to properly manage. As most townships operate with no employees and elected officials working

¹ Minn. Stat. § 13.02 subd. 11 (defining “political subdivision” as including “any town exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2.”)

² *Id.*

part-time, these townships lack the expertise and resources to properly administer the MGDPA. Third, the exclusion of towns from the MGDPA does not prevent townships from providing data when requested. Towns that are not subject to MGDPA still should provide data to the public as appropriate, but they are allowed more flexibility in doing so.

All references to “towns” or “townships” in the rest of this resource refer only to townships subject to the MGDPA.

II. SCOPE OF THE MGDPA

The MGDPA begins by directing that all government data are presumptively public “for both inspection and copying” absent some law or regulation that says otherwise.³ “Government data” is “all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.”⁴ “Government entities” is defined such that it applies only to the State’s executive branch, statewide systems, counties, cities, school districts, urban townships, and any subdivision of those entities.⁵ Notably, it excludes the Legislature. The township itself, along with all its committees, commissions, or any other body created by the township are subject to the MGDPA.

In general, all records produced by the township subject to the MGDPA by any means are included as ‘data’. The term “government data” is defined comprehensively as “all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.”⁶ The definition applies no matter when the data is created – whether it be at the township hall, on a roadside, or at home. It applies regardless of whether the employee or officer is “on the clock” for the township.

III. RESPONSIBLE AUTHORITY & COMPLIANCE OFFICER

The MGDPA requires the town board to appoint a “Responsible Authority”, which is the person designated by the township board who is responsible for the collection, use, and dissemination of the data held by the township.⁷ The town clerk is the “Responsible Authority” in a township until the town board appoints a different person as the Responsible Authority. The Responsible

³ Minn. Stat. § 13.01. It then goes on to provide roughly 182 pages of exceptions, procedures, qualifications, classifications, exceptions to exceptions modifying this basic statement.

⁴ Minn. Stat. § 13.02 subd. 7

⁵ See Minn. Stat. §13.02, subs. 7a and 11.

⁶ Minn. Stat. § 13.02, subd. 7.

⁷ Minn. Stat. § 13.02, subd. 16.

Authority may appoint other employees as “designee” to help the Responsible Authority in the administration of duties.

In addition to the Responsible Authority, the township board or Responsible Authority is to appoint a “Data Practices Compliance Official,” which is an employee of the township to whom questions or complaints about the town’s data practices activities may be directed.⁸ The Responsible Authority may also be designated as the Data Practices Compliance Official.

IV. ORGANIZATION AND CLASSIFICATION OF DATA

Compliance with the MGDPA relies on the proper collection and classification of information held by the township. The collection of the township’s data is a critical first step the town must take but it’s also an ongoing process. The statute does not describe access to data based on who holds the data or where it is held, so failing or refusing to collect data does not relieve the town of the obligation to provide it, if requested. All town supervisors, clerks, treasurer, other officers, and employees should be expected to regularly submit copies of the information they create or receive related to their work for the township to the Responsible Authority.

Once collected, the Responsible Authority must organize and inventory the data collected.⁹ The inventory is to be updated at least annually. The town may choose the method by which it maintains or keeps the data it receives. For example, the town could try to keep all records in paper format or choose to digitize all records. The inventory not only helps the township know what they have collected, it may help show what the township has not yet collected. The inventory may be useful when responding to data requests from the public to identify more quickly what the township has available on a particular topic and as a guide to whether the information can be disseminated. The State’s Department of Administration Data Inventory has a sample that may be considered.¹⁰ This example is more complex than a township’s inventory is likely to be, but it demonstrates the use of categories for the inventory of the data maintained.

The MGDPA classifies data based on whether the data is on or about a person or is data that is not about a person. These two broad categories¹¹ of data are defined as follows:

1. “Data on individuals”, which means “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

⁸ Minn. Stat. § 13.05, subd. 13.

⁹ See Minn. Stat. § 13.025, subd. 1.

¹⁰ https://mn.gov/admin/assets/Admin_Data_Inventory_Sept%202022_tcm36-379647.pdf

¹¹ MGDPA includes a category for “Data on Decedents”, in Minn. Stat. § 13.10. Data that is “data on decedents” is most often data that was previously considered “Data on Individuals”, that becomes “data on decedents” by the death of the person or the passage of 90 years since the creation of the data. This resource does not address this category but it may be relevant to township’s administration of data.

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.”¹²

2. “Data not on individuals”, which means “all government data that are not data on individuals.”¹³

Once separated into these two broad categories, the data then must be classified as:

1. Public, meaning it is available to anyone at any time;
2. Private / Non-Public, meaning it is available to the subject of the data, those authorized by the subject of the data, entities authorized by law, and town employees or officers whose work relates to the subject;
3. Confidential / Protected Non-Public, meaning it is available to entities authorized by law and town employees or officers whose work relates to the subject.

The separation of data into these categories and classifications is governed by the MGDPA. The classification process is complex and time consuming, usually requiring the help of the town attorney, a well-trained Responsible Authority, or other experienced consultant or employee. The Association strongly recommends that townships do not attempt MGDPA compliance without experienced professional help. The classification of specific pieces of data is beyond the scope of this resource. Townships should work with their town attorney, consult the Minnesota Statutes Chapter 13, and consider the resources and training offered by the State’s Data Practices Office, here: <https://mn.gov/admin/data-practices/> .

V. ADOPTING DATA ACCESS PROCEDURES

The township board must adopt a procedure or policy describing the processes the township will use to comply with the MGDPA and to provide access to data to the public.¹⁴ A data access policy describes some basics about the MGDPA, a process for person to request data from the township, describe the town’s process for responses, explain costs that are imposed on the data requestor, contact information for the Responsible Authority, and provide the form to be used for the request. The Minnesota Data Practices Office provides a Model Policy for the Public and a Model Policy for Data Subjects on its website here: <https://mn.gov/admin/data-practices/data/rules/policies/> . Townships should consult their attorney before adopting any model policy as it may not be appropriate for the township’s need without modification. A town that adopts any of the model policies published by the State must notify the Data Practices Office of the town’s action.¹⁵

¹² Minn. Stat. § 13.02, subd. 5.

¹³ Minn. Stat. § 13.02, subd. 4.

¹⁴ Minn. Stat. 13.025 and 13.03. Data access policies must be updated “no later than August 1 of each year, and at any other time as necessary to reflect changes in personnel, procedures, or other circumstances that impact the public’s ability to access data.”

¹⁵ Minn. Stat. § 13.073 subd. 6

The township should also be aware of the possibility it will need to use Informed Consent authorizations, Tennesen warnings, and other notices in the process of collecting and disseminating data. An Informed Consent process is used when the town is asked or wants to release private data about an individual (Data on Individuals, Private or Confidential) by request by the subject of the data, or at the town's desire to release it to another person. A Tennesen Warning may be needed when the township collects sensitive or confidential information on individuals or wants to use data in ways that are not covered by the Tennesen warning. A Tennesen Warning is a privacy notice that informs the person that the government is seeking or collecting information from the person that may be private or confidential. A Tennesen Warning must include a variety of information, including the reason the township is collecting the information, how the town intends to use the data, whether the person may refuse to provide the data, the consequences of a refusal to provide the data, who has access to the data, and the right to parental access to the data if it relates to a minor. Other notices may be needed for other purposes.

VI. TOWNSHIP'S AUTHORITY TO BORROW

A data request usually begins with the town receiving an inquiry for data or a completed data request form. The request may be to "inspect" the data, usually meaning to view it in person, or for copies to be sent to the requestor. The town can require that the information required by its data request form be completed before acting on the request. Anyone may request access to the township's data, no matter whether the person is a taxpayer or landowner within the township or has any connection to the township. The town cannot place any limits or expectations upon the data requestor's use of the data received. The town cannot require the person or entity to identify itself but may need some contact information if the requestor expects the town to send the data.

The MGDPA requires production of data that already exists – it does not require the town produce any new data, perform analysis of data, summarize data, or create anything that does not already exist. The township must provide only the records it possesses. It's possible other government units hold township-related data, such as a county government, but the township is not required to obtain data from those other government units.

A. Prompt Response to the Request

The Responsible Authority or Designee must promptly respond to the data request,¹⁶ and in the case of a request for data by the subject of the data, within ten days of request.¹⁷ The Responsible

¹⁶ Minn. Stat. 13.03, subd. 2(a) (requiring the responsible authority to respond to data requests in "an appropriate and prompt manner").

¹⁷ Minn. Stat. § 13.04, subd. 3 (requiring the responsible authority to respond to a request for data by the subject of the data within ten days of receiving the request, excluding Saturdays, Sundays, and legal holidays.)

Authority may communicate with the data requestor about the reasonable time needed for the town to respond and whether the requestor would like data provided intermittently as its assembled, or all at once when completed. The town should try to meet the expectations of the requestor if reasonable. This does not require the town's Responsible Authority to drop all other duties to address the data request – but the town should be able to show how it is diligently assembling the data requested. Data that can be provided immediately or in a short time should be provided right away.

B. Charging Fees to the Data Requestor

For the most part, the costs of complying with MGDPA are upon the township. There are very limited options to recover costs from the data requestor. In person viewing of the town's data must be offered without cost to the requestor, and the requestor could take photographs of the materials presented. The town pays all the costs of retrieval and assembly and often the clerk sits with the requestor while he or she inspects the data. Towns may impose a copying cost of up to \$0.25 per page upon the data requestor if the requestor wants printed copies of the data and more than 100 pages are to be printed.¹⁸ The subject of data is entitled to view it for no cost, but may be required to pay for costs of making copies of the data.¹⁹ The town may not charge costs for search and assembly of the data to the subject.

C. Denying Access to Data

Some data is not available to the public or to the data requestor because it is classified as private or confidential or there is another reason provided in statute for it being unavailable. If the Responsible Authority finds the requested data cannot be disseminated because of its classification, the Responsible Authority must inform the data requestor of the determination either orally at the time of the request or by writing as soon as possible.²⁰ The reason for the determination must be provided with the statute supporting the determination.²¹ The data requestor may demand the Responsible Authority provide the reasons for any denial of access in writing.²²

D. Procedure When Data is Inaccurate or Incomplete

An individual who is the subject of data held by the township may challenge the accuracy or completeness of the data held by the township.²³ In practice, this begins by the individual becoming aware of data held by the township about the individual, possibly after the individual

¹⁸ Minn. Stat. § 13.03, subd. 3.

¹⁹ Minn. Stat. § 13.04, subd. 3.

²⁰ Minn. Stat. § 13.03, subd. 3(f).

²¹ *Id.* "If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall inform the requesting person...and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based."

²² *Id.*

²³ Minn. Stat. § 13.04, subd. 4.

makes a data request for all data related to the individual. To exercise this procedure, the individual must notify the Responsible Authority, describing the nature of the disagreement. “The responsible authority shall within 30 days either: (1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.”²⁴ The decision of the Responsible Authority is subject to appeal to the Commissioner of Administration, which is administered by the staff of the State’s Data Practices Office. Whether by determination of the Responsible Authority or the Commissioner, data on individuals that has been successfully challenged must be completed, corrected, or destroyed as appropriate.

VII. VIOLATIONS OF MGDPA

The MGDPA imposes both civil and criminal penalties for violations of its requirements.²⁵ A Responsible Authority or township which violates MGDPA is liable to a person who suffers any damage because of the violation.²⁶ The civil damages may include the costs and reasonable attorney’s fees of the plaintiff. If the Responsible Authority or township willfully violates MGDPA, the township is also subject to punitive damages of between \$1,000 and \$15,000, for each violation. To find a “willful” violation of the MGDPA, a court must find, by clear and convincing evidence, that the Responsible Authority or township intentionally violated the MGDPA.²⁷

The MGDPA includes possible criminal penalties for a person who intentionally violates the MGDPA.²⁸ The criminal penalty is deemed a misdemeanor offense, which carries the possibility of a fine of up to \$1,000 and up to 90 days in jail.²⁹ While it is very unlikely a town officer or employee would be charged for a criminal violation of the MGDPA, the Responsible Authority, any Designee, town officers, and employees should be aware of this possibility.

VIII. DESTRUCTION OF DATA

²⁴ *Id.*

²⁵ Minn. Stat. §§ 13.08, 13.09

²⁶ Minn. Stat. § 13.08, subd. 1.

²⁷ *Backlund v. City of Duluth*, 176 F.R.D. 316 (D. Minn. 2002) (a Federal Court considering a MGDPA claim interpreted the term “willful violation” to mean an act that “intentionally violated the MGDPA without legal justification or excuse.”)

²⁸ Minn. Stat. § 13.09.

²⁹ Minn. Stat. § 609.02, subd. 3.

The process of creating and maintaining data must also consider the process for eventual purging of data. Townships should remember that periodic destruction of data held by the township is allowed, subject to the Data Retention Policy adopted by the township. Some data must be held forever, like the township's minutes and annual financial reports, but other data is intended to be held only for as long as the town's data retention policy describes. While it is labor intensive to review data for destruction purposes, it serves useful functions. From the data practices perspective, it reduces the amount of data the township must maintain, categorize, and review when data is requested. This can help control the costs and labor needed to comply with data practices requests.

IX. CONCLUSION

The information provided in this document represents only an introduction to the MGDPA. This resource does not include information on advisory opinions from the Data Practices Office, the categorization of differed documents, in-depth review of other remedies for violations, and many other topics. Townships subject to the MGDPA will need to begin the long process of adopting the property policies, organizing data, and carefully responding to data requests. Townships should also be prepared to spend considerable amounts of money on professional help from the town attorney and other resources. These costs and activities should be made part of the township's budget and expectations.