


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 692

Jerry

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4/17
DATE FOR REVIEW 4/27
DATE DUE 5/7

Adopted w/a hearing X
Adopted w/o a hearing
Temporary rule

Approved ____ Disapproved 5/4 Returned to Agency ____

Resubmitted 6/29 Due 7/9
Approved 6/29 Disapproved ____ Returned to Agency 6/30

Date filed w/Secretary of State 6/29

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✓ Comment Directed to AG.

✓ Rule as Adopted

✓ Rule as Proposed - also see version submitted to CHE

✓ Order Adopting 1.8.81

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
10.31.78 Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency see my comment

✓ Affidavit of Mailing Notice of rulemaking and as required by 15.1671
9.14.78 At least 30 days prior to ~~hearing~~/adoption

✓ ~~Mailing list~~ Certificate of Secy. State
✓ Affidavit of Receipt from Secy State

✓ Publication in State Register
9.4.78 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report 2.5.79

✓ Chief Hearing Examiner's Report(s) issued under provisions of APA and Rules of office of HE. existing at time of issuance of HE rpt.
~~Approving H.E.'s Report~~
~~Approving agency action~~

✓ Agency's Findings of Fact and Addendum to F. of F, 3/18/81
1/18/81

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

? Order Approving Incorporation by Reference see CHE + Addendum to FofF

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

✓ Affidavit Concerning Review by IISAC.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION
OF RULES OF THE STATE DEPARTMENT OF ADMINISTRATION
GOVERNING ENFORCEMENT AND ADMINISTRATION OF THE
"MINNESOTA GOVERNMENT DATA PRACTICES ACT."

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before Hearing Examiner Steve M. Mihalchick on the 31st day of October, 1978, at 9:00 A.M., in the State Office Building Auditorium, St. Paul, Minnesota, after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as rules implementing the enforcement and administration of the "Minnesota Government Data Practices Act", 2 MCAR §§ 1.201-1.218 are adopted this 11th day of June, 1981, pursuant to authority vested in me by Minnesota Statutes section 15.671.

STATE OF MINNESOTA

Dated: 6-11-81

COMMISSIONER OF ADMINISTRATION

2 MCAR § 1.201. Scope and purpose. These rules relate to and shall apply to the provisions of Minn. Stat. §§ ~~15.162~~ 15.1611 through ~~15.1671~~ 15.1699.

A. These rules shall apply to those governmental entities as defined by Minn. Stat. § ~~15.1671~~ 15.162, subd. 5, 7, and 8, which collect, create, use store, and disseminate data on individuals as defined in Minn. Stat. § 15.162, subd. 3.

1. These rules shall only apply to data on individuals, as defined by Minn. Stat. § 15.162, subd. 3, which is created, collected, maintained, used or disseminated by governmental entities.

B. Non-profit social service agencies meeting the requirements of Minn. Stat. § 15.162, subd. 5 shall include, but are not limited to, agencies providing mental health, physical health, counseling and day-activities services.

1. These rules shall only apply in the instance where such an agency is required, by the terms of a written contract with a state agency, political subdivision, or statewide system to collect, create, store, use, or disseminate data on individuals.

2. In the event of such a contract, these rules shall only apply to the data on individuals that is actually generated by the social service agency because of the contract.

3. Any data generated by activities of the social service agency that are independent of the contractually based activities shall not be subject to these rules.

4. These rules shall not apply to personnel data maintained on employees of such social service agencies.

C. These rules shall not apply to any governmental data collected, created, used, stored, or disseminated which is not data on individuals as defined in Minn. Stat. § 15.162, subd. 3, except these rules shall apply to summary data.

D. Nothing in these rules shall limit the discovery procedures available at law to any party in a civil or criminal action or administrative proceeding as described in the Minnesota Rules of Civil Procedure and the Minnesota Rules of Criminal Procedure as adopted by the Minnesota Supreme Court or in Minnesota Statutes, and rules adopted thereunder.

E. Nothing in these rules shall restrict or limit the scope or operation of any judicial order or rule issued by a state or federal court.

1. In the event of the issuance of a subpoena duces tecum for any private or confidential data or a subpoena requiring any agent of an entity to testify concerning any private or confidential data, the court's attention shall be called, through the proper channels, to those statutory provisions, rules, or regulations which restrict the disclosure of such information.

F. Nothing in these rules shall be construed to diminish the rights conferred on subjects of data by Minn. Stat. § 15.165, or any other statute.

G. The purpose of these rules is to aid governmental entities in implementing and administering Minn. Stat. ~~§§ 15.162~~ 15.1611 through ~~15.1671~~ 15.1699 as those sections relate to data on individuals. These rules are intended to guide entities so that while protection is given to individual privacy, neither necessary openness

in government nor the orderly and efficient operation of government is curtailed.

2 MCAR § 1.202, Definitions. All terms shall have the meanings given them by Minn. Sta. § 15.162. Those terms and additional terms as used in these rules shall have the meanings as follows:

A. Act means Minn. Stat. §§ ~~15.162~~ 15.1611 through ~~15.1671~~ 15.1699, as amended, ~~commonly-referred-to-as-the-"Data-Privacy-Act"-or-the-Minnesota-Fair-Information-Practices-Act".~~ officially entitled the "Minnesota Government Data Practices Act".

~~B. Arrest Information means only those elements of data that are expressly listed in § 15.162, subd. 1a of the Act. Arrest information shall only include data which is collected, created, or maintained by an entity whose officers, employees, or agents are given arrest powers by statute, or the power to take into custody any person arrested by another citizen of this state.~~

~~1. Such entities include, but are not limited to, municipal police departments, county sheriff departments, the Minnesota State Patrol, and officers deputized as game wardens under the provisions of Minn. Stat. § 97.50.~~

~~C.~~ B. Data means "data on individuals" as defined in § 15.162, subd. 3 of the Act, unless stated otherwise.

1. Data can be maintained in any form, including, but not limited to, paper records and files, microfilm, computer medium, or other processes.

2. The duration of the existence of data, including whether certain data is temporary rather than permanent, is not relevant to compliance with these rules.

3. All data, in whatever form it is maintained, is "data on individuals" if it can in any way identify any particular ~~a unique~~ individual.

~~4. Code numbers representing unique individuals in certain data constitute "data on individuals", provided a list or index of any type is made available by which the code number can be cross referenced to identify unique individuals. Such data may qualify for treatment as summary data, pursuant to 2 MCAR § 1.209.~~

4. Code numbers, which are used to represent particular individuals, constitute "data on individuals" if a list or index of any type is available by which the code number can be cross referenced to a name or other unique personal identifier so that any individual's identity is revealed. Code numbers, lists of code numbers or data associated with code numbers may qualify for treatment as summary data, pursuant to 2 MCAR § 1.209.

a. Code number means the labeling or enumeration of data by use of a letter, number, or combination thereof, which is used in place of an individual's name, including but not limited to index numbers, dummy numbers, SOUNDEX codes, and social security numbers.

5. Data is "data on individuals" if it identifies an individual in itself, or if it can be used in connection with other data elements to uniquely identify an individual. Such data shall include, but is not limited to, street addresses, job titles and so forth where the particular data could only describe or identify one individual.

C. Confidential Data, as defined in § 15.162, subd. 2a of the Act, shall only include data which is expressly classified as confidential by either a state statute, including the provisions of § 15.1642 of the Act, or federal law.

1. Data is confidential only if a state statute or federal law provides substantially that:

a. Certain data shall not be available either to the public or to the data subject; or

b. Certain data shall not be available to anyone for any reason except agencies which need the data for agency purposes.

c. Certain data shall be confidential if a state statute or federal law provides that the data may be shown to the data subject only at the discretion of the person holding the data, and if such state statute or federal law provides standards which limit the exercise of the discretion of the person maintaining the data.

2. Data is not confidential if:

a. A state statute or federal law provides that the data is confidential, but the context of the statute or federal law, in which the term confidential appears, reasonably indicates the data is accessible by the data subject; , or if the data subject is given access to the data only upon the discretion of the person holding the data and the state statute or federal law does not provide any standards which limit the exercise of such discretion. In such cases, the proper classification of the data is private.

3. A state agency rule, an executive order, an administrative decision, or a local ordinance shall not classify data as "confidential", or use wording to make data inaccessible to the data subject unless there is a state statute or federal law as the basis for the classification.

D.
~~E.~~ Private Data, as defined in § 15.162, subd. 5a of the Act, shall only include data which is expressly classified by either a state statute, including the provisions of § 15.1642 of the Act, or federal law.

1. Data is private if a state statute or federal law provides substantially that:

a. Certain data shall not be available to the public but shall be available to the subject of that data;

b. Certain data shall not be available to anyone, except the data subject or his designated representative such as an attorney;

c. Certain data shall be confidential and the person the data is about may view the data at reasonable times; or

d. Certain data shall be confidential and may be shown to the data subject at the discretion of the person holding the data. Such data shall be private if the state statute or federal law does not provide standards which limit the exercise of the discretion of the person maintaining the data.

e. Certain data is confidential, but the context of the statute or federal law in which the term confidential appears, reasonably indicates the data is accessible by the individual who is the subject of the data.

2. Data is not private if:

a. A federal agency rule provides substantially that as a part of its plan for implementation of a certain federal program, a state agency, statewide system, or political subdivision must provide for the confidentiality of data obtained from program subjects.

3. A state agency rule, an executive order, an administrative decision, or a local ordinance shall not classify data as "private", or use wording to make data inaccessible to the public unless there is a state statute or federal law as the basis for the classification.

E. ~~F.~~ Public Data shall mean "data on individuals", ~~as defined in § 15.162, subd. 5b of the Act,~~ which is ~~neither private nor confidential data, and which is data that is an official record pursuant to Minn. Stat. § 15.17.~~ not classified by state statute, including Section 15.1642, or federal law as private or confidential data.

~~1. Data is public if:~~

~~a. A state statute or federal law substantially provides that certain data shall be made available to the public, pursuant to Minn. Stat. § 15.17, or any other similar wording.~~

~~b. A state statute or federal law substantially requires the collection of certain data by a state agency, political subdivision or state-wide system, and does not classify that data as private or confidential.~~

~~c. A state agency, statewide system, or political subdivision, without any express enabling authority to do so, collects certain data because that data is necessary to its operations, as defined at 2 MCAR § 1.216, B.1.~~

1. This rule shall not limit the ability of an entity to apply for temporary classifications of data pursuant to § 15.1642 of the Act.

F. ~~G.~~ Designee ~~means any person designated by a responsible authority to be in charge of individual file(s) or system(s) containing "data on individuals"~~ shall have the meaning given that term by Minn. Stat. Section 15.162, subd. 10.

G. ~~H.~~ Entity means any governmental agency subject to the requirements of the Act, including state agencies, political subdivisions, and statewide systems as those terms are defined in § 15.162 of the Act.

1. State agency shall include any entity which is given power of statewide ~~impact~~ effect by statute or executive order.

2. Political subdivision shall include those local government entities which are given powers of less than statewide ~~impact~~ effect by statute or executive order.

3. Statewide systems shall include, but are not limited to, record keeping and data administering systems established by statute, federal law, administrative decision or agreement, or joint powers agreement.

a. Statewide systems shall include, but are not limited to, the Criminal Justice Information System administered by the Bureau of Criminal Apprehension, the Statewide Accounting System, ~~the Minnesota Education Computing Consortium,~~ and the various welfare systems primarily administered by the Department of Public Welfare.

H. ~~I.~~ Federal Law means United States Code, rules and regulations of federal agencies as published in the ~~Federal Register~~ Code of Federal Regulations, and federal case law, including decisions of any court in the federal judicial system.

I. ~~J.~~ Individual means any living human being. 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 natural person.

J. ~~K.~~ Records Management Act means Minn. Stat. § 138.17.

K. ~~L.~~ Responsible Authority means the individual in each entity who is designated or appointed pursuant to § 15.162, subd. 6 of the Act.

1. In state agencies, the Responsible Authority shall be as follows, unless otherwise provided by state law:

a. Departments: the commissioner of the department.

b. Constitutional Offices: the constitutional officer.

c. University of Minnesota: the individual appointed by the Board of Regents.

d. All other state agencies: the chief executive officer, or if none, then an individual chosen by the agency's governing body.

2. In political subdivisions, the Responsible Authority shall be as follows, unless otherwise provided by state law:

a. Counties: each elected official of the county shall be the Responsible Authority for his respective office. An individual who is an employee of the county shall be appointed by the county board to be the Responsible Authority for any data administered outside the offices of elected officials.

b. Cities: the city council shall appoint an individual who is an employee of the city.

c. School Districts: the school board shall appoint an individual who is an employee of the school district.

d. Nonprofit Corporations or Nonprofit Social Service Agencies: unless a statute or the governmental entity which created the corporation or agency appoints an individual, the governing body of the corporation or agency shall appoint an individual. If no appointment is made, the chief executive officer of the nonprofit corporation or agency shall be the Responsible Authority. If the corporation or agency is part of a statewide system, the Responsible Authority for the statewide system shall be the Responsible Authority for the corporation or agency as determined by this rule.

e. All other political subdivisions: the governing body shall appoint an individual who is an employee of the political subdivision.

3. In "Statewide Systems", the Responsible Authority shall be as follows, unless otherwise provided by state law:

a. The commissioner of any state department or any executive officer designated by statute or executive order as responsible for such a system; or

b. If a state statute or executive order does not designate an individual as Responsible Authority, the Commissioner of Administration shall appoint the Responsible Authority after the entities which participate in the system jointly apply for such an appointment in a form provided by the Commissioner of Administration.

L
~~M~~. Summary Data, as defined in § 15.162, subd. 9 of the Act, means data which has been extracted, manipulated, or summarized from private or confidential data, and from which all data elements that could link the data to a specific individual have been removed.

1. Summary data includes, but is not limited to, statistical data, case studies, reports of incidents, and research reports.

2. Once it is summarized from private or confidential data, summary data remains ~~Data is~~ summary ~~data~~ if the Responsible Authority maintains any list of numbers or other data which could uniquely identify any individual in the summary data ~~is~~ physically separated from the summary data and the Responsible

Authority does ~~is~~ not ~~made~~ make such list or other data available to persons who gain access to, or possession of the summary data.

2 MCAR § 1.203. Access to Public Data. The Responsible Authority shall comply with the following general rules governing access to public data.

A. The Responsible Authority shall provide access to public data to any person, without regard to the nature of that person's interest in the data.

1. The Responsible Authority shall establish procedures to describe how such access may be gained. The procedures established shall be in compliance with Section 15.1621 of the Act.

a. In such procedures, the Responsible Authority may limit the time during which ~~that public~~ access to public data is available to the time during which the normal operations ~~office hours~~ of the agency are conducted.

b. In such procedures, the Responsible Authority shall provide for a response to a request for access within a reasonable time.

c. The Responsible Authority ~~shall~~ may charge a reasonable fee for providing copies of public data~~, unless the costs incurred by the entity in providing the copies are minimal~~.

d. In determining the amount of the reasonable fee, the Responsible Authority shall be guided by the following:

(1) The cost of materials, including paper, used to provide the copies.

(2) The cost of the labor required to prepare the copies.

(3) Any schedule of standard copying charges as established by the agency in its normal course of operations.

(4) Any special costs necessary to produce such copies from machine based record keeping systems, including but not limited to computers and microfilm systems.

(5) Mailing costs.

2 MCAR § 1.204. Access to Private Data. Pursuant to §§ ~~15.1641~~ 15.163 and 15.162, subd. 5a of the Act, the Responsible Authority shall comply with the following rules concerning access to private data:

A. Access to private data shall be available only to the following:

1. The subject of such data~~.~~, as limited by any applicable statute or federal law.

2. Individuals within the entity, whose work assignments reasonably require access.

3. Entities and agencies as determined by the Responsible Authority who are authorized by statute, including ~~§ 15.1641 (e)~~ 15.163, subd. 4 of the Act, or federal law to gain access to that specific data.

4. Entities or individuals given access by the express written direction of the data subject.

B. The Responsible Authority shall establish written procedures to assure that access is gained only by those parties identified in Part A of this rule.

~~1. In those procedures, the Responsible Authority shall provide for reasonable measures that will to assure that the person seeking to gain access to the private data is actually the subject of that data or the authorized representative of the data subject.~~

1. In those procedures, the Responsible Authority shall provide for reasonable measures to assure, in those instances where an individual who seeks to gain access to private data asserts that he or she is the subject of that data or the authorized representative of the data subject, that the individual making the assertion is in fact the subject of the data or the authorized representative of the data subject.

2. Examples of such reasonable measures include, but are not limited to, the following:

a. Requiring the person seeking to gain access to appear at the offices of the entity to gain such access or, in lieu of a personal appearance, requiring the ~~notarized~~ signature of any data subject who is unable to appear at the offices of the entity.

b. Requiring the person to provide reasonable identification.

C. The Responsible Authority may limit the time that access is available to the data subject to the normal working hours of the agency.

D. The Responsible Authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data.

E. The Responsible Authority ~~shall~~ may charge the data subject a reasonable fee for providing copies of private data.

1. In determining the amount of the reasonable fee, the Responsible Authority shall be guided by the criteria set out in 2 MCAR § 1.203 concerning access to public data.

2 MCAR § 1.205. Access to Private Data Concerning Data Subjects Who are Minors. Pursuant to §§ ~~15.1641, and~~ 15.162, subd. 4 and subd. 5a and 15.163 of the Act, the Responsible Authority shall comply with the following rules concerning access:

A. In addition to the particular requirements of this rule, access to private data concerning a minor data subject shall be subject to the requirements of 2 MCAR § 1.204 concerning access to all private data.

B. Access to private data concerning minors shall be available only to the following:

1. Those parties identified as having access to private data under ~~part~~ Section A of 2 MCAR § 1.204.

2. Subject to the provisions of Minn. Stat. § 15.162, subd. 4, any other applicable statute, and the exception set out at ~~part C-1~~ 1.205, C. 1. below, the parents of the minor data subject.

a. For purposes of this rule, the Responsible Authority shall presume the parent has the authority to exercise the rights inherent in the Act unless the Responsible Authority has been provided with evidence that there

is a state law or court order governing such matters as divorce, separation, or custody, or a legally binding instrument which provides to the contrary.

C. Pursuant to the provisions of Minn. Stat. § 15.162, subd. 4, the Responsible Authority shall establish procedures to provide access by the parents of a minor data subject to private data concerning that minor, subject to the following:

1. The Responsible Authority may deny parental access to private data when the minor, who is the subject of that data, requests that the Responsible Authority deny such access.

a. The Responsible Authority shall provide minors from whom the entity collects private or confidential data with a notification that the minor individual has the right to request that parental access to private data be denied.

ab. The Responsible Authority may require the minor data subject to submit a written request that the data be withheld. The written request shall set forth the reasons for denying parental access and shall be signed by the minor.

2. Upon receipt of such a request, the Responsible Authority shall determine if honoring the request to deny parental access would be in the best interest of the minor data subject.

a. In making the determination, the Responsible Authority shall be guided by at least the following:

(1) 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.

(2) Whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm.

(3) Whether there is ground for believing that the minor data subject's reasons for precluding parental access are reasonably accurate.

(4) 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.

~~(5) Whether the data in question is subject to the rights of parental access outlined in the "Family Educational Rights and Privacy Act of 1974", Public Law 93-380, and the rules promulgated thereunder.~~

~~(6)~~(5) Whether the data concerns medical, dental, or other health services provided pursuant to Minn. Stat. §§ 144.341 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.

3. The Responsible Authority shall not deny access by parents to data that is considered an "education record", as that term is defined in Title 45 Code of Federal REgulations, Part 99, Section 99.3, unless the minor

to whom the data pertains is enrolled as a full time student in a post-secondary educational institution or the student has attained the age eighteen. As of the date of the adoption of these rules, the term "education records" was defined by Title 45 Code of Federal Regulations, Part 99, Section 99.3 as follows: "'Education Records' (a) Means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution. (b) The term does not include: (1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which: (i) Are in the sole possession of the maker thereof, and (ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position. (2) Records of a law enforcement unit of an educational agency or institution which are: (i) Maintained apart from the records described in paragraph (a) of this definition; (ii) Maintained solely for law enforcement purposes, and (iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; Provided. That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit. (3) (i) Records relating to an individual who is employed by an educational agency or institution which; (A) Are made and maintained in the normal course of business: (B) Relate exclusively to the individual in that individual's capacity as an employee, and (C) Are not available for use for any other purpose. (ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student. (4) Records relating to an eligible student which are: (i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity; (ii) Created, maintained, or used only in connection with the

provision of treatment to the student, and (iii) Not disclosed to anyone other than individuals providing the treatment; Provided. That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution. (5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni."

4. Without a request from a minor, the Responsible Authority may deny parental access to private data on a minor, pursuant to the provisions of Minn. Stat. § 144.335 or any other statute or federal law that allows or requires the Responsible Authority the authority to do so, if such state statute or federal law provides standards which limit the exercise of the discretion of the Responsible Authority.

2 MCAR § 1.206. Access to Confidential Data. Pursuant to Minn. Stat. §§ ~~15.1641~~ 15.163 and 15.162, subd. 2a, the Responsible Authority shall comply with the following rules concerning access to confidential data:

A. Access to confidential data is available only to the following:

1. Individuals within the entity, whose work assignments reasonably require access.

2. Entities and agencies who are authorized by statute, including § ~~15.1641~~ 15.163 of the act, or federal law to gain access to that specific data.

B. The Responsible Authority shall establish written procedures to assure that access may be gained only by those parties identified in Part A of this rule.

1. In the drafting and administration of those procedures, the Responsible Authority shall provide measures by which data subjects or their

authorized representatives shall be informed, upon request, if they are the subjects of confidential data.

a. The Responsible Authority shall not disclose the actual confidential data to the data subjects, but shall inform them whether confidential data concerning them is or is not retained.

b. The Responsible Authority shall take reasonable measures to assure that the person making inquiry is actually the individual data subject~~.~~ or the authorized representative of the data subject.

c. Reasonable measures ~~may~~ include, but are not limited to:

(1) Requiring the inquiring person to appear at the office of the entity to make his/her request~~.~~ ;

(2) Requiring the inquiring person to provide identification~~.~~ ; or

(3) Requiring the notarized signature of any data subject who is unable to appear at the offices of the entity.

~~2-MCAR-§-1.207.--Access-to-Arrest-Information.--Pursuant-to-§-15.162,-subd.-1a,-2a,-and-5a-of-the-Act,-the-Responsible-Authority,-shall-comply-with-the-following-rules-concerning-access-to-arrest-information:~~

~~A. For-the-duration-of-time,-defined-in-Part-B-of-this-rule,-that-immediately-follows-the-creation-of-data-constituting-arrest-information,-the--~~

~~Responsible Authority shall make such information available to anyone who requests it in writing, by personal appearance, by telephone inquiry, or any other means.~~

~~B. For purposes of this rule, "duration of time" commences with the creation or recording of the arrest information subsequent to the actual detention or citation of the arrested party. "Duration of time" ends at that point in time when an arrested party is:~~

~~1. Either released without a criminal complaint being filed against him/her; or~~

~~2. Appears before a judicial officer for the offense for which he/she was arrested, or any lesser included offense as described in the Rules of Criminal Procedure as adopted by the Minnesota Supreme Court.~~

~~2.~~ ~~Is released from the supervision of any component of the criminal justice system.~~

~~C. During the duration of time described in Part B of this rule, the Responsible Authority shall not be limited to publicly releasing only arrest information, as defined by § 15.162, subd. 1a of the Act. The Responsible Authority may release additional information after consideration of at least the following:~~

~~1. Whether the status afforded to certain data as investigative data, pursuant to § 15.162, subd. 2a of the Act, is no longer needed to protect the integrity of an investigation.~~

2. Whether there is concern and interest on the part of the public in the person arrested or the alleged crime committed.

3. Whether the release of additional data and its subsequent publication may prejudice the arrested individual's right to a fair and impartial trial.

4. Whether the data subject has requested that arrest disposition data pertaining to that data subject be disseminated.

5. Whether the identity of any victims of or witnesses to the crime should be protected.

D. The Responsible Authority shall not make available to the public any individually identifiable data concerning the detention of a juvenile individual, unless that juvenile is judicially certified to be tried as an adult as described in the Minnesota Rule of Criminal Procedure. The Responsible Authority shall make any data concerning the detention of a juvenile available to the parents of the juvenile.

2 MCAR § 1.208. Access to Investigative Data. Pursuant to Minn. Stat. §§ 15.162, subd. 2a and 15.1641 15.163 of the Act, the Responsible Authority shall comply with the provisions of 2 MCAR § 1.206, concerning access to confidential data.

A. The Responsible Authority shall determine that data maintained by his entity is investigative data only if all criteria set out in Parts 1, 2, and 3 of this section are met.

~~1. Collecting Agency Criteria.--The data is collected, created or maintained by or at the direction of one of the following entities, or by an agent of such entity:~~

~~a. Law Enforcement agencies, whose agents are given arrest powers, including, but not limited to those entities listed in 2 MCAR § 1.201--1.202, B.1.~~

~~b. Public Attorneys, who are given the statutory or constitutional authority to prosecute or to defend civil or criminal actions as defined by the Minnesota Rules of Civil Procedure and the Minnesota Rules of Criminal Procedure including, but not limited to, municipal and county prosecutors and members of the Attorney General's staff.~~

~~eb:~~ ~~Judicial entities, whose agents are given the statutory or constitutional authority to adjudicate cases and to render sentences.~~

~~dc:--Any agency given statutory authority to revoke or suspend licensure;~~ to grant or revoke charters, permits, certificates of authority and registrations; to issue cease and desist or similar orders or to assess fines:

~~ed:~~ ~~Any entity which has a reasonable expectation that certain data in its possession may become the subject of a legal action, as set forth in Part 2 of this section:~~

2. Purpose of Collection Criteria.--The data is collected or created for the purpose of the commencement of a legal action.--Any of the following shall constitute a "legal action", for the purposes of this rule, and as used in Minn. Stat. § 15.162, subd. 2a(b):

a. Arrest of any individual.

b. Issuance of a citation, complaint, or an indictment as described in Minnesota Rules of Criminal Procedure.

c. Service of a civil complaint on behalf of the state, a state agency, or a political subdivision.

d. Service of a civil answer on behalf of the state, a state agency, or a political subdivision.

e. Maintaining or prosecuting a civil or criminal action on behalf of the state, a state agency, or political subdivision.

f. Conducting any arbitration proceeding pursuant to Chapter 572 of Minnesota Statutes.

g. Conducting any proceeding which may lead to the suspension or revocation of any type of license charter, permit, certificate of authority of registration issued by a state agency or political subdivision.

h. Issuing a cease or desist or similar order.

i. Levying fines against persons.

3. Active Data Criteria. Active data includes:

a. Data collected for the purpose of the commencement of a criminal action in which all perpetrators of the criminal violation have not been apprehended, the matter has not been fully adjudicated, the statute of limitations for the alleged violation has not run, or all rights of appeal in the judicial system have not been exhausted.

b. Data collected for the purpose of bringing or defending a civil action where that action has not been finally resolved, including exhaustion or extinguishment of all rights of appeal in the judicial system.

c. Data collected for the purpose of participation in an arbitration proceeding where that proceeding has not resulted in a binding decision, including exhaustion of all rights of appeal in the judicial system.

d. Data collected for the purpose of participation in a license revocation or suspension proceeding where that proceeding has not resulted in a binding decision, including exhaustion of all rights of appeal in the judicial system.

2 MCAR § 1.209.[7] Access to Summary Data. Pursuant to Minn. Stat. § 15.1641(d) 15.163, subd. 7, the Responsible Authority shall comply with the following general rules concerning access to summary data:

A. Summary data is public data~~.~~, unless classified by statute, federal law or temporary classification as not public. The Responsible Authority shall comply with 2 MCAR § 1.203, concerning access to public data.

B. The Responsible Authority shall prepare and implement procedures in his/her agency to assure that access to summary data is ~~given to anyone who requests such data~~ provided pursuant to Section 15.163, subd. 7 of the Act. In the preparation and administration of such procedures, the Responsible Authority shall comply with the following:

1. Preparation of summary data may be requested by any person. The request shall be in writing in a form provided by the Responsible Authority. Within ten days of the receipt of such a request, the Responsible Authority shall inform the requestor of the estimated costs if any, pursuant to Section 2 of this rule and subject to the provisions of that section either:

a. Provide the summary data requested; or

b. Provide a written statement to the requestor, describing a time schedule for preparing the requested summary data, including reasons for any time delays; or

c. Provide access to the requestor to the private or confidential data for the purpose of the requestor's preparation of summary data, pursuant to § ~~15.1641 (d)~~ 15.163, subd. 7, of the Act and subd. 4 of this section~~.~~; or

d. Provide a written statement to the requestor stating reasons why the Responsible Authority has determined that the requestor's access would compromise the private or confidential data~~.~~

2. Any costs incurred in the preparation of summary data shall be borne by the requesting person. In assessing the costs associated with the preparation of summary data, the Responsible Authority shall:

a. Be guided by the provisions of 2 MCAR § 1.203 in determining costs.

b. Provide to the requesting person an estimate of the costs associated with the preparation of the summary data.

c. Prior to preparing or supplying the summary data, collect any funds necessary to reimburse the entity for its costs.

d. Charge no more than reasonable copying costs when the summary data being requested requires only copying and no other preparation.

e. Take into account the reasonable value to the entity of the summary data prepared. ~~-~~and where appropriate reduce the costs assessed to the requesting person.

3. For the purposes of administering Minn. Stat. § ~~15.1641-(d)~~ 15.163, subd. 7, the following terms shall have the meanings given them.

a. "Administrative officer" includes, but is not limited to, the entity's research director, statistician, or computer center director.

b. "Person outside" the entity includes the person requesting the summary data or any other person designated by the person requesting the data.

4. A non-disclosure agreement, as required by § ~~15.1641-(d)~~ 15.163, subd. 7 of the Act shall contain at least the following:

a. A general description of the private or confidential data which is being used to prepare summary data.

b. The purpose for which the summary data is being prepared.

c. A statement that the preparer understands he/she may be subject to the civil or criminal penalty provisions of the Act in the event that the private or confidential data is disclosed.

5. Methods of preparing summary data include but are not limited to the following:

a. Removing from a set of data, a file, or a record keeping system all unique personal identifiers so that the data that remains fulfills the definition of summary data as defined by § 15.162, subd. 9 of the Act.

b. Removing from the entity's report of any incident, or from any collection of data similar to an incident report, all unique personal identifiers so that the resulting report fulfills the definition of summary data in § 15.162, subd. 9 of the Act.

c. For the purpose of this rule, "removing all unique personal identifiers" includes but is not limited to:

(1) Blacking out personal identifiers on paper records.

(2) Tearing off or cutting out the portions of paper records that contain the personal identifiers.

(3) Programming computers in such a way that printed ~~or~~, terminal or other forms of output do not contain personal identifiers.

2 MCAR § 1.2~~10~~08. Classification of Data. In order to comply with the provisions of §§ 15.162, ~~15.1641~~, 15.165 and 15.163 of the Act the Responsible Authority shall:

A. Review and identify all of the types of data maintained by the entity, including data retained as active and inactive.

B. ~~Determine the private, confidential, or public classification for each type of data;~~ Determine what types of data maintained by the entity are classified as private or confidential, according to the definitions of those terms pursuant to § 15.162 of the Act and 2 MCAR § 1.202.

C. Identify either a state statute or provisions of federal law supporting any determination that certain data is either private or confidential.

D. Administer all agency data in accordance with the determinations made under 2 MCAR § 1.210 B.

2 MCAR § 1.2~~11~~09. Authority of the Responsible Authority. ~~Jurisdiction, as that term is used in S. 15.1641 (a) of the Act, means that the Responsible Authority shall have the authority to:~~ Pursuant to § 15.162 through 15.1642 of the Act, the Responsible Authority shall have the authority to:

A. Implement the Act and these rules in each entity.

B. Make good faith attempts to resolve all administrative controversies arising from the entity's practices of creation, collection, use and dissemination of data.

C. Prescribe changes to the administration of the entity's programs, procedures, and design of forms to bring those activities into compliance with the Act and with these rules.

D. Take all administrative actions necessary to comply with the general requirements of the Act, particularly Minn. Stat. § 15.165, and these rules.

E. Where necessary, direct designees to perform the detailed requirements of the Act and these rules under the general supervision of the Responsible Authority.

2 MCAR § 1.2~~12~~10. Appointment of the Responsible Authority.

A. Pursuant to § 15.162, subd. 6 of the Act, the governing body of each political subdivision and the governing body of each state agency whose activities are subject to the direction of a governing body shall,

within 30 days of the effective date of these rules, if it has not done so, appoint a Responsible Authority.

1. This rule shall not affect the appointments of Responsible Authorities made previous to the adoption of this rule.

2. The governing body shall confer on the Responsible Authority full administrative authority to carry out the duties assigned by the Act and by these rules.

3. Governing bodies may use the forms set forth in the appendix to these rules to appoint the Responsible Authority.

2 MCAR § 1.21~~3~~1. Appointment Power of the Responsible Authority. Pursuant to § ~~15.1641-(a)~~ 15.1621, subd. 2 of the Act, the Responsible Authority shall, if he deems it to be in the best interest of the administration and enforcement of the Act, appoint designees who shall be members of the staff of the entity. In the exercise of this appointment power, the Responsible Authority shall comply with the following:

A. The appointment order shall be in writing and copies of the order constitute public data on individuals, pursuant to Minn. Stat. § 15.162, subd. 5(b) of the Act.

B. The Responsible Authority shall instruct any designees in the requirement of the Act and of these rules. If the Responsible Authority deems it necessary, such instruction shall include:

1. Distribution to designees of written materials describing the requirements of the Act and of these rules.

2. Preparation of training programs whose objective is to familiarize agency personnel with the requirements of the Act and of these rules.

3. Requiring attendance of designees and other entity personnel at training programs held within or outside the entity.

2 MCAR § 1.21$\frac{2}{4}$. Duties of the Responsible Authority Relating to Public Accountability. Pursuant to § 15.163 of the Act, the duties of the Responsible Authority shall include, but not be limited to the following:

A. For the purposes of public accountability, the Responsible Authority shall, within sixty days of the effective date of these rules, or until August 1 of each year when the requirements of Part B of this rule are fully complied with, place his/her name, job title and business address, and the name(s) and job titles of any designees selected by the Responsible Authority on a document.

1. Such document shall be made available to the public and/or posted in a conspicuous place by each entity.

2. The document shall identify the Responsible Authority or designees as the persons responsible for answering inquiries from the public concerning the provisions of the Act or of these rules.

B. In the public document to be prepared or updated by August 1 of each year as required by § 15.163 of the Act, the Responsible Authority shall identify and describe by type all records, files, or processes maintained by his/her entity, which contain private or confidential data.

1. In addition to the items to be placed in the public document as required by § 15.163 of the Act, the Responsible Authority shall include the following:

a. The name, title, and address of designees appointed by the Responsible Authority.

b. Identification of the files or systems for which each designee is responsible.

c. A citation of the state statute or federal law which classifies ~~the~~ each type of data as private or confidential.

2. The Responsible Authority shall draft the descriptions of the types of records, files, and processes in easily understandable English. Technical or uncommon expressions, understandable only by a minority of the general public shall be avoided, except where required by the subject matter.

3. The Responsible Authority may use the form set forth in the appendix to these rules to prepare this public document.

2 3
~~3~~ MCAR § 1.21~~5~~. Duties of the Responsible Authority Relating to the Administration of Private and Confidential Data. In order to administer the requirements of § ~~15.1641-(e)~~ 15.163, subd. 4 of the Act, the Responsible Authority shall determine for each type of record, file, or process identified in 2 MCAR § 1.214 whether the data contained therein was collected prior or on or subsequent to August 1, 1975.

A. For each type of record, file or process containing data collected prior to August 1, 1975, the Responsible Authority shall:

1. Review the federal, state or local legal enabling authority which mandated or necessitated the collection of the private or confidential data.

2. Based on that review, determine the lawful purpose for the collection of the data at the time it was originally collected.

3. Direct the staff of the entity that private or confidential data collected prior to August 1, 1975, shall not be used, stored, or disseminated for any purpose, unless that purpose ~~is~~ was authorized by the enabling authority which was in effect at the time the data was originally collected.

B. For each type of record, file, or process containing private or confidential data collected on or subsequent to August 1, 1975, the Responsible Authority shall:

1. Review the legal enabling authority which mandates or necessitates the collection of the data.

2. Identify the purposes for the collection of and the intended uses of all private or confidential data that have been communicated to data subjects or should have been communicated to data subjects at the time of data collection, pursuant to § 15.165, subd. 2 of the Act.

C. Using the purposes and uses identified in Parts A and B of this rule, the Responsible Authority shall:

1. Prepare lists which identify the uses of and purposes for the collection of private or confidential data for each type of record, file or process identified in 2 MCAR § 1.214.

a. Each list shall identify all persons, agencies, or entities authorized by state or federal law to receive any data disseminated from the particular record, file or process.

2. Pursuant to § 15.165, subd. 2 of the Act, either:

a. Attach each list identifying purposes, uses and recipients of data to all agency forms which collect the private or confidential data that will be retained in each record, file or process; or

b. Communicate, in any reasonable fashion, the contents of each list to data subjects at the time particular data that will be retained

in each record, file, or process is collected from them. For purposes of this section, "reasonable fashion" shall include, but not be limited to:

(1) Oral communications made to data subjects.

(2) Providing data subjects with brochures that describe the entity's purposes for the collection of and the uses to be made of private and confidential data.

D. In administering the entity's private or confidential data consistent with the provisions of ~~the~~ these rules, the Responsible Authority shall:

1. Educate entity personnel as to authorized purposes and uses.

2. Prepare administrative procedures that will acquaint entity personnel with authorized purposes and uses.

3. Distribute policy directives requiring compliance with the entity's determination of authorized purposes and uses.

E. The Responsible Authority shall authorize a new purpose for the collection of private or confidential data or a new use for private or confidential data under any one of the following conditions:

1. If subsequent passage of federal or state legislation requires initiation of a new or different purpose or use pursuant to § ~~15.1641-(e)-(2),~~ ~~of-the-Act,~~ 15.163, subd. 4(b), of the Act, or

2. The Responsible Authority, prior to initiation of the new or different purpose or use, complies with the provisions of either § ~~15.1641,-(e)(1)-or-(3)~~ 15.163, subd. 4(a), subd. 4(c) or subd. 4(d) of the Act.

a. For the purposes of administration of Minn. Stat. § ~~15.1641-(e)(1)~~ 15.163, subd. 4(a) or subd. 4(c), the Responsible Authority shall file a statement ~~on~~ in a form ~~provided~~ prescribed by the Commissioner.

b. For the purposes of Minn. Stat. § ~~15.1641-(e)-(3)~~ 15.163, subd. 4(d) the following term shall have the meaning given it:

(1) "Informed consent" means the data subject possesses and exercises sufficient mental capacity to make a decision which reflects an appreciation of the consequences of allowing the entity to initiate a new purpose or use of the data in question.

c. For the purposes of the administration of Minn. Stat. § ~~15.1641(e)-(3)~~ 15.163, subd. 4(d), the Responsible Authority shall comply with the following:

(1) The Responsible Authority shall not take any action to coerce any data subject to give an "informed consent". The Responsible Authority shall explain the necessity for or consequences of the new or different purpose or use.

(2) All informed consents shall be given in writing. Prior to any signature being affixed to it by the data subject, such writing shall identify the consequences of the giving of informed consent.

(3) If the Responsible Authority makes reasonable efforts to obtain the informed consent of a data subject and if those efforts are not acknowledged in any way, the Responsible Authority shall interpret the silence of the data subject as the giving of an implied consent to the new or different purpose or use of the data.

(a) For purposes of this section, "reasonable efforts" shall include:

(i) Depositing in the United States Mail, postage pre-paid and directed to the last known address of the data subject, at least two communications requesting informed consent.

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

(4) The data subject may give informed consent to less than all of the data elements in any list of data elements presented by a Responsible Authority, thereby giving only partial consent.

(a) Only those elements that the data subject has expressly consented to shall become part of the new or different purpose or use.

D. If the Responsible Authority seeks an individual's informed consent to the release of private data to an insurer or the authorized representative of an insurer, the Responsible Authority shall comply with the provisions of Minn. Stat. § 15.163, subd. 4 (d), (1) through (7).

2 MCAR S 1.216~~5~~ 4. Duties of the Responsible Authority as They Relate to the Administration of all Entity Data. Pursuant to § ~~15.1641-(b)~~ 15.163, subd. 3 of the Act, the Responsible Authority shall, within eighteen months of the effective date of these rules, formulate a plan that will provide for the review and analysis of the data administration practices of the entity.

A. In the formulation of this plan, the Responsible Authority shall at least provide for the preparation of a list of or index to all data or types of data currently collected, stored, used, or disseminated by the entity.

1. The list or index developed shall include the identification of the state statute(s), federal law(s), or local ordinance(s) that authorize(s) the programs or functions for which data or types of data are ~~is~~ collected, or which authorize(s) the actual ~~data~~ collection, storage, use or dissemination~~,~~ of data or types of data.

a. The plan shall further provide for the list or index to be updated when new or different data collection, storage, use or dissemination is authorized.

b. This list or index shall be available to members of the general public, upon request.

B. The Responsible Authority shall use this plan and the list or index developed to aid in the determination of whether collection and storage of data and use and dissemination of private or confidential data is necessary.

1. For purposes of this section, data is necessary if:

a. The particular data is both:

(1) Required to carry out programs and functions that are expressly or impliedly authorized by a provision of state statute, federal law or a local ordinance; and

(2) Periodically examined, updated, modified or referred to by the entity; or

b. 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

c. Retention of the particular data is required in the event that a legal action is brought against or by the entity; or

d. Retention of the particular data is 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.

C. For any data determined to be not necessary pursuant to Part B of this rule, the Responsible Authority shall provide for the following activities in the entity's plan.

1. Taking all actions ~~which include making changes to forms designs, rewriting procedures, and so forth,~~ , including modification of the entity's data collection forms and data collection procedures, to assure that all ~~such~~ unnecessary data is no longer collected and stored and all ~~such~~ private and confidential data determined to be not necessary is no longer used and disseminated. Private data shall continue to be disseminated upon request by the data subject.

2. Disposing of ~~such~~ data determined to be not necessary pursuant to the procedures of the Records Management Act.

a. Inquiries concerning procedures for disposition of data may be directed to the Records Management Division, Department of Administration, St. Paul, Minnesota, 55155.

D. In the formulation of the plan described in ~~Part~~ Section A of this rule, the Responsible Authority shall provide for the establishment of administrative mechanisms and procedures that comply with § ~~15.1641-(e)~~ 15.163, subd. 5 of the Act. For purposes of this section,

1. "Accurate" means that 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.

~~2-MCAR-§-1.217.--Duties-of-the-Responsible-Authority-as-They-Relate-to-Computerized-Data.--For-the-purposes-of-the-administration-of-§-15.1641-(e) of-the-Act,-the-Responsible-Authority-shall-be-guided-by-the-following:~~

~~A.--"Directly-Accessible-Files"-means-files-maintained-by-any-entity which-contain-private-or-confidential-data,-to-which-access-can-be-made-or-updating-performed-through-the-use-of-any-type-of-communication-terminal, including,-but-not-limited-to,-teletypewriters-and-cathode-ray-tube-terminals.~~

~~B.--Within-180-days-of-the-effective-date-of-these-rules,-the-Responsible Authority-shall-perform-an-audit-of-the-physical-and-software-security-measures-that-the-entity-has-installed-to-protect-the-integrity-of-"directly-accessible files".~~

~~C.--The-nature-and-extent-of-the-audit-shall-be-at-the-discretion-of-the Responsible-Authority,-subject-to-the-following:~~

~~1.--The-audit-shall-emphasize-a-review-of-any-measures-taken-to assure-that-private-or-confidential-data-is-not-accessible-to-the-public through-the-use-of-a-communications-terminal.~~

~~2.--The-audit-shall-include-a-review-of-the-measures-taken-to assure-all-of-the-entity's-computer-based-data-is-protected-from-tampering by-unauthorized-persons.~~

~~D.--If it reasonably appears to the Responsible Authority that there are weaknesses in the entity's data security procedures, the Responsible Authority shall:~~

~~1.--Provide for terminal security and system and data integrity through the establishment of appropriate security measures.~~

~~a.--Appropriate security measures include, but are not limited to, usage of password systems, establishment of procedures to assure physical security of terminals, utilization of system usage audits, and update verification routines, and establishments of limits on the system usage capabilities given to terminals.~~

~~E.--Auditing security measures on an annual basis shall be a part of the ongoing administration of the entity's computerized data system.~~

2 MCAR § ~~1.218~~ 1.217[5]. Administrative Appeal. Pursuant to § 15.165, subd. 4 of the Act, an individual may appeal an adverse determination of a Responsible Authority to the Commissioner of Administration.

A. The appeal shall follow the procedures established in Minnesota Statutes, Chapter 15, as amended, and the rules of the Office of ~~Hearing Examiners~~ Administrative Hearings relating to Contested Case Proceedings.

B. Notice of an appeal must be submitted to the Commissioner within a reasonable time of the determination made by the Responsible Authority pursuant to § 15.165, subd. 4 of the Act. For purposes of this section, "reasonable time" shall mean 180 days unless the Responsible Authority has provided the individual with a written statement which informs the individual of the right to appeal the determination to the Commissioner. In the event this statement is provided, "reasonable time" for purposes of this section shall mean 60 days.

1. The notice shall be in writing and addressed to the Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

2. The notice shall contain the following information:

a. The name, address, and phone number, if any, of the appealing party.

b. The name of the Responsible Authority and the entity which he or she represents.

c. A description of the nature of the dispute, including a description of the data.

d. A description of the desired result of the appeal.

~~3.--The-Commissioner-may-require-additional-information-if-it-is-reasonably neeessary-in-order-to-establish-the-Contested-Case-Proceeding.~~

~~-4.~~ 3. Upon written request of the data subject stating reasons, the appeal may be processed under the name of a pseudonym.

C. The Hearing Examiner, at any stage of the proceedings, after all parties have had an opportunity to present their views, may recommend dismissal of any sham, capricious, or frivolous case, or any case not within the jurisdiction of the Department of Administration.

~~C~~D. The Department of Administration shall be reimbursed for all costs associated with the Contested Case Proceeding by the entity whose Responsible Authority has been the impetus for the individual's appeal to the Commissioner.

1. The Commissioner shall establish appropriate accounting procedures to provide to the entity an itemized invoice.

2 MCAR § 1.21~~9~~6. General Powers of the Commissioner. Pursuant to § 15.163, subd. 2 of the Act and to assist in the general implementation and enforcement of the Act, the Commissioner shall have the following powers:

A. If the Commissioner determines that certain information is relevant to monitoring any entity's data collection and handling practices, policies and procedures, the Commissioner shall require the Responsible Authority of such entity to submit the information.

B. Any inquiries concerning the Act or these rules and any information submissions required to be made by Section A of this rule shall be directed to the Data Privacy ~~Unit~~ Division, Department of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

C. The Data Privacy ~~Unit~~ Division shall respond promptly to all inquiries within personnel and budgetary limitations.

2 MCAR § 1.22~~20~~17. Duties of the Commissioner Relating to Temporary Classification of Data. Pursuant to Minn. Stat. § 15.1642, the Commissioner and Responsible Authorities shall comply with the following:

A. The Responsible Authority, pursuant to § 15.162, subd. 6 of the Act, shall prepare any application for ~~emergency~~ temporary classification in writing in a form provided by the Commissioner. Copies of the form are available from the Data Privacy Division.

~~1.--The-form-for-an-application-is-set-out-in-the-appendix-to-these-rules.--Copies-of-the-form-are-available-from-the-Data-Privacy-Unit.~~

B. For the purposes of the administration of § 15.1642 of the Act, the following terms have the meanings given to them:

1. "Days" means calendar, not working days.

2. "Upon filing" means upon receipt of either an original or amended application by the Commissioner.

3. "Date of Disapproval" means the date the Responsible Authority actually receives the disapproval notification from the Commissioner.

4. "Within ~~20~~ 25 days of submission to the Attorney General" means within ~~20~~ 25 days of the date that the Attorney General's Office in the Department of Administration actually receives the record from the Commissioner.

C. Applications for ~~emergency~~ temporary classification of data shall be submitted to the Data Privacy ~~Unit~~ Division, Department of Administration, State of Minnesota, St. Paul, Minnesota 55155.

D. If the Data Privacy ~~Unit~~ Division requires the Responsible Authority to submit additional information in support of the application, that application is deemed to have been filed on the date the additional material is received by the Data Privacy ~~Unit~~ Division. The Commissioner shall return any application to the applicant if the additional information requested is not received within 30 days.

~~E.--The provisions of this rule shall terminate and cease to have force and effect on whichever of the following dates or events occurs later:~~

~~1.--On August 1, 1979; or~~

~~2.--On the effective date of a statute that repeals the Commissioner's authority to rule on emergency classification of data, pursuant to Minn. Stat. § 15.1642, subd. 3.~~

2 MCAR § 1.~~221~~ 18. Severable Provisions. If any provisions of these rules are found invalid for any reason, the remaining provisions shall remain valid.

ADVISORY FORM A

RESOLUTION APPOINTING A COUNTY RESPONSIBLE AUTHORITY

State of Minnesota

County of (name of county)

WHEREAS, Minnesota Statutes, Section 15.162, Subdivision 6, requires that (name of county) County appoint one person as the Responsible Authority to administer the requirements for collection, storage, use and dissemination of data on individuals within the county and,

WHEREAS, the (name of county) County Board of Commissioners shares the concern expressed by the legislature on the responsible use of all County data and wishes to satisfy this concern by immediately appointing an administratively and technically qualified Responsible Authority as required under the statute.

BE IT RESOLVED, the County Board of Commissioners appoints (name of individual) as the Responsible Authority for the purpose of meeting all requirements of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADOPTED BY (name of county) COUNTY COMMISSIONERS ON (date).

ATTESTED TO: (signature of appropriate official)

(title of appropriate official)

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

2 MCAR § 1.220

ADVISORY FORM B

RESOLUTION APPOINTING A CITY RESPONSIBLE AUTHORITY

State of Minnesota

City of (insert name of city)

Resolution Title: Appointment of Responsible Authority

WHEREAS, Minnesota Statutes, Section 15.162, Subdivision 6, as amended, requires that the City of (insert name of city) appoint one person as the Responsible Authority to administer the requirements for collection, storage, use and dissemination of data on individuals, within the City and,

WHEREAS, the (insert name of city) City Council shares concern expressed by the legislature on the responsible use of all City data and wishes to satisfy this concern by immediately appointing an administratively qualified Responsible Authority as required under the statute.

BE IT RESOLVED, the City Council of (insert name of city) appoints (name of individual appointed) as the Responsible Authority for the purposes of meeting all requirements of Minnesota Statutes, Section 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADOPTED BY (insert name of city) CITY COUNCIL ON (date).

ATTESTED TO BY THE:

(Signature of Mayor) on (date)

(Signature of City Clerk) (date)

2 MCAR § 1.220

ADVISORY FORM C

RESOLUTION APPOINTING A SCHOOL DISTRICT RESPONSIBLE AUTHORITY

State of Minnesota

(name of district) School District

School District Number ____

Pursuant to the provisions of Minnesota Statutes, Section 15.162, Subdivision 6, as amended, (Insert name of individual), is hereby appointed Responsible Authority for the (insert name of district) School District Number ____.

(insert name of individual appointed) is hereby authorized to take all actions necessary to assure that all programs, administrative procedures and forms used within School District (insert number) are administered in compliance with the provisions of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

2 MCAR § 1.220

ADVISORY FORM D

RESOLUTION APPOINTING A RESPONSIBLE AUTHORITY FOR STATE OR LOCAL BOARDS OR COMMISSIONS

State of Minnesota

(insert name of board or commission)

Under the provisions of Minnesota Statutes, Section 15.162, Subdivision 6, as amended, (name of individual is hereby appointed Responsible Authority for (insert name of board or commission).

(insert name of individual appointed is hereby authorized to take all actions necessary to assure that all programs, administrative procedures and forms used by the (insert name of board or commission are administered in compliance with the provisions of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration and published in the State Register on (insert date.

ADVISORY FORM E

2 MCAR § 1.220

PUBLIC DOCUMENT AS REQUIRED BY MINNESOTA STATUTES, SECTION 15.163

GOVERNMENTAL ENTITY: (Name of Entity) (Address)

RESPONSIBLE AUTHORITY: (Name) (Title) (Address)

| NAME OF RECORD, FILE, SYSTEM OR PROCESS (Insert a name sufficient to identify.) | DESCRIPTION OF RECORD, FILE, SYSTEM OR PROCESS (Describe in terms understandable by the general public.) | CLASSIFICATION (Insert private or confidential.) | CITATION OF STATUTE OR FEDERAL LAW THAT CLASSIFIES THE DATA (Insert citation to state or federal statute, federal rule, case law) | NAME, TITLE AND ADDRESS OF DESIGNEE, IF ANY FOR FILE, ETC. (Insert name, etc. of person appointed to be in charge of this file,etc. |
|---|---|---|---|---|
| | | | | |

APPROVED AS TO FORM AND LEGALITY
6/29 19 81
WARREN SPANNAUS, ATTORNEY GENERAL
BY Jerry Anderson
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 29 1981
Joan Anderson Growe
Secretary of State
2:25 PM

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

# Office Memorandum

TO : FILE

DATE: July 1, 1981

FROM : Jerry S. Anderson

PHONE: 6-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Department of Administration Governing Enforcement and Administration of the "Minnesota Government Data Practices Act"

On April 17, 1981, these rules were submitted for our review. On May 4, after waiting 17 days to allow for public comment regarding the legality of the rules, and after considering the comments that were received within that period, I met with Don Gemberling, Bob Nardi, and Ted Grindal. The purpose of the meeting was to discuss my concerns with the legality of the rules.

In addition to specific areas of the rules that I believed needed to be changed, which I set forth for Mr. Gemberling, I also informed him that I could not approve the rules for two procedural defects, i.e. lack of submission of the final version of the rules to the Chief Hearing Examiner and lack of an Order Adopting the final version. After the meeting I drafted a memo to Mr. Gemberling in this regard.

On June 29, 1981, these rules were resubmitted for our review, all procedural and substantive defects having been corrected. On that date I approved and filed the rules. Subsequent to filing the rules with the Secretary of State, the question was raised whether this office was obligated to wait 10 days before reviewing the rules.

In my opinion, this office was not required to wait 10 days before approving the rules. That 10-day period was established in the Attorney General rules (not by statute) solely to assure a time in which persons could comment on the legality of the rules after the initial submission to this office. In this situation, we waited a full 17 days before reviewing the rules after they were first submitted. Public comment was received and considered. The substance of the meeting and the memo was to the effect that the rules were not being approved by this office, even though the memo to Mr. Gemberling is drafted in somewhat different terms than many of our other disapproval memos. Thus, when these rules were delivered to us on June 29, I considered it to be a resubmission, for which there is no waiting period for review. It is my opinion, in interpreting the Attorney General's rules, that to the extent this review differed from other reviews, all provisions of our rules for review have been substantially complied with and that all interests in the review process have been protected. In no manner has there been any violation of statutory provisions. Therefore, the rules were properly reviewed, approved, and filed on June 29, 1981.

JSA:rjg

SF-00006-02

Bob N.
F.y.I.
- DAG

DEPARTMENT of Administration

STATE OF MINNESOTA

# Office Memorandum

TO : Jerry S. Anderson
Special Assistant Attorney General

DATE: June 29, 1981

DAG

FROM : Donald A. Gemberling
Data Privacy Division

PHONE: 296-6733

SUBJECT: Rules

Enclosed please find the documents necessary to "cure" the problems you identified with the Department's submission to you of rules relating to the implementation and enforcement of the "Minnesota Government Data Practices Act."

The documents are:

1. Three copies of the rules as revised and in their "current" version;

2. A copy of an Addendum to the Findings of Fact and Conclusions which explains the changes made in this version from the previous version submitted to you;

3. A copy of the Commissioner's order adopting this version of the rules;

4. A copy of the memo which transmitted this version to the Chief Hearing Examiner; and

5. A copy of the Chief Hearing Examiner's report on this version of the rules.

If you have further questions or comments, please contact me.

DAG:nb

Enclosures

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

# Office Memorandum

TO : JAMES J. HINIKER, JR.
Commissioner of Administration

DATE: June 29, 1981

ATTN: Donald A. Gemberling
Data Privacy Division

FROM : Jerry S. Anderson
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Department of Administration Governing Enforcement and Administration of the "Minnesota Government Data Practices Act."

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

JSA:rjg

Enc.

cc: Susan Robertson
Duane Harves

ATTORNEY GENERAL

Don Gemberling
Director
Data Privacy Division

5/4/81

Jerry S. Anderson
Special Assistant Attorney General

6-4692

Data Practices Act Rules

As we discussed on this date, the submission of the above-referenced rules to this office is incomplete. A new Order Adopting the rules as changed after the Chief Hearing Examiner's review is necessary. Further, the changed rules must be resubmitted to the Chief Hearing Examiner for his review of and report on the changes that you made pursuant to his initial report.

Upon submission of these documents, this office will commence its review of the rules. For purposes of that review, we will retain in our file the documents submitted to date.

JSA/gy

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT of Administration

# Office Memorandum

TO : Duane G. Harves, Chief Hearing Examiner
Office of Administrative Hearings

DATE: June 10, 1981

DAG

FROM : Don Gemberling, Director
Data Privacy Division

PHONE: 296-6733

SUBJECT: Re-Submission of Rules for Review

Upon our submission of the rules relating to the enforcement and administration of the data practices act to the Attorney General's Office, Jerry Anderson determined that our submission was incomplete. Mr. Anderson made this determination on two grounds. First, the version of the rules submitted to him was not the same version of the rules which you reviewed for substantial change. Second, this Department had not issued an Order adopting the version of the rules which was submitted to the Attorney General's Office.

In the course of my discussions with Mr. Anderson, he also asked that some of the rule provisions be clarified. As a result of his comments and of further legislative changes to the underlying statute, I have prepared a new version of the rules. To justify the changes made in that version, I have prepared another addendum.

For purposes of your review for substantial change, the following documents are enclosed:

1. The latest (and I hope the last) version of the rules to be adopted;

2. An addendum to the Findings of Fact which was prepared to justify the changes you suggested in your first review of these rules;

3. An addendum to the addendum which justifies the changes made on account of Jerry Anderson's comments and the changes to the statute; and

4. An Order adopting the latest version of the rules.

If you have any questions or comments, please call Brooke L. Manley at 296-6729. I will be out of town the week of June 15-19.

Your continued cooperation and assistance in this matter is appreciated.

DAG:nb

Enclosures

cc: Brooke L. Manley

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA DEPARTMENT

OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE DEPARTMENT OF ADMINISTRATION GOVERNING ENFORCEMENT AND ADMINISTRATION OF THE "MINNESOTA GOVERNMENT DATA PRACTICES ACT."

ADDENDUM TO THE ADDENDUM TO FINDINGS OF FACT AND CONCLUSIONS

On April 17, 1981, the Department of Administration, hereinafter "Department", submitted the complete record of this matter including a copy of the rules proposed for final adoption to the Office of the Attorney General for review as to form and legality.

On May 4, 1981, a meeting was conducted between the Data Privacy Division and those representatives of the Attorney General's staff who are concerned with reviewing rules for form and legality. During this meeting, the Attorney General's staff identified certain rule provisions which they felt needed further clarification by amendment to the rules.

On May 4, 1981, Jerry S. Anderson, Special Assistant Attorney General directed a memo to Don Gemberling, Director of the Data Privacy Division. This memo contained the Attorney General's conclusion that the Department's submission of the record in this matter to the Attorney General's Office was incomplete. Incompleteness was found because even though Duane Harves, Chief Hearing Examiner, had conducted his review of a version of those rules, he had not reviewed the version actually submitted to the Attorney General's Office. (The changes in the different versions of the rules were generated in response to Mr. Harves' report.) Mr. Anderson's memorandum also concluded the submission was incomplete because there was no Order adopting the exact

version of the rules submitted to the Attorney General's Office.

The Department has reviewed the Attorney General's suggestions for clarification and the 1981 amendments to the "Minnesota Government Data Practices Act", hereinafter "Act". (See Chapter 311, Minnesota Session Laws 1981.) The Department intends to adopt a version of the rules which includes the Attorney General's suggestions and which reflects the changes necessitated by the changes to the underlying statute. Furthermore, the Commissioner of Administration has issued an Order adopting the "final" version of these rules. To account for these most recent changes to the rules, previous Finding of Fact and Conclusions are amended by adding the following:

On page 3, the previous version of these rules included a definition of arrest information. The necessity for this definition was documented in the Department's Statement of Need and Reasonableness. Section 40 of Chapter 311 Minnesota Session Laws 1981 repealed the provisions of the statute on which this definition was based. Legislative enactment of Section 36, Subdivision 2 of Chapter 311 provides legislative guidance on previously unanswered questions dealing with the definition of arrest information. The rule provision attempted to answer those questions. The legislative clarifications takes away the necessity for this particular definition to appear in the rules and it has been deleted. This deletion causes the remaining subsections of 2 MCAR Section 1.202 to be re-lettered.

On page 14, the Attorney General's staff commented that the provisions of 2 MCAR Section 1.204.B.1 could be interpreted in such a way that only the subject of private data or his/her representative could gain access to private data. This interpretation would then be inconsistent with subsection A. of

this same section.

The Department finds that the provision could be read incorrectly and inconsistently and therefore the provision has been amended in the rules to be adopted. The old language of subsection B.1. has been deleted and replaced with a new provision.

On page 22 of the previous version of these rules, the Attorney General's staff commented that the provisions of 2 MCAR Section 1.206. B. 1. c. could be read to mean that all of the three alternatives presented were necessary for an agency to establish "reasonable measures" to assure proper identification of data subjects or their representatives. To clarify that point, the Department has changed the punctuation of these provisions to make it clear that "reasonable measures" may constitute any of the three options presented by the rule provisions.

As discussed earlier, the 1981 legislative changes to the underlying statute dealing with arrest information and other law enforcement issues provide statutory answers to questions which the previous version of these rules attempted to answer. For that reason, the Department intends to delete in its entirety 2 MCAR Section 1.207 from the rules to be adopted. The Department has determined that Section 36, subdivision 2 of Chapter 311, coupled with the general provisions of Minnesota Statutes Section 15.1621, at this time provide all the guidance necessary to law enforcement agencies.

The Department had, in the previous version of these rules, proposed to adopt a rule section dealing with "Access to Investigative Data". The Section

as proposed had as its primary purpose defining the term investigative data and providing guidance as to when investigative data ceases to be active. In the 1981 amendments to the underlying statute, the Legislature has also provided clear and more specific guidance on the issues which the rule section was drafted to deal with. See Section 22 and Section 36, subdivision 5 of Chapter 311 Minnesota Session Laws 1981. The Department finds that on account of these legislative clarifications, the necessity for proposing this rule section no longer exists. This section has been deleted from the rules to be adopted.

Deletion of the sections dealing with access to arrest data and investigative data necessitates that the sections which follow those two sections be re-numbered accordingly. In this Addendum all references are to the new section numbers which result.

On page 29, the Attorney General's staff suggested that a clarification be made to 2 MCAR Section 1.207. B. 2. e. The rule provision as proposed originally attempted to state that agencies should take into account any value which results to them by preparing summary data when the agency is assessing costs to persons who request summary data. The Attorney General's staff commented that the language as proposed did not state that requirement clearly. The Department agrees with this comment and has clarified the provision to be adopted by adding language which states the requirement more clearly.

On page 36, the Attorney General's staff suggested that a clarification be made to 2 MCAR Section 1.213. A. 3. The rule as proposed attempted to provide guidance to agencies in making determinations as to the proper uses and dissemination of data collected prior to August 1, 1975. The Attorney General's staff commented that the legal authority that agencies must look to in making those determinations is the legal authority which was in effect at the time

the data was collected. The language of the rule provision as proposed seemed to suggest that the agency look to current authority regulating the data to make those decisions. The Department finds that the Attorney General's comment is correct and appropriate and has changed the rule to be adopted to accord with the actual provisions of Minnesota Statutes Section 15.163, subdivision 4.

The Department finds that the changes made to the rules to be adopted, as suggested by the staff of the Attorney General's Office and which are necessitated by the 1981 changes to the underlying statute, are reasonable and necessary for the reasons outlined in the foregoing. The Department concludes that for all of the reasons discussed in the record of this matter that the rules to be adopted ought to be approved by the Hearing Examiner and by the Office of the Attorney General.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

DATED: 6-11-81

BY: _____

James J. Hiniker, Jr.
Commissioner

ADM-79-001-SM

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE DEPARTMENT OF ADMINISTRATION GOVERNING ENFORMCEMENT AND ADMINISTRATION OF THE "MINNESOTA GOVERNMENT DATA PRACTICES ACT."

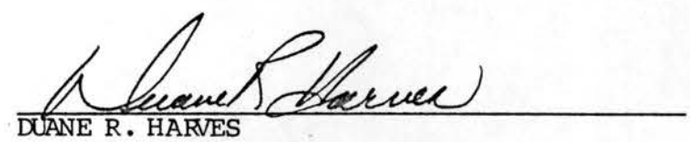
REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter was previously submitted to the Chief Hearing Examiner for review on January 9, 1981, following which the Chief Hearing Examiner issued a report on January 16, 1981. On June 12, 1981, the Department of Administration (hereinafter "Department") again submitted the rules, as amended pursuant to the prior Report of the Chief Hearing Examiner and amendments to Minn. Stat. §§ 15.1611 through 15.1699 made in the 1981 Legislative Session.

Having reviewed the rules, the Chief Hearing Examiner finds and concludes that the changes made in the rules do not constitute substantial changes as that phrase is used in Minn. Stat. §§ 15.0411 - 15.052.

Although the Department has made a very persuasive, practical argument for its continued use of the phrase "federal law" in the rules, the Chief Hearing Examiner is not convinced that he should reverse the findings and conclusions on this issue as detailed in the report dated January 16, 1981. Therefore, the Chief Hearing Examiner again directs the Attorney General's attention to that prior report wherein it was found and concluded that the use of the phrase constitutes an incorporation by reference, is vague and non-specific, and is potentially an unlawful delegation of the Department's authority to the federal government.

Dated: June 25, 1981.



DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000

STATE OF MINNESOTA

# Office Memorandum

DEPARTMENT OF ADMINISTRATION

TO : STATE AGENCIES
POLITICAL SUBDIVISIONS
PERSONS REGISTERED WITH THE SECRETARY OF STATE PURSUANT TO MINN. STAT. § 15.0412
DIRECTORS OF "DAC'S" AND MENTAL HEALTH CENTERS
DIRECTORS OF COMMUNITY ACTION AGENCIES

DATE: SEPTEMBER 12, 1978

FROM : RICHARD L. BRUBACHER
COMMISSIONER

PHONE: (612) 296-6733

RECEIVED
OCT 5 1978
OFFICE OF HEARING EXAMINERS

SUBJECT: PROPOSED RULES GOVERNING DATA PRIVACY

RECEIVED
OCT 5 1978
OFFICE OF HEARING EXAMINERS

This Department has drafted Proposed Rules concerning the "Data Privacy Act" as required by Minn. Stat. § 15.1671. A hearing to consider the adoption of these rules is scheduled for October 31, 1978, commencing at 9:00 a.m. in the State Office Building Auditorium, Room 83, on Wabasha Street between Aurora and Fuller, St. Paul, Minnesota.

Pursuant to § 15.1671, enclosed is a copy of the State Register of September 4, 1978, in which is printed the full text of the Notice of Hearing and of the Proposed Rules. The notice appears at page 346. The text of the Proposed Rules begins at page 347. Besides providing details concerning the hearing and other important information, the Notice describes procedures for written and oral comments concerning the Proposed Rules.

I advise each recipient of this memo to review the rules with care and in consultation with your agency's legal advisor since these rules have a direct effect on your activities and procedures.

Special Notice to Agencies Who have Contracts with Non-Profit Social Service Agencies: Certain nonprofit agencies under contract with your agency are subject to the provisions of the "Data Privacy Act" and to any legally adopted rules. Therefore, the Proposed Rules are of special interest to such agencies. Please inform those with whom your agency contracts of the date, time, and place of the hearing; of the nature and extent of the Proposed Rules; and of the availability of a copy of the Proposed Rules from this office.

Special Notice to Persons Registered with the Secretary of State: Minnesota Statutes § 15.0412, subd. 4 does not require that a copy of the Proposed Rules be sent to you. However, a copy is being provided so that you will be fully informed as to the content and extent of the Proposed rules.

RLB:mm

Enclosure

Dept Exhibit No. D
File No.

# STATE REGISTER

RECEIVED
OCT 5 1978
OFFICE OF HEARING EXAMINERS

## STATE OF MINNESOTA

RULES

PROPOSED RULES

STATE CONTRACTS

OFFICIAL NOTICES

**VOLUME 3, NUMBER 9**

**SEPTEMBER 4, 1978**

**Pages 329-376**

# STATE REGISTER

**Printing Schedule for Agencies**

| Issue Number | *Submission deadline for Executive Orders, Adopted Rules and Proposed Rules | *Submission deadline for State Contract Notices and other **Official Notices. | Issue Date |
|---|---|---|---|
| | SCHEDULE FOR VOLUME 3 | | |
| 10 | Monday Aug 28 | Friday Sept 1 | Monday Sept 11 |
| 11 | Friday Sept 1 | Monday Sept 11 | Monday Sept 18 |
| 12 | Monday Sept 11 | Monday Sept 18 | Monday Sept 25 |
| 13 | Monday Sept 18 | Monday Sept 25 | Monday Oct 2 |
| 14 | Monday Sept 25 | Monday Oct 2 | Monday Oct 9 |

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published weekly, on Monday, by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $110 per year, and $85 per year for additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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# CONTENTS


## MCAR AMENDMENTS AND ADDITIONS ..... 333

## RULES

### Department of Education
### Board of Education

Adopted Rules Governing the Financial Accounting Reporting Requirements ..... 334
Adopted Temporary Rules Governing Educational Aids for Pupils Attending Nonpublic Schools ..... 335

### Board of Education
### Instruction Division

Adopted Rules for Experimental Programs for Elementary and Middle Schools; and Pre-School Health and Developmental Screening ..... 336

### Department of Personnel
### Recruitment and Selection Division

Extension of Adopted Temporary Rules Governing Examination and Referral of Candidates for Classified Positions in State Civil Service and Emergency Appointments to Classified Positions .. 338

### Office of the Secretary of State

Adopted Rules on Preparation of the White Ballot and on Voter Registration ..... 338

## PROPOSED RULES

### Department of Administration
### Data Privacy Unit

Proposed Rules Governing the Enforcement and Administration of the "Minnesota Data Privacy Act" ..... 346

## STATE CONTRACTS

### Energy Agency

Notice of Request for Proposals for Consultant Services ..... 369

### Energy Agency
### Data and Analysis Division

Notice of Request for Proposals for Consulting Engineering Work to Help Develop Outdoor Display Lighting Standards ..... 369
Notice of Availability of Contract for the Development of a Computer Based Systems Model ..... 369

### Housing Finance Agency

Notice of Request for Proposals for Annual Report .. 370

### The City of Minneapolis Acting as An Agent to the Minnesota Department of Transportation

Notice of Availability of Contract for Preliminary Engineering for Highway Corridor Studies ..... 370

### Department of Public Welfare
### Social Services Division

Notice of Availability of Contract for Day Care Services ..... 371
Notice of Availability of Contract for Migrant Child Day Care Services ..... 371

## OFFICIAL NOTICES

### Cable Communications Board

Notice of Intent to Solicit Outside Opinion Regarding Rules Governing the Length of Municipal Franchise Renewal Terms ..... 372

### Department of Natural Resources

Notice of Intent to Solicit Outside Opinion Regarding Inclusion of the Minnesota River (Franklin to Le Sueur) in the Minnesota Wild Scenic and Recreational Rivers System ..... 373

### Office of the Secretary of State
### Administration Division

Open Appointment Process: Notice of Openings on State Agencies — Application Procedures ..... 373

### Department of Commerce
### Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Notice of Regular Meeting of Board ..... 374

## ERRATA ..... 374




Landmark Center, the restored Old Federal Courts Building at 75 West Fifth Street in St. Paul, will open to the public on September 8 and 9, 1978. Constructed over a 10-year period from 1892-1902, the original building cost $2.5 million, including furnishings. Cass Gilbert, designer of the Minnesota State Capitol, was supervising architect during part of that time. Landmark Center will be used as a cultural center for St. Paul citizens.

# MCAR AMENDMENTS AND ADDITIONS

**The following is a listing of all proposed and adopted rules published in this issue of the *State Register*. The listing is arranged in the same order as the table of contents of the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend the rules contained in the MCAR set. Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short term nature of their legal effectiveness. During the term of their legal effectiveness, however, adopted temporary rules do amend the MCAR. A cumulative listing of all proposed and adopted rules in Volume 3 of the *State Register* will be published on a quarterly basis and at the end of the volume year.**


## TITLE 1 CONSTITUTIONAL OFFICES
### Part 2 Secretary of State
SecStat 301, 502-513, 601, 604, 606-607, 902-903, 1101, 2101-2106, 2108-2111, 2113, 2115 (adopted) ..... 338

## TITLE 2 ADMINISTRATION
### Part 1 Administration Department
### Data Privacy Unit
2 MCAR §§ 1.201-1.221 (proposed temporary) ..... 346

## TITLE 2 ADMINISTRATION
### Part 2 Personnel Department
### Recruitment & Selection Division
2 MCAR §§ 2.044, 2.048, 2.064, 2.084, 2.087 (extension adopted temporary) ..... 338

## TITLE 5 EDUCATION
### Part 1 Education Department
### Board of Education
### Instruction Division
5 MCAR §§ 1.0010, 1.0720-1.0725 (adopted) ..... 336

## TITLE 5 EDUCATION
### Part 1 Education Department
### Board of Education
5 MCAR §§ 1.0745-1.0756 (adopted temporary) ..... 335

## TITLE 5 EDUCATION
### Part 1 Education Department
### Board of Education
5 MCAR § 1.0762 F. (adopted) ..... 334



Located on Government Road in Taylors Falls, this New England style home was built in 1855 by William Henry Carman Folsom, a lumberman who was a member of the 1857 constitutional convention and served several terms in the Minnesota legislature. (Drawing by Ron Hunt reprinted, with permission, from *A Living Past: 15 Historic Places in Minnesota*, copyright 1973, 1978 by the Minnesota Historical Society.)

**The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.**

**If an adopted rule is identical to its proposed form as previously published, a notice of adoption as proposed and a citation to its previous *State Register* publication will be printed.**

**If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.**

**A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.**

# Department of Education Board of Education

## Adopted Rules Governing the Financial Accounting Reporting Requirements

The proposed rules governing the issuance and renewal of licenses for school superintendents and principals and the repeal of EDU 330 is being held for further consideration by the board.

The rules regarding the financial accounting reporting requirements 5 MCAR § 1.0762, subdivision F., has been adopted and is identical to its proposed form as published at *State Register*, Volume 2, Number 33, pp. 1539-1540, February 20, 1978 (2 S.R. 1539) with the following amendment:

### Rules as Adopted

**Chapter Thirty-Eight Financial Accounting Reporting Requirements**

**5 MCAR § 1.0762 Fund accounting.**

F. General fund assets may be used for any general or special operating purpose of a school district and may be transferred permanently by local governing board action to any other operating fund where the resources of that other fund are not adequate to finance approved expenditures from such fund or to eliminate a negative unappropriated fund balance in a building construction fund being discontinued.

~~The amount of general fund assets to be used to eliminate a negative unappropriated building construction fund balance shall not exceed the amount of such unappropriated fund balance reduced by the sum, if greater than zero, of~~

~~(a) The unappropriated fund balance in the capital expenditure fund, projected to the end of the current fiscal year, plus~~

~~(b) The under levies for capital expenditures in the five previous levies.~~

The portion of the general fund unappropriated fund balance permanently transferred to eliminate a negative building construction fund unappropriated fund balance must be reduced by

(a) The capital expenditure fund year-end unappropriated fund balance, plus

(b) The difference between the capital expenditure levy limitation and the certified capital expenditure levy for the three previous years.

# Department of Education Board of Education

## Adopted Temporary Rules Governing Educational Aids for Pupils Attending Nonpublic Schools

The State Board of Education adopted the temporary rules relating to pupils attending nonpublic schools on August 1, 1978. These rules, 5 MCAR §§ 1.0745-1.0756, are identical to those published at *State Register*, Volume 3, Number 1, pp. 30-34, July 10, 1978 (3 S.R. 30) with the amendments listed below. The attorney general approved the rules on August 9, 1978.



### Temporary Rules as Adopted

**Chapter Thirty-Seven A Textbooks and Standardized Tests for Pupils Attending Nonpublic Schools**

**5 MCAR § 1.0748** A. 1. An estimate of the nonpublic school pupils, kindergarten through grade twelve, who ~~will~~ may be enrolled as of September 15 of the following school year and who ~~will~~ may be signing pupil request forms for textbooks and standardized tests.

F. Reimbursement. Upon completion of the distribution of the textbooks and standardized tests, each public school district or intermediary service area may claim from the Department of Education (1) the cost of materials and (2) a sum for the actual cost of administration which shall not exceed five percent of the cost of the materials distributed. The administrative costs shall be in addition to the allocation available for textbooks and standardized tests. Handling and shipping charges by the vendor shall be included in the allocation for textbooks and standardized tests for each nonpublic school. A public school district shall not be considered a vendor.

**Chapter Thirty-Seven B: Instructional Materials for Pupils Attending Nonsectarian Nonpublic Schools**

**5 MCAR § 1.0749 Policy.** Instructional materials, as provided by Minn. Stat. § 123.938 (1978), shall be made available to pupils attending nonsectarian nonpublic schools, provided such schools have an enrollment less than 200 pupils and are not primarily preschools. The instructional materials aid shall be supplemental to the educational aids and services available to nonpublic school pupils as provided by Minn. Stat. §§ 123.931-123.937 (1976 as amended).

**5 MCAR § 1.0752** A. 1. An estimate of the nonpublic school pupils, kindergarten through grade twelve, who ~~will~~ may be enrolled as of September 15 of the following school year and who ~~will~~ may be signing pupil request forms for instructional materials.

F. Reimbursement. Upon completion of the distribution of the instructional materials, each public school district or intermediary service area may claim from the Department of Education (1) the cost of the materials and (2) a sum for the

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**5 MCAR § 1.0756**

actual cost of administration which shall not exceed five percent of the cost of the materials distributed. The administrative costs shall be in addition to the allocation available for textbooks and standardized tests. Handling and shipping charges by the supplier shall be included in the allocation for each nonpublic school. A public school district shall not be considered a vendor.

**Chapter Thirty-Seven C Health Services for Pupils Attending Nonpublic Schools**

**5 MCAR § 1.0756** A. Preliminary application. On or before April 1 the nonpublic school shall submit to the district or intermediary service area a preliminary application for health services beginning with the following school year. The preliminary application shall be on forms provided by the Department of Education and shall include an estimate of the nonpublic school pupils, kindergarten through grade twelve, who ~~will~~ may be enrolled as of September 15 of the following school year and who ~~will~~ may be signing pupil request forms for health services. The preliminary application may also include an assessment of the type and level of health services desired for the following school year.

# Board of Education Instruction Division

## Adopted Rules for Experimental Programs for Elementary and Middle Schools; and Pre-School Health and Developmental Screening

The rules published in the *State Register*, Volume 2, Number 21, pp. 1051-1055, November 28, 1977 (2 S.R. 1051), are adopted and are identical to their proposed form, with the following amendments. (Only the sections which have been changed appear here.)

**Chapter One Classification for State Aids, Minimum Requirements for Elementary and Secondary Schools**

**5 MCAR § 1.0010** C. If the evaluation at the end of the course or program is positive, the state Board of Education ~~may~~ shall authorize continuation of the program. When such continuation is granted, the state Board of Education shall stipulate the specific rules from which the program shall continue to be exempt.

**Chapter Thirty-Six Pre-school Health and Developmental Screening**

**5 MCAR § 1.0720** C. Parent or parents included: 1) a biological mother or father, 2) an adoptive mother or father, 3) a legally appointed guardian, 4) in the event that a child is a ward of the Commissioner of Public Welfare or other public official, the commissioner or such official; or 5) when the parent or guardian is unknown or cannot be found after reasonable efforts have been made, then such agency or other person appointed pursuant to Minnesota statutes or court order.

**5 MCAR § 1.0721** D. The pre-school screening program and follow-up shall be coordinated as far as possible with other health screening programs to eliminate duplication of services and provide more efficient administration. School districts shall arrange for exchange of information on students with other health screening programs. Such exchange shall be consistent with 5 MCAR § 1.0724 D.

**5 MCAR § 1.0722**

A. 7. Referral procedures to be utilized when a condition is identified in need of ~~diagnosis or treatment.~~ further evaluation.

A. 8. Procedures to be utilized to determine whether or not referral resources were ~~utilized.~~ used in accordance with 5 MCAR § 1.0724 F.

D. Exceptions to the ~~statutorily~~ required screening components ~~may~~ shall be made by the state board upon submission to it of evidence that a local board is not able to supply such screening due to financial limitations.

**5 MCAR § 1.0723 Staffing.** Screening shall be performed by qualified personnel. In selecting personnel to implement the pre-school screening program, school districts shall give first priority to volunteers. Second priority shall be given to others possessing minimum qualifications who can provide services determined to be most cost effective. A person may perform one or more of the functions described in A. through F. of this section provided appropriate qualifications are met. Each pre-school health and developmental screening program shall include the following screening personnel meeting the state minimum qualifications:

A. Nurse.

1. ~~Who must be registered and currently licensed in the state of Minnesota.~~ A nurse currently licensed to practice professional nursing in the State of Minnesota shall be qualified to perform those pre-school screening functions permitted under the state nurse practice act, and

E. Clinic assistant.

1. Who has been trained by Department of Education or Department of Health professional staff in administering one or more of the health or developmental screening measures~~.~~, or

2. Who has been trained by a program providing equivalent preparation as determined by the Department of Health or the Department of Education.

F. Dental screener.

2. Registered nurse ~~W~~who has been trained by the Minnesota Department of Health or approved by the Minnesota Department of Health as having been trained to perform dental screening.

**5 MCAR § 1.0724**

A. Screening procedures shall~~,~~ ~~to the extent the school board determines they are financially feasible,~~ include the following components:

1. An individual review of past and present health status including perinatal, psychosocial, family health~~,~~ ~~nutrition intake~~ and immunizations.

2. b. Direct observation of the child's functioning utilizing standardized developmental screening instruments approved by the Minnesota Department of Education and which have:

4. c. Muscle balance screening procedures include at least observation, cover test, and the Hirschberg test ~~and the Worth 4 Dot.~~ or a test with equivalent standards as determined by the Department of Health or the Department of Education, which is appropriate for the age group being screened.

d. Test for visual acuity. A test such as the Screening Test for Young Children and Retardates (STYCAR), the Snellen E cube, the Snellen Alphabet Chart, ~~and plus lenses~~ or a test with equivalent standards, as determined by the Department of Health or Department of Education, must be used.

B. As of July 1, 1978, the screening procedure shall, in addition to the components included in A of this section, ~~and to the extent the school board determines they are financially feasible~~ include the following components:

**5 MCAR § 1.0724**

1. Assessment of the unclothed child including an inspection of pulse, respiration, blood pressure, head, eyes, ears, nose, pharynx, neck, chest, heart, lungs, abdomen, spine, extremities, joints, muscle tone, skin and neurologi~~cal~~ reaction according to normal procedures.

2. b. Urine ~~and bacteriuria~~ (bililabstix~~, culturia assay~~).

C. No pre-school screening program shall provide laboratory tests, a health history or physical assessment to any child who has been provided with those laboratory tests, a health history, physical assessment or physical examination within the previous 12 months. The school district shall request the results of any laboratory test, health history or physical examination within the 12 months preceding a scheduled pre-school screening clinic, ~~If requested by the parent, health history and physical examination completed by a personal physician within the previous 12 months or within 60 days after the provision of other screening tests shall be accepted by the school district~~ for inclusion in the school records in lieu of comparable information collected in the screening program. Procedures shall be developed for exchange of student information in accordance with 5 MCAR § 1.0724 D.

F. A minimum of two attempts shall be made, at least one of which shall be in writing with return postage, to determine whether recommended referrals were utilized.

~~F.~~ G. Data on individual students obtained in the screening program shall be incorporated into school district records, except as indicated in D of this section.

H. Local school districts shall request information from parents concerning medical assistance eligibility to make it possible for the district to comply with 5 MCAR § 1.0725 C.

~~G.~~ I. Diagnosis, treatment or therapy shall not be provided in the pre-school screening program but this does not preclude provision of such services as a part of a related program.

**5 MCAR § 1.0725** A. Payment of aids for the costs of screening conducted in accordance with an approved plan shall be made as provided for by legislative appropriations.

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SecStat 301

# Department of Personnel Recruitment and Selection Division

## Extension of Adopted Temporary Rules Governing Examination and Referral of Candidates for Classified Positions in State Civil Service and Emergency Appointments to Classified Positions

The temporary rules published at *State Register*, Volume 2, Number 43, pp. 1954-5, May 1, 1978 (2 S.R. 1954) and adopted effective June 5, 1978 as amended at *State Register*, Volume 2, Number 51, pp. 2307-8, June 26, 1978 (2 S.R. 2307) are continued in effect until permanent rules are adopted or December 2, 1978, whichever comes first.

August 15, 1978

Clarence E. Harris
Commissioner of Personnel

# Office of the Secretary of State

## Adopted Rules on Preparation of the White Ballot and on Voter Registration

The rules proposed and published at *State Register*, Volume 2, Number 15, pp. 784-796, October 17, 1977 (2 S.R. 784) are now adopted. Rules SecStat 2101-2106, 2108-2111, 2113 and 2115 regarding preparation of the white ballot are adopted are identical to their proposed form. Rules SecStat 301, 502-513, 601, 604-607, 902, 903, 1002 and 1101 regarding voter registration are adopted and are identical to their proposed form, with the following amendments:

**SecStat 301 Specifications.**

A. Voter registration cards printed for the purpose of distribution and mailing shall be printed in the following manner:

1. The size shall be 6″ × 12-3/4″ (including 3/4″ stub).

2. The paper shall be ~~approximately~~ at least white 100 lb. offset.

3. The ink shall be blue with red Xs next to the line indicating the voter's name, address, last previous registration address (if any) and signature. The certification also shall be printed in red on the original voter registration card.

4. The duplicate card shall have a very light blue screen.

5. The card shall have three 1/16″ perforations that result in the three equal size cards 6″ × 4″.

6. The top stub shall have a substance applied to it so that the card can be sealed when it is folded together for mailing.

B. The original voter registration cards shall be in the following form:

VOTER REGISTRATION CARD **SecStat 301**

Please type or print in ink

Read instructions before completing

X Name _____
Last First Middle

X Legal Residence _____
Street or Route No.

_____
Apt. No. and Rural Box No.

_____
☐ City or ☐ Township County Zip
(check whichever is applicable)

Mailing Address (if different from above)

_____
Street or Route No. Apt. No. and

_____
Rural Box No. City or Township County Zip

W _____ P _____

S.D. No. _____

OFFICE USE ONLY

Election day voter registration proof:
- ☐ Driver's License
- ☐ Minn. Ident. Card
- ☐ Witness
- ☐ Prior Registration
- ☐ Ineffective Notice
- ☐ Student Identification

_____
Number (if applicable)

Telephone Number _____

Date of Birth (optional) _____

Previous Name _____
(if changed since last registration)

X ~~Your Address at Your Most Recent Prior Registration~~ Address of Your Last Registration If Any _____
Street or Route No. Apt. No.

_____
City or Township County State Zip

BE SURE TO CHECK INSTRUCTIONS TO DETERMINE WHETHER YOU ARE QUALIFIED TO REGISTER

**KEY: RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

**SecStat 301**

I certify that I will be at least 18 years old on election day and the above facts are correct. I understand that giving false information to procure a registration is a felony punishable by not more than 5 years imprisonment and a fine of not more than $5,000, or both.

____/____/_____ X _____

Date — Legal Signature of Voter
Be sure to sign the blue card

In the upper right hand corner of the card there shall be a box marked for "office use only". In the box there shall be "W _____", "P _____" and "S.D. No. _____". (These initials stand for "ward", "precinct" and "school district".) Other information may also be included. Judges of election shall record the type of election day registration proof and its number, if any, in the "office use only" box.

C. The duplicate voter registration card shall be in the following form:

DUPLICATE VOTER REGISTRATION CARD

Sign this card -- DO NOT COMPLETE

The information will be typed by the voter registration office.

| | |
|---|---|
| ~~X~~ Name _____<br>Last First Middle | W _____ P _____<br>S.D. No. _____ |
| ~~X~~ Legal Residence _____<br>Street or Route No. | OFFICE USE ONLY |
| _____<br>Apt. No. and Rural Box No. | ~~Election-day-voter registration-proof:~~<br>~~---Driver's License~~<br>~~---Minn. Ident. Card~~<br>~~---Witness~~<br>~~---Prior Registration~~<br>~~---Ineffective Notice~~<br>~~---Student Identification~~ |
| ☐ City or ☐ Township County Zip<br>(check whichever is applicable) | _____<br>~~Number (if applicable)~~ |

SecStat 301

Mailing Address (if different from above) _____
Street or Route No.

_____
Apt. No. and Rural Box No. City or Township County Zip

Telephone Number _____

Date of Birth (optional) _____

Previous Name _____
(if changed since last registration)

~~X Your-Address-at-Your-Most-Recent-Prior-Registration~~ Address of Your Last Registration If Any _____
Street or Route No. Apt. No.

_____
City or Township County State Zip

BE SURE TO CHECK INSTRUCTIONS TO DETERMINE WHETHER YOU ARE QUALIFIED TO REGISTER

____/____/____ X _____
Date Legal Signature of Voter (for identification only)

In the upper right hand corner of the card there shall be a box marked for "office use only". In the box there shall be: "W _____", "P _____" and "S.D. No. _____". (These initials stand for "ward", "precinct" and "school district".) Other information may also be included.

D. The instruction card shall be in the following form:

INSTRUCTIONS FOR VOTER REGISTRATION
READ CAREFULLY BEFORE REGISTERING

Lines indicated by an (X) must be completed by the registrant before his or her registration may be accepted.

1. Print in ink or type all information requested on white card.

2. Print or type your legal name — Do not use nicknames.

3. Your residence should be that place where you ac-

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**SecStat 301**

tually live. Check the appropriate box indicating whether you live in a city or township.

4. Print or type your mailing address if it is different from your residence address.

5. Place your telephone number (optional) on the appropriate line.

6. Place your date of birth (optional) on the appropriate line.

7. If your name has been changed through marriage, divorce or decree or order of court since your last voter registration, print or type your former name on the appropriate line.

8. Address of last previous registration — Print or type the address from which you were last registered to vote. If you have never been registered to vote before, print or type "none".

9. After the white card is completed, sign your full name in ink and fill in the date on the white card.

10. SIGN THE BLUE CARD.

11. The blue card must be signed in ink on the line where it is required, but do not fill in the blue card. It will be typed in by the voter registration office.

12. After the white card is completed and both cards are signed, seal using sealing tab attached.

13. Complete the address on the reverse of the white registration card by filling in the name of the county where you reside and the name of the city which is the county seat. Mail or deliver to the office of the county auditor.

An eligible voter is a person who at the time of any election

(a) is 18 years of age or older,

(b) is a citizen of the United States and

(c) has resided in Minnesota for 20 days.

The following persons are not eligible voters:

(a) any person who has been convicted of a felony or treason, who has not been restored to his civil rights;

(b) any person who is under guardianship over his person;

(c) any person who is adjudicated to be not mentally competent; and

(d) any person who is not properly registered, in areas that provide for voter registration.

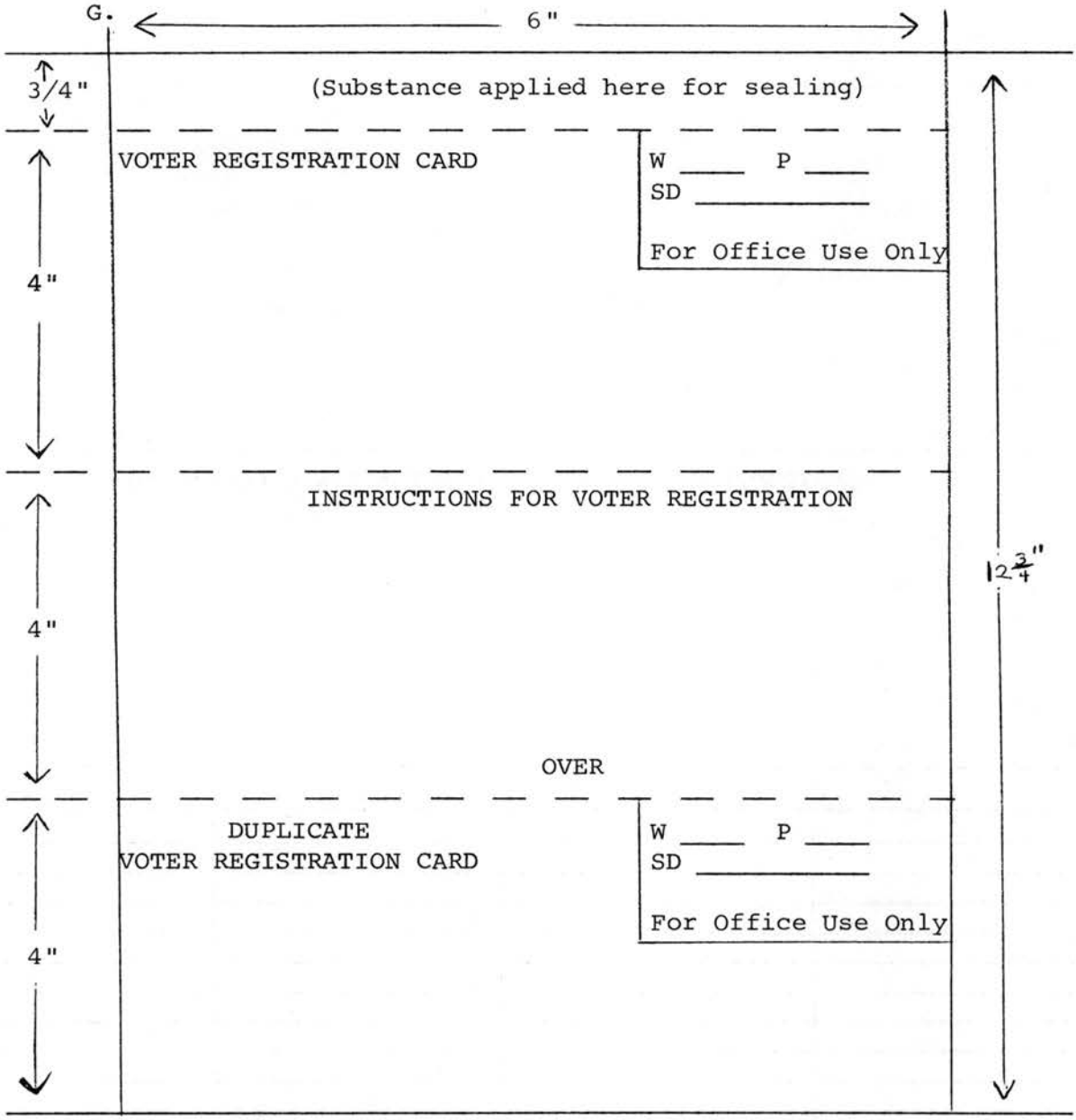
E. The reverse side of the original (white) registration card shall be in the following form:

first
class
postage

RETURN TO:
(here the county auditor shall
supply the address)

F. The reverse side of the duplicate (blue) registration card shall be lined horizontally to create spaces 1/4" wide and divided vertically into four sections to allow the judges of election to record the date of the election in which the voter voted.

SecStat 301

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**SecStat 301**

H.

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**SecStat 506 Ineffective registration.** Upon receipt of a voter registration card that is faulty or defective, filed with the wrong office or filed during a period when pre-election day voter registrations cannot by law be accepted, the following notice of ineffective registration shall be mailed to the person requesting to become registered. The notice shall require that it be returned if not deliverable.

NOTICE OF INEFFECTIVE REGISTRATION

IMPORTANT INFORMATION
ABOUT YOUR VOTER REGISTRATION

To: _____

Your Voter Registration cannot be accepted by this office for the following reason(s):

1. ☐ Wrong County. Your registration has been forwarded to _____County.

2. ☐ Incomplete: _____

_____

3. ☐ Your registration was received fewer than 20 days before the upcoming election. It will be effective on __/__/__ (day after next election).

4. ☐ Minnesota law provides that pre-election day registration for the upcoming __/__/__ election be received in this office by __/__/__. You may register to vote at the polling place on election day by presenting either

(a) this mailed notice;

(b) a valid Minnesota Driver's License or receipt thereof~~,~~;

(c) a Minnesota Identification Card or receipt thereof~~,~~;

(d) a student identification card that contains the student's valid address~~,~~;

(e) a student fee statement that contains the student's valid address ~~or~~;



(f) a copy of a student registration card that contains the student's valid address;

(g) ~~by having~~ a registered voter in your precinct ~~witness your registration~~ who can attest to your address; or

(h) ~~by having~~ a valid registration in the same precinct under a different address~~; or by presenting this mailed card~~.

Your polling Place is _____

_____County Auditor __/__/__
(signature) (date)

**SecStat 604 Notation.** When a voter uses either a Minnesota Driver's License or Minnesota Identification Card to prove residence when registering on election day, the election judge who is registering voters shall ~~write~~ record the number on the card ~~and the letters D.L. (Driver's License) or M.I. (Minnesota Identification)~~ in the "office use only" area of original card.

**SecStat 1002 Compatibility.** Any voter registration records maintained on electronic or automatic data processing systems and provided to registered voters within the county shall include~~, in this order, horizontally across form.~~ registrant name, address (including street or route number, city or township and zip code) and telephone number when provided by the registrant. ~~Each entry in a precinct shall be arranged in alphabetical order by last name of registrant.~~ Each precinct shall be entered in the municipality listing in numerical order by precinct number. Each municipality shall be entered in alphabetical order by municipality name within the county. Standards for data entry shall be compatible with secretary of state standards.

**Chapter Eleven: Violations**

**SecStat 1101 County attorneys to report.** County attorneys shall report the outcome of any investigation of alleged violations of voter registration laws to the ~~commissioner~~ Secretary of State within 10 days of the determination.

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# PROPOSED RULES

**Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.**

**Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.**



**Representing the most highly developed stage in avian evolution, the crow breeds in colonies and has a high degree of social organization. It is omnivorous, and in addition to vegetables, it feeds on the eggs and young of other birds. Most crows have a loud, harsh cry, but some species have a melodious "whisper song" which can be heard only at close range. In captivity, crows exhibit a talent for mimicry. (Drawing by Brian Conway)**

# Department of Administration Data Privacy Unit

## Proposed Rules Governing the Enforcement and Administration of the "Minnesota Data Privacy Act"

### Order for Hearing

It is hereby ordered that a public hearing on the above-captioned rules be held in Room 83, State Office Building, St. Paul, Minnesota on October 31, 1978 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

It is further ordered that a Notice of Hearing be mailed to all persons or representatives of association or other interested groups who have registered their names with the Secretary of State for that purpose.

It is further ordered that the Notice of Hearing be published in the *State Register*.

August 21, 1978

Richard L. Brubacher
Commissioner

### Notice of Hearing

Notice is hereby given that the public hearing in the above entitled matter will be held in the Auditorium Hearing Room, Room Number 83, State Office Building, St. Paul, Minnesota, on October 31, 1978, commencing at 9:00 a.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted by mail to Steve Mihalchick, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8112 either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, define terms used in Minn. Stat. §§ 15.162 through 15.1671, establish procedures concerning collection, use and dissemination of data on individuals and define and implement duties of state and local officials who are responsible for data on individuals. One copy of the proposed rules will be mailed to each state agency and political subdivision as required by Minn. Stat. § 15.1671 and to each person registered with the Secretary of State as required by Minn. Stat. § 15.0412. Copies of the proposed rules are available and one free copy may be obtained by writing to the Data Privacy Unit, Room 203 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules are contained in Minn. Stat. § 15.1671.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1976), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the Ethical Practices Board, Room 41, State Office Building, St. Paul, Minnesota (612) 296-1720 as a lobbyist within five days of the commencement of such activity by the individual.

to the proposed adoption of permanent rules governing the enforcement and administration of the "Minnesota Data Privacy Act", as published in the State Register, September 4, 1978

Page 347:

Rule 2 MCAR § 1.201, Subsection A, should read: "A. These rules shall apply to those governmental entities as defined by Minn. Stat. § 15.162, . . . ."

Pages 348-349:

Rule 2 MCAR § 1.202, Subsection E. following l.c., the Rule should read:

2. Data is not private if:

   a. A federal agency rule provides substantially that as a part of its plan for implementation of a certain federal program, a state agency, statewide system, or a political subdivision must provide for the confidentiality of data obtained from program subjects.

3. A state agency rule, an executive order, an administrative decision, or a local ordinance shall not classify data as "private", or use wording to make data inaccessible to the public unless there is a state statute or federal law as the basis for the classification.

Page 350:

In Rule 2 MCAR § 1.202, Section L. 3., paragraph a. should read:

   a. The commissioner of any state department or any executive officer designated by statute or executive order as responsible for such a system; or

Page 353:

In the introductory paragraph of 2 MCAR § 1.208, change the second to the last word in that paragraph from investigatory to investigative.

In 2 MCAR § 1.208, Section A. change the first word of that paragraph from Investigatory to Investigative.

Page 354:

Rule 2 MCAR § 1.209. The first sentence in the introductory paragraph should read: "Pursuant to Minn. Stat. § 15.1641 (d), . . . ."

Page 355:

Rule 2 MCAR § 1.210, the fourth paragraph should be denominated as D. instead of B.

Dept's Exhibit No. L

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Pursuant to Minn. Stat. § 15.0412, subd. 7, notice is hereby given that the Department of Administration's reasonable estimate of the total cost to all local public bodies in the state to implement the attached proposed rules for the two years immediately following adoption may exceed $100,000 in either of the two years.

An exact figure of the costs to each local unit of government is virtually impossible to present. The cost for each local unit will depend on, among other factors, the size of the population served by the local unit, the number of records retained and maintained by the unit, and the degree of the unit's current compliance with the "Data Privacy Act" and with other statutes and regulations governing data on individuals.

August 21, 1978

Richard L. Brubacher
Commissioner

## Rules as Proposed

**2 MCAR § 1.201. Scope and purpose.** These rules relate to and shall apply to the provisions of Minn. Stat. §§ 15.162 through 15.1671.

A. These rules shall apply to those governmental entities as defined by Minn. Stat. § 15.1671, subd. 5, 7, and 8,



which collect, create, use, store, and disseminate data on individuals as defined in Minn. Stat. § 15.162, subd. 3.

B. Nonprofit social service agencies meeting the requirements of Minn. Stat. § 15.162, subd. 5 shall include, but are not limited to, agencies providing mental health, physical health, counseling and day-activities services.

1. These rules shall only apply in the instance where such an agency is required, by the terms of a written contract with a state agency, political subdivision, or statewide system to collect, create, store, use, or disseminate data on individuals.

2. In the event of such a contract, these rules shall only apply to the data on individuals that is actually generated by the social service agency because of the contract.

3. Any data generated by activities of the social service agency that are independent of the contractually based activities shall not be subject to these rules.

4. These rules shall not apply to personnel data maintained on employees of such social service agencies.

C. These rules shall not apply to any governmental data collected, created, used, stored, or disseminated which is not data on individuals as defined in Minn. Stat. § 15.162, subd. 3, except these rules shall apply to summary data.

D. Nothing in these rules shall limit the discovery procedures available at law to any party in a civil or criminal action or administrative proceeding as described in the Minnesota Rules of Civil Procedure and the Minnesota Rules of Criminal Procedure as adopted by the Minnesota Supreme Court or in Minnesota Statutes.

E. Nothing in these rules shall restrict or limit the scope or operation of any judicial order or rule issued by a state or federal court.

F. Nothing in these rules shall be construed to diminish the rights conferred on subjects of data by Minn. Stat. § 15.165, or any other statute.

G. The purpose of these rules is to aid governmental entities in implementing and administering Minn. Stat. §§ 15.162 through 15.1671. These rules are intended to guide entities so that while protection is given to individual privacy, neither necessary openness in government nor the orderly and efficient operation of government is curtailed.

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## 2 MCAR § 1.202

**2 MCAR § 1.202 Definitions.** All terms shall have the meanings given them by Minn. Stat. § 15.162. Those terms and additional terms as used in these rules shall have the meanings as follows:

A. Act means Minn. Stat. §§ 15.162 through 15.1671, as amended, commonly referred to as the "Data Privacy Act" or the "Minnesota Fair Information Practices Act".

B. Arrest Information means only those elements of data that are expressly listed in § 15.162, subd. 1a of the Act. Arrest information shall only include data which is collected, created, or maintained by an entity whose officers, employees, or agents are given arrest powers by statute, or the power to take into custody any person arrested by another citizen of this state.

1. Such entities include, but are not limited to, municipal police departments, county sheriff departments, the Minnesota State Patrol, and officers deputized as game wardens under the provisions of Minn. Stat. § 97.50.

C. Data means "data on individuals" as defined in § 15.162, subd. 3 of the Act, unless stated otherwise.

1. Data can be maintained in any form, including, but not limited to, paper records and files, microfilm, computer medium, or other processes.

2. The duration of the existence of data, including whether certain data is temporary rather than permanent, is not relevant to compliance with these rules.

3. All data, in whatever form it is maintained, is "data on individuals" if it can in any way identify a unique individual.

4. Code numbers representing unique individuals in certain data constitute "data on individuals", provided a list or index of any type is made available by which the code number can be cross referenced to identify unique individuals. Such data may qualify for treatment as summary data, pursuant to 2 MCAR § 1.209.

a. Code number means the labeling or enumeration of data by use of a letter, number, or combination thereof, which is used in place of an individual's name, including but not limited to index numbers, dummy numbers, SOUNDEX codes, and social security numbers.

5. Data is "data on individuals" if it identifies an individual in itself, or if it can be used in connection with other data elements to uniquely identify an individual. Such data shall include, but is not limited to, street addresses, job titles and so forth where the particular data could only describe or identify one individual.

D. Confidential Data as defined in § 15.162, subd. 2a of the Act, shall only include data which is expressly classified by either a state statute, including the provisions of § 15.1642 of the Act, or federal law.

1. Data is confidential only if a state statute or federal law provides substantially that:

a. Certain data shall not be available either to the public or to the data subject; or

b. Certain data shall not be available to anyone for any reason except agencies which need the data for agency purposes.

2. Data is not confidential if:

a. A state statute or federal law provides that the data is confidential, but the context of the statute or federal law, in which the term confidential appears, reasonably indicates the data is accessible by the data subject.

3. A state agency rule, an executive order, an administrative decision, or a local ordinance shall not classify data as "confidential", or use wording to make data inaccessible to the data subject unless there is a state statute or federal law as the basis for the classification.

E. Private Data, as defined in § 15.162, subd. 5a of the Act, shall only include data which is expressly classified by either a state statute, including the provisions of § 15.1642 of the Act, or federal law.

1. Data is private if a state statute or federal law provides substantially that:

a. Certain data shall not be available to the public but shall be available to the subject of that data;

b. Certain data shall not be available to anyone, except the data subject or his designated representative such as an attorney;

c. Certain data shall be confidential and the person the data is about may view the data at reasonable times; or

d. Certain data shall be confidential and may be shown to the data subject at the discretion of the person holding the data. Such data shall be private if the state statute or federal law does not provide standards which limit the exercise of the discretion of the person maintaining the data.

2. Data is not private if:

a. Absent a statutory or federal law basis for classification, a state agency rule, an executive order, an administrative decision or a local ordinance provides substantially that certain data shall be private, pursuant to Minn. Stat. § 15.162, subd. 5a, or any other similar wording.

b. A federal agency rule provides substantially that as a part of its plan for implementation of a certain federal program, a state agency, statewide system, or political subdivision must provide for the confidentiality of data obtained from program subjects.

F. Public Data shall mean "data on individuals", as defined in § 15.162, subd. 5b of the Act, which is neither private nor confidential data, and which is data that is an official record pursuant to Minn. Stat. § 15.17.

1. Data is public if:

a. a state statute or federal law substantially provides that certain data shall be made available to the public, pursuant to Minn. Stat. § 15.17, or any other similar wording;

b. a state statute or federal law substantially requires the collection of certain data by a state agency, political subdivision or statewide system, and does not classify that data as private or confidential;

c. a state agency, statewide system, or political subdivision, without any express enabling authority to do so, collects certain data because that data is necessary to its operations; as defined at 2 MCAR § 1.216 B.1.

2. This rule shall not limit the ability of an entity to apply for emergency classifications of data pursuant to § 15.1642 of the Act.

G. Designee means any person designated by a responsible authority to be in charge of individual file(s) or system(s) containing "data on individuals".

H. Entity means any governmental agency subject to the requirements of the Act, including state agencies, political subdivisions, and statewide systems as those terms are defined in § 15.162 of the Act.

1. State agency shall include any entity which is given power of statewide impact by statute or executive order.

2. Political subdivision shall include those local government entities which are given powers of less than statewide impact by statute or executive order.

3. Statewide systems shall include, but are not limited to, recordkeeping and data administering systems established by statute, federal law, administrative decision or agreement, or joint powers agreement.

a. Statewide systems shall include, but are not limited to, the Criminal Justice Information System administered by the Bureau of Criminal Apprehension, the Statewide Accounting System, the Minnesota Education Computing Consortium, and the various welfare systems primarily administered by the Department of Public Welfare.

I. Federal Law means United States Code, rules of federal agencies as published in the *Federal Register*, and federal case law, including decisions of any court in the federal judicial system.

J. Individual means any living human being. 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 natural person.

K. Records Management Act means Minn. Stat. § 138.17.

L. Responsible Authority means the individual in each entity who is designated or appointed pursuant to § 15.162, subd. 6 of the Act.

1. In state agencies, the Responsible Authority shall be as follows:

a. Departments: the commissioner of the department.

b. Constitutional Offices: the constitutional officer.

c. University of Minnesota: the individual appointed by the Board of Regents.

d. All other state agencies: the chief executive officer, or if none, then an individual chosen by the agency's governing body.

2. In political subdivisions, the Responsible Authority shall be as follows:

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**2 MCAR § 1.202**

a. Counties: each elected official of the county shall be the Responsible Authority for his respective office. An individual who is an employee of the county shall be appointed by the county board to be the Responsible Authority for any data administered outside the offices of elected officials.

b. Cities: the city council shall appoint an individual who is an employee of the city.

c. School Districts: the school board shall appoint an individual who is an employee of the school district.

d. Nonprofit Corporations or Nonprofit Social Service Agencies: unless a statute or the governmental entity which created the corporation or agency appoints an individual, the governing body of the corporation or agency shall appoint an individual. If no appointment is made, the chief executive officer of the nonprofit corporation or agency shall be the Responsible Authority. If the corporation or agency is part of a statewide system, the Responsible Authority for the statewide system shall be the Responsible Authority for the corporation or agency as determined by this rule.

e. All other political subdivisions: the governing body shall appoint an individual who is an employee of the political subdivision.

3. In Statewide Systems, the Responsible Authority shall be as follows:

a. The commissioner of any state department or any executive officer designated by statute or executive officer designated by statute or executive order as responsible for such a system; or

b. If a state statute or executive order does not designate an individual as Responsible Authority, the Commissioner of Administration shall appoint the Responsible Authority after the entities which participate in the system jointly apply for such an appointment in a form provided by the Commissioner of Administration.

M. Summary Data, as defined in § 15.162, subd. 9 of the Act, means data which has been extracted, manipulated, or summarized from private or confidential data, and from which all data elements that could link the data to a specific individual have been removed.

1. Summary data includes, but is not limited to, statistical data, case studies, reports of incidents, and research reports.

2. Data is summary data if any list of numbers or other data which could uniquely identify any individual in the summary data is physically separated from the summary data and is not made available to persons who gain access to, or possession of the summary data.

**2 MCAR § 1.203 Access to Public Data.** The Responsible Authority shall comply with the following general rules governing access to public data.

A. The Responsible Authority shall provide access to public data to any person, regardless of that person's interest in the data.

1. The Responsible Authority shall establish procedures to describe how such access may be gained.

a. In such procedures, the Responsible Authority may limit the time that public access is available to the normal office hours of the agency.

b. In such procedures, the Responsible Authority shall provide for a response to a request for access within a reasonable time.

c. The Responsible Authority shall charge a reasonable fee for providing copies of public data, unless the costs incurred by the entity in providing the copies are minimal.

d. In determining the amount of the reasonable fee, the Responsible Authority shall be guided by the following:

1. The cost of materials, including paper, used to provide the copies.

2. The cost of the labor required to prepare the copies.

3. Any schedule of standard copying charges as established by the agency in its normal course of operations.

4. Any special costs necessary to produce such copies from machine based record keeping systems, including but not limited to computers and microfilm systems.

5. Mailing costs.

**2 MCAR § 1.204 Access to private data.** Pursuant to §§ 15.1641 and 15.162, subd. 5a of the Act, the Responsible Authority shall comply with the following rules concerning access to private data:

A. Access to private data shall be available only to the following:

1. The subject of such data.

2. Individuals within the entity, whose work assignments reasonably require access.

3. Entities and agencies as determined by the Responsible Authority who are authorized by statute, including § 15.1641 (c) of the Act, or federal law to gain access to that specific data.

4. Entities or individuals given access by the express written direction of the data subject.

B. The Responsible Authority shall establish written procedures to assure that access is gained only by those parties identified in Part A of the rule.

1. In those procedures, the Responsible Authority shall provide for reasonable measures that will assure that the person seeking to gain access to the private data is actually the subject of that data or the authorized representative of the data subject.

2. Such reasonable measures include, but are not limited to, the following:

a. Requiring the person seeking to gain access to appear at the offices of the entity to gain such access or requiring the notarized signature of any data subject who is unable to appear at the offices of the entity.

b. Requiring the person to provide reasonable identification.

C. The Responsible Authority may limit the time that access is available to the data subject to the normal working hours of the agency.

D. The Responsible Authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data.

E. The Responsible Authority shall charge the data subject a reasonable fee for providing copies of private data.

1. In determining the amount of the reasonable fee, the Responsible Authority shall be guided by the criteria set out in 2 MCAR § 1.203 concerning access to public data.

**2 MCAR § 1.205 Access to private data concerning data subjects who are minors.** Pursuant to §§ 15.1641 and 15.162, subd. 4 and 5a of the Act, the Responsible Authority shall comply with the following rules concerning access:

A. In addition to the particular requirements of this rule, access to private data concerning a minor data subject shall be subject to the requirements of 2 MCAR § 1.204 concerning access to all private data.

B. Access to private data concerning minors shall be available only to the following:

1. Those parties identified as having access to private data under part A. of 2 MCAR § 1.204.

2. Subject to the provisions of Minn. Stat. § 15.162, subd. 4, any other applicable statute, and the exception set out at subd. C.1. below, the parents of the minor data subject.

a. For purposes of this rule, the Responsible Authority shall presume the parent has the authority to exercise the rights inherent in the Act unless the Responsible Authority has been provided with evidence that there is a state law or court order governing such matters as divorce, separation, or custody, or a legally binding instrument which provides to the contrary.

C. Pursuant to the provisions of Minn. Stat. § 15.162, subd. 4, the Responsible Authority shall establish procedures to provide access by the parents of a minor data subject to private data concerning that minor, subject to the following:

1. The Responsible Authority may deny parental access to private data when the minor, who is the subject of that data, requests that the Responsible Authority deny such access.

a. The Responsible Authority may require the minor data subject to submit a written request that the data be withheld. The written request shall set forth the reasons for denying parental access and shall be signed by the minor.

2. Upon receipt of such a request, the Responsible Authority shall determine if honoring the request to deny parental access would be in the best interest of the minor data subject.

a. In making the determination, the Responsible Authority shall be guided by at least the following:

(1) 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.

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**2 MCAR § 1.205**

(2) Whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm.

(3) Whether there is ground for believing that the minor data subject's reasons for precluding parental access are reasonably accurate.

(4) 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.

(5) Whether the data in question is subject to the right of parental access outlined in the "Family Educational Rights and Privacy Act of 1974," Public Law 93-380, and the rules promulgated thereunder.

(6) Whether the data concerns medical, dental or other health services provided pursuant to Minn. Stat. §§ 144.341 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 MCAR § 1.206 Access to confidential data.** Pursuant to Minn. Stat. §§ 15.1641 and 15.162, subd. 2a, the Responsible Authority shall comply with the following rules concerning access to confidential data:

A. Access to confidential data is available only to the following:

1. Individuals within the entity, whose work assignments reasonably require access.

2. Entities and agencies who are authorized by statute, including § 15.1641 of the Act, or federal law to gain access to that specific data.

B. The Responsible Authority shall establish written procedures to assure that access may be gained only by those parties identified in Part A. of this rule.

1. In the drafting and administration of those procedures, the Responsible Authority shall provide measures by which data subjects shall be informed, upon request, if they are the subjects of confidential data.

a. The Responsible Authority shall not disclose the actual confidential data to the data subjects, but shall inform them whether confidential data concerning them is or is not retained.

b. The Responsible Authority shall take reasonable measures to assure that the person making inquiry is actually the individual data subject.

c. Reasonable measures may include, but are not limtied to:

(1) Requiring the inquiring person to appear at the office of the entity to make his/her request.

(2) Requiring the inquiring person to provide identification.

(3) Requiring the notarized signature of any data subject who is unable to appear at the offices of the entity.

**2 MCAR § 1.207 Access to arrest information.** Pursuant to § 15.162, subd. 1a, 2a, and 5a of the Act, the Responsible Authority shall comply with the following rules concerning access to arrest information:

A. For the duration of time, defined in Part B of this rule, that immediately follows the creation of data constituting arrest information, the Responsible Authority shall make such information available to anyone who requests it in writing, by personal appearance, by telephone inquiry, or any other means.

B. For purposes of this rule, "duration of time" commences with the creation or recording of the arrest information subsequent to the actual detention or citation of the arrested party. "Duration of time" ends at that point in time when an arrested party is:

1. Either released without a criminal complaint being filed against him/her; or

2. Appears before a judicial officer for the offense for which he/she was arrested, or any lesser included offense as described in the Rules of Criminal Procedure as adopted by the Minnesota Supreme Court.

C. During the duration of time described in Part B. of this rule, the Responsible Authority shall not be limited to publicly releasing only arrest information, as defined by § 15.162, subd. 1a of the Act. The Responsible Authority may release additional information after consideration of at least the following:

1. Whether the status afforded to certain data as investigative data, pursuant to § 15.162, subd. 2a of the Act, is no longer needed to protect the integrity of an investigation.

2. Whether there is concern and interest on the part of the public in the person arrested or the alleged crime committed.

3. Whether the release of additional data and its subsequent publication may prejudice the arrested individual's right to a fair and impartial trial.

4. Whether the data subject has requested that arrest disposition data pertaining to that data subject be disseminated.

5. Whether the identity of any victims of or witnesses to the crime should be protected.

D. The Responsible Authority shall not make available to the public any data concerning the detention of a juvenile individual, unless that juvenile is judicially certified to be tried as an adult as described in the Minnesota Rule of Criminal Procedure. The Responsible Authority shall make any data concerning the detention of a juvenile available to the parents of the juvenile.

**2 MCAR § 1.208 Access to Investigative Data.** Pursuant to Minn. Stat. §§ 15.162, subd. 2a and 15.1641 of the Act, the Responsible Authority shall comply with the following general rules concerning access to investigatory data:

A. Investigatory data is confidential data, pursuant to § 15.162, subd. 2a(b). The Responsible Authority shall comply with the provisions of 2 MCAR § 1.206, concerning access to confidential data.

B. The Responsible Authority shall determine that data maintained by his entity is investigative data only if all criteria set out in Parts 1, 2, and 3 of this section are met.

1. Collecting agency criteria. The data is collected, created, or maintained by or at the direction of one of the following entities, or by an agent of such entity:

a. Law enforcement agencies, whose agents are given arrest powers, including, but not limited to, those entities listed in 2 MCAR § 1.201 B.1.

b. Public attorneys, who are given the statutory or constitutional authority to prosecute or to defend civil or criminal actions as defined by the Minnesota Rules of Civil Procedure and the Minnesota Rules of Criminal Procedure including, but not limited to, municipal and county prosecutors and members of the Attorney General's staff.

c. Judicial entities, whose agents are given the statutory or constitutional authority to adjudicate cases and to render sentences.

d. Any agency given statutory authority to revoke or suspend licensure.

e. Any entity which has a reasonable expectation that certain data in its possession may become the subject of a legal action, as set forth in Part 2 of this section.

2. Purpose of collection criteria. The data is collected or created for the purpose of the commencement of a legal action. Any of the following shall constitute a "legal action", for the purposes of this rule, and as used in Minn. Stat. § 15.162, subd. 2a(b):

a. Arrest of any individual.

b. Issuance of a citation, complaint, or an indictment as described in Minnesota Rules of Criminal Procedure.

c. Service of a civil complaint on behalf of the state, a state agency, or a political subdivision.

d. Service of a civil answer on behalf of the state, a state agency, or a political subdivision.

e. Maintaining or prosecuting a civil or criminal action on behalf of the state, a state agency, or political subdivision.

f. Conducting any arbitration proceeding pursuant to Minn. Stat. ch. 572.

g. Conducting any proceeding which may lead to the suspension or revocation of any type of license issued by a state agency or political subdivision.

3. Active data criteria. Active data includes:

a. Data collected for the purpose of the commencement of a criminal action in which all perpetrators of the criminal violation have not been apprehended, the matter has not been fully adjudicated, the statute of limitations for the alleged violation has not run, or all rights of appeal in the judicial system have not been exhausted.

b. Data collected for the purpose of bringing or defending a civil action where that action has not been finally resolved, including exhaustion or extinguishment of all rights of appeal in the judicial system.

c. Data collected for the purpose of participation in an arbitration proceeding where that proceeding has not resulted in a binding decision, including exhaustion of all rights of appeal in the judicial system.

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**2 MCAR § 1.208**

d. Data collected for the purpose of participation in a license revocation or suspension proceeding where that proceeding has not resulted in a binding decision, including exhaustion of all rights of appeal in the judicial system.

**2 MCAR § 1.209 Access to Summary Data.** Pursuant to Minn. Stat. § 15.641 (d), the Responsible Authority shall comply with the following general rules concerning access to summary data:

A. Summary data is public data. The Responsible Authority shall comply with 2 MCAR § 1.203, concerning access to public data.

B. The Responsible Authority shall prepare and implement procedures in his/her agency to assure that access to summary data is given to anyone who requests such data. In the preparation and administration of such procedures, the Responsible Authority shall comply with the following:

1. Preparation of summary data may be requested by any person. The request shall be in writing in a form provided by the Responsible Authority. Within ten days of the receipt of such a request, the Responsible Authority shall inform the requestor of the estimated costs if any, pursuant to subd. B.2 of this rule and subject to the provisions of that subd. either:

a. Provide the summary data requested; or

b. Provide a written statement to the requestor, describing a time schedule for preparing the requested summary data, including reasons for any time delays; or

c. Provide access to the requestor to the private or confidential data for the purpose of the requestor's preparation of summary data, pursuant to § 15.1641 (d) of the Act and subd. B.4. of this rule.

2. Any costs incurred in the preparation of summary data shall be borne by the requesting person. In assessing the costs associated with the preparation of summary data, the Responsible Authority shall:

a. Be guided by the provisions of 2 MCAR § 1.203 in determining costs.

b. Provide to the requesting person an estimate of the costs associated with the preparation of the summary data.

c. Prior to preparing or supplying the summary data, collect any funds necessary to reimburse the entity for its costs.

d. Charge no more than reasonable copying costs when the summary data being requested requires only copying and no other preparation.

e. Take into account the reasonable value to the entity of the summary data prepared.

3. For the purposes of administering Minn. Stat. § 15.1641 (d), the following terms shall have the meanings given them.

a. "Administrative officer" includes, but is not limited to, the entity's research director, statistician, or computer center director.

b. "Person outside" the entity includes the person requesting the summary data or any other person designated by the person requesting the data.

4. A nondisclosure agreement, as required by § 15.1641 (d) of the Act, shall contain at least the following:

a. A general description of the private or confidential data which is being used to prepare summary data.

b. The purpose for which the summary data is being prepared.

c. A statement that the preparer understands he/she may be subject to the civil or criminal penalty provisions of the Act in the event that the private or confidential data is disclosed.

5. Methods of preparing summary data include, but are not limited to, the following:

a. Removing from a set of data, a file, or a record keeping system all unique personal identifiers so that the data that remains fulfills the definition of summary data as defined by § 15.162, subd. 9 of the Act.

b. Removing from the entity's report of any incident, or from any collection of data similar to an incident report, all unique personal identifiers so that the resulting report fulfills the definition of summary data in § 15.162, subd. 9 of the Act.

c. For purposes of this rule, "removing all unique personal identifiers" includes but is not limited to:

(1) Blacking out personal identifiers on paper records.

(2) Tearing off or cutting out the portions of paper records that contain the personal identifiers.

(3) Programming computers in such a way that

printed or terminal output does not contain personal identifiers.

**2 MCAR § 1.210 Classification of data.** In order to comply with the provisions of §§ 15.162, 15.1641, 15.165 and 15.163 of the Act the Responsible Authority shall:

A. Review and identify all of the types of data maintained by the entity, including data retained as active and inactive.

B. Determine the private, confidential, or public classification for each type of data, according to the definitions of those terms pursuant to § 15.162 of the Act and 2 MCAR § 1.202.

C. Identify either a state statute or provisions of federal law supporting any determination that certain data is either private or confidential.

B. Administer all agency data in accordance with the determinations made under 2 MCAR § 1.210 B.

**2 MCAR § 1.211 Authority of the Responsible Authority.** Jurisdiction, as that term is used in § 15.1641 (a) of the Act, means that the Responsible Authority shall have the authority to:

A. Implement the Act and these rules in each entity.

B. Make good faith attempts to resolve all administrative controversies arising from the entity's practices of creation, collection, use, and dissemination of data.

C. Prescribe changes to the administration of the entity's programs, procedures, and design of forms to bring those activities into compliance with the Act and with these rules.

D. Take all administrative actions necessary to comply with the general requirements of the Act, particularly Minn. Stat. § 15.165, and these rules.

E. Where necessary, direct designees to perform the detailed requirements of the Act and these rules under the general supervision of the Responsible Authority.

**2 MCAR § 1.212 Appointment of the Responsible Authority.**

A. Pursuant to § 15.162, subd. 6 of the Act, the governing body of each political subdivision and the governing body of each state agency whose activities are subject to the direction of a governing body shall, within 30 days of the effective date of these rules, appoint a Responsible Authority.

1. This rule shall not affect the appointments of Responsible Authorities made previous to the adoption of this rule.

2. The governing body shall confer on the Responsible Authority full administrative authority to carry out the duties assigned by the Act and by these rules.

3. Governing bodies may use the forms set forth in the appendix to these rules to appoint the Responsible Authority.

**2 MCAR § 1.213 Appointment power of the Responsible Authority.** Pursuant to § 15.1641 (a) of the Act, the Responsible Authority shall, if he deems it to be in the best interest of the administration and enforcement of the Act, appoint designees who shall be members of the staff of the entity. In the exercise of this appointment power, the Responsible Authority shall comply with the following:

A. The appointment order shall be in writing and copies of the order constitute public data on individuals, pursuant to Minn. Stat. § 15.162, subd. 5(b) of the Act.

B. The Responsible Authority shall instruct any designees in the requirements of the Act and of these rules. If the Responsible Authority deems it necessary, such instruction shall include:

1. Distribution to designees of written materials describing the requirements of the Act and of these rules.

2. Preparation of training programs whose objective is to familiarize agency personnel with the requirements of the Act and of these rules.

3. Requiring attendance of designees and other entity personnel at training programs held within or outside the entity.

**2 MCAR § 1.214 Duties of the Responsible Authority relating to public accountability.** Pursuant to § 15.163 of the Act, the duties of the Responsible Authority shall include, but not be limited to, the following:

A. For the purposes of public accountability, the Responsible Authority shall, within sixty days of the effective

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**2 MCAR § 1.214**

date of these rules, or until August 1 of each year when the requirements of subd. B. of this rule are fully complied with, place his/her name, job title and business address, and the name(s) and job titles of any designees selected by the Responsible Authority on a document.

1. Such document shall be made available to the public and/or posted in a conspicuous place in each entity.

2. The document shall identify the Responsible Authority or designees as the persons responsible for answering inquiries from the public concerning the provisions of the Act or of these rules.

B. In the public document to be prepared or updated by August 1 of each year as required by § 15.163 of the Act, the Responsible Authority shall identify and describe all records, files, or processes maintained by his entity, which contain private or confidential data.

1. In addition to the items to be placed in the public document as required by § 15.163 of the Act, the Responsible Authority shall include the following:

a. The name, title, and address of designees appointed by the Responsible Authority.

b. Identification of the files or systems for which each designee is responsible.

c. A citation of the state statute or federal law which classifies the data as private or confidential.

2. The Responsible Authority shall draft the descriptions of records, files, and processes in easily understandable English. Technical or uncommon expressions, understandable only by a minority of the general public, shall be avoided except where required by the subject matter.

3. The Responsible Authority may use the form set forth in the appendix to these rules to prepare this public document.

**2 MCAR § 1.215 Duties of the Responsible Authority relating to the administration of Private and Confidential Data.** In order to administer the requirements of § 15.1641 (c) of the Act, the Responsible Authority shall determine for each record, file, or process identified in 2 MCAR § 1.214 whether the data contained therein was collected prior or subsequent to August 1, 1975.

A. For each record, file, or process containing data collected prior to August 1, 1975, the Responsible Authority shall:

1. Review the federal, state or local legal enabling authority which mandated or necessitated the collection of the private or confidential data.

2. Based on that review, determine the lawful purpose for the collection of the data at the time it was originally collected.

3. Direct the staff of the entity that private or confidential data collected prior to August 1, 1975, shall not be used, stored, or disseminated for any purpose, unless that purpose is authorized by the enabling authority.

B. For each record, file, or process containing private or confidential data collected subsequent to August 1, 1975, the Responsible Authority shall:

1. Review the legal enabling authority which mandates or necessitates the collection of the data.

2. Identify the purposes for the collection of and the intended uses of all private or confidential data that have been communicated to data subjects or should have been communicated to data subjects at the time of data collection, pursuant to § 15.165, subd. 2 of the Act.

C. Using the purposes and uses identified in subds. A. and B. of this rule, the Responsible Authority shall:

1. Prepare lists which identify the uses of and purposes for the collection of private or confidential data for each type of record, file, or process identified in 2 MCAR § 1.214.

a. Each list shall identify all persons, agencies, or entities authorized by state or federal law to receive any data disseminated from the particular record, file or process.

2. Pursuant to § 15.165, subd. 2 of the Act, either:

a. Attach each list identifying purposes, uses and recipients of data to all agency forms which collect the private and confidential data that will be retained in each record, file or process; or

b. Communicate, in any reasonable fashion, the contents of each list to data subjects at the time particular data that will be retained in each record, file, or process is collected from them. For purposes of this section, "reasonable fashion" shall include, but not be limited to:

(1) Oral communications made to data subjects.

(2) Providing data subjects with brochures that describe the entity's purposes for the collection of and the uses to be made of private and confidential data.

D. In administering the entity's private or confidential

data consistent with the provisions of the rules, the Responsible Authority shall:

1. Educate entity personnel as to authorized purposes and uses.

2. Prepare administrative procedures that will acquaint entity personnel with authorized purposes and uses.

3. Distribute policy directives requiring compliance with the entity's determination of authorized purposes and uses.

E. The Responsible Authority shall authorize a new purpose for the collection of private or confidential data or a new use for private or confidential data under any one of the following conditions:

1. If passage of federal or state legislation requires initiation of a new or different purpose or use pursuant to § 15.1641 (c) (2) of the Act; or

2. The Responsible Authority, prior to initiation of the new or different purpose or use, complies with the provisions of either § 15.1641 (c) (1) or (3) of the Act.

a. For the purposes of administration of Minn. Stat. § 15.1641 (c) (1), the Responsible Authority shall file a statement on a form provided by the Commissioner of Administration. A Responsible Authority shall not initiate a new or different purpose or use of private or confidential data until the Responsible Authority receives written approval from the Commissioner of Administration.

b. For the purposes of Minn. Stat. § 15.1641 (c) (3) the following term shall have the meaning given it:

(1) "Informed consent" means the data subject possesses and exercises sufficient mental capacity to make a decision which reflects an appreciation of the consequences of allowing the entity to initiate a new purpose or use of the data in question.

c. For the purposes of the administration of Minn. Stat. § 15.1641 (c) (3), the Responsible Authority shall comply with the following:

(1) The Responsible Authority shall not take any action to coerce any data subject to give an "informed consent." The Responsible Authority shall explain the necessity for or consequences of the new or different purpose or use.

(2) All informed consents shall be given in writing. Prior to any signature being affixed to it by the data subject, such writing shall identify the consequences of the giving of informed consent.

(3) If the Responsible Authority makes reasonable efforts to obtain the informed consent of a data subject and if those efforts are not acknowledged in any way, the Responsible Authority shall interpret the silence of the data subject as the giving of an implied consent to the new or different purpose or use of the data.

(a) For purposes of this section, "reasonable efforts" shall include:

(i) Depositing in the United States Mail, postage pre-paid and directed to the last known address of the data subject, at least two communications requesting informed consent.

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

(4) The data subject may give informed consent to less than all of the data elements in any list of data elements presented by a Responsible Authority, thereby giving only partial consent.

(a) Only those elements that the data subject has expressly consented to shall become part of the new or different purpose or use.

**2 MCAR § 1.216 Duties of the Responsible Authority as they relate to the administration of all Entity Data.** Pursuant to § 15.1641 (b) of the Act, the Responsible Authority shall, within eighteen months of the effective date of these rules, formulate a plan that will provide for the review and analysis of the data administration practices of the entity.

A. In the formulation of this plan, the Responsible Authority shall at least provide for the preparation of a list of or index to all data or types of data currently collected, stored, used, or disseminated by the entity.

1. The list or index developed shall include the identification of the state statute(s), federal law(s), or local ordinance(s) that authorize(s) the programs or functions for which data is collected, or which authorize(s) the actual data collection, storage, use or dissemination.

a. The plan shall further provide for the list or index

**KEY: RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

to be updated when new or different data collection, storage, use, or dissemination is authorized.

b. This list or index shall be available to members of the general public, upon request.

B. The Responsible Authority shall use this plan and the list or index developed to aid in the determination of whether collection and storage of data and use and dissemination of private and confidential data is necessary.

1. For purposes of this section, data is necessary if:

a. The particular data is both:

(1) Required to carry out programs and functions that are expressly or impliedly authorized by a provision of state statute, federal law or a local ordinance; and

(2) Periodically examined, updated, modified or referred to by the entity; or

b. 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

c. Retention of the particular data is required in the event that a legal action is brought against or by the entity; or

d. Retention of the particular data is 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.

C. For any data determined to be not necessary pursuant to subd. B., of this rule, the Responsible Authority shall provide for the following activities in the entity's plan.

1. Taking all actions which include making changes to forms designs, rewriting procedures, and so forth, to assure that all such data is no longer collected and stored and all such private and confidential data is no longer used and disseminated. Private data shall continue to be disseminated upon request by the data subject.

2. Disposing of such data pursuant to the procedures of the Records Management Act.

a. Inquiries concerning procedures for disposition of data may be directed to the Records Management Division, Department of Administration, St. Paul, Minnesota, 55155.

D. In the formulation of the plan described in subd. A. of this rule, the Responsible Authority shall provide for the establishment of administrative mechanisms and procedures that comply with § 15.1641 (e) of the Act. For purposes of this subdivision,

1. "Accurate" means that the data in questions 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.

**2 MCAR § 1.217 Duties of the Responsible Authority as they relate to computerized data.** For the purposes of the administration of § 15.1641 (e) of the Act, the Responsible Authority shall be guided by the following:

A. "Directly accessible files" means files maintained by any entity which contain private or confidential data, to which access can be made or updating performed through the use of any type of communication terminal, including, but not limited to, teletypewriters and cathode ray tube terminals.

B. Within 180 days of the effective date of these rules, the Responsible Authority shall perform an audit of the physical and software security measures that the entity has installed to protect the integrity of "directly accessible files."

C. The nature and extent of the audit shall be at the discretion of the Responsible Authority, subject to the following:

1. The audit shall emphasize a review of any measures taken to assure that private or confidential data is not accessible to the public through the use of a communications terminal.

2. The audit shall include a review of the measures taken to assure all of the entity's computer based data is protected from tampering by unauthorized persons.

D. If it reasonably appears to the Responsible Authority that there are weaknesses in the entity's data security procedures, the Responsible Authority shall:

1. Provide for terminal security and system and data integrity through the establishment of appropriate security measures.

a. Appropriate security measures include, but are not limited to, usage of password systems, establishment of procedures to assure physical security of terminals, utilization of system usage audits, and update verification routines, and establishments of limits on the system usage capabilities given to terminals.

E. Auditing security measures on an annual basis shall be a part of the ongoing administration of the entity's computerized data system.

**2 MCAR § 1.218 Administrative appeal.** Pursuant to § 15.165, subd. 4 of the Act, an individual may appeal an adverse determination of a Responsible Authority to the Commissioner of Administration.

A. The appeal shall follow the procedures established in Minn. Stat. ch. 15, as amended, and the rules of the Office of Hearing Examiners relating to Contested Case Proceedings.

B. Notice of an appeal must be submitted to the Commissioner of Administration within a reasonable time of the determination made by the Responsible Authority pursuant to § 15.165, subd. 4 of the Act.

1. The notice shall be in writing and addressed to the Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

2. The notice shall contain the following information:

a. The name, address, and phone number, if any, of the appealing party.

b. The name of the Responsible Authority and the entity which he or she represents.

c. A description of the nature of the dispute, including a description of the data.

d. A description of the desired result of the appeal.

3. The Commissioner of Administration may require additional information if it is reasonably necessary in order to establish the Contested Case Proceeding.

4. Upon written request of the data subject stating reasons, the appeal may be processed under the name of a pseudonym.

C. The Department of Administration shall be reimbursed for all costs associated with the Contested Case Proceeding by the entity whose Responsible Authority has been the impetus for the individual's appeal to the Commissioner of Administration.



1. The commissioner shall establish appropriate accounting procedures to provide to the entity an itemized invoice.

**2 MCAR § 1.219 General powers of the Commissioner of Administration.** Pursuant to § 15.163, subd. 2 of the Act and to assist in the general implementation and enforcement of the Act, the commissioner shall have the following powers:

A. If the commissioner determines that certain information is relevant to monitoring any entity's data collection and handling practices, policies and procedures, the commissioner shall require the Responsible Authority of such entity to submit the information.

B. Any inquiries concerning the Act or these rules and any information submissions required to be made by subd. A. of this rule shall be directed to the Data Privacy Unit, Department of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

C. The Data Privacy Unit shall respond promptly to all inquiries within personnel and budgetary limitations.

**2 MCAR § 1.220 Duties of the Commissioner of Administration relating to emergency classification of Data.** Pursuant to Minn. Stat. § 15.1642, the commissioner and Responsible Authorities shall comply with the following:

A. The Responsible Authority, pursuant to § 15.162, subd. 6 of the Act, shall prepare any application for emergency classification in writing in a form provided by the commissioner.

1. The form for an application is set out in the appendix to these rules. Copies of the form are available from the Data Privacy Unit.

B. For the purposes of the administration of § 15.1642 of the Act, the following terms have the meanings given to them:

1. "Days" means calendar, not working days.

2. "Upon filing" means upon receipt of either an original or amended application by the commissioner.

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**2 MCAR § 1.220**

3. "Date of disapproval" means the date the Responsible Authority actually receives the disapproval notification from the commissioner.

4. "Within 20 days of submission to the Attorney General" means within 20 days of the date that the Attorney General's Office in the Department of Administration actually receives the record from the commissioner.

C. Application for emergency classification of data shall be submitted to the Data Privacy Unit, Department of Administration, State of Minnesota, St. Paul, Minnesota 55155.

D. If the Data Privacy Unit requires the Responsible Authority to submit additional information in support of the application, that application is deemed to have been filed on the date the additional material is received by the Data Privacy Unit. The commissioner shall return any application to the applicant if the additional information requested is not received within 30 days.

E. The provisions of this rule shall terminate and cease to have force and effect on whichever of the following dates or events occurs later:

1. On August 1, 1979; or

2. On the effective date of a statute that repeals the commissioner's authority to rule on emergency classification of data, pursuant to Minn. Stat. § 15.1642, subd. 3.

**2 MCAR § 1.221 Severable provisions.** If any provisions of these rules are found invalid for any reason, the remaining provisions shall remain valid.

ADVISORY FORM A

RESOLUTION APPOINTING A COUNTY RESPONSIBLE AUTHORITY

State of Minnesota

County of (name of county)

WHEREAS, Minnesota Statutes, Section 15.162, Subdivision 6, requires that (name of county) County appoint one person as the Responsible Authority to administer the requirements for collection, storage, use and dissemination of data on individuals within the county and,

WHEREAS, the (name of county) County Board of Commissioners shares the concern expressed by the legislature on the responsible use of all County data and wishes to satisfy this concern by immediately appointing an administratively and technically qualified Responsible Authority as required under the statute.

BE IT RESOLVED, the County Board of Commissioners appoints (name of individual) as the Responsible Authority for the purpose of meeting all requirements of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADOPTED BY (name of county) COUNTY COMMISSIONERS ON (date).

ATTESTED TO: (signature of appropriate official)

(title of appropriate official)

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**2 MCAR § 1.220**

ADVISORY FORM B

RESOLUTION APPOINTING A CITY RESPONSIBLE AUTHORITY

State of Minnesota

City of (insert name of city)

Resolution Title: Appointment of Responsible Authority

WHEREAS, Minnesota Statutes, Section 15.162, Subdivision 6, as amended, requires that the City of (insert name of city) appoint one person as the Responsible Authority to administer the requirements for collection, storage, use and dissemination of data on individuals, within the City and,

WHEREAS, the (insert name of city) City Council shares concern expressed by the legislature on the responsible use of all City data and wishes to satisfy this concern by immediately appointing an administratively qualified Responsible Authority as required under the statute.

BE IT RESOLVED, the City Council of (insert name of city) appoints (name of individual appointed) as the Responsible Authority for the purposes of meeting all requirements of Minnesota Statutes, Section 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADOPTED BY (insert name of city) CITY COUNCIL ON (date).

ATTESTED TO BY THE:

(Signature of Mayor) on (date)

(Signature of City Clerk) (date)

ADVISORY FORM C

RESOLUTION APPOINTING A SCHOOL DISTRICT RESPONSIBLE AUTHORITY

State of Minnesota

(name of district) School District

School District Number ____

Pursuant to the provisions of Minnesota Statutes, Section 15.162, Subdivision 6, as amended, (Insert name of individual), is hereby appointed Responsible Authority for the (insert name of district) School District Number ____.

(insert name of individual appointed) is hereby authorized to take all actions necessary to assure that all programs, administrative procedures and forms used within School District (insert number) are administered in compliance with the provisions of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

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**2 MCAR § 1.220**

ADVISORY FORM D

RESOLUTION APPOINTING A RESPONSIBLE AUTHORITY FOR STATE OR LOCAL BOARDS OR COMMISSIONS

State of Minnesota

(insert name of board or commission)

Under the provisions of Minnesota Statutes, Section 15.162, Subdivision 6, as amended, (name of individual is hereby appointed Responsible Authority for (insert name of board or commission).

(insert name of individual appointed is hereby authorized to take all actions necessary to assure that all programs, administrative procedures and forms used by the (insert name of board or commission are administered in compliance with the provisions of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration and published in the State Register on (insert date.

ADVISORY FORM E

PUBLIC DOCUMENT AS REQUIRED BY MINNESOTA STATUTES, SECTION 15.163

GOVERNMENTAL ENTITY: (Name of Entity)
(Address)

RESPONSIBLE AUTHORITY: (Name)
(Title)
(Address)

| NAME OF RECORD, FILE, SYSTEM OR PROCESS | DESCRIPTION OF RECORD, FILE, SYSTEM OR PROCESS | CLASSIFICATION | CITATION OF STATUTE OR FEDERAL LAW THAT CLASSIFIES THE DATA | NAME, TITLE AND ADDRESS OF DESIGNEE, IF ANY FOR FILE, ETC. |
|---|---|---|---|---|
| (Insert a name sufficient to identify.) | (Describe in terms understandable by the general public.) | (Insert private or confidential.) | (Insert citation to state or federal statute, federal rule, case law) | (Insert name, etc. of person appointed to be in charge of this file,etc. |
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**2 MCAR § 1.220**

ADVISORY FORM F

APPLICATION FOR EMERGENCY CLASSIFICATION OF DATA

Check One: /__/ NEW APPLICATION /__/ AMENDED APPLICATION

APPLICATION FOR EMERGENCY CLASSIFICATION

Instruction: This application must be completed in full. Information requested is based on the requirements of M.S. 15.1642. This application cannot be processed unless it is complete. Submit this application to:

Commissioner, Department of Administration
% Data Privacy Unit
2nd Floor, State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

If questions arise, contact the Data Privacy Unit, (612) 296-6729 or 296-6733.

THIS APPLICATION IS A PUBLIC RECORD

It is strongly recommended that an agency or subdivision prepare this application in consultation with its legal advisor. Preparation of responses to certain questions, such as "compelling need," deal with legal standards for which legal guidance is indicated.

1. This is an application for emergency classification of data as:

   /__/ PRIVATE /__/ CONFIDENTIAL

   pursuant to M.S. 15.162. (Only one box may be checked. An agency cannot apply for both types of classification on the same form. Separate applications must be prepared requesting private or confidential emergency classifications.)

2. Name and address of requesting agency:

   _____

   _____

   _____

3. Is this application for: (Check one)

   This agency only /__/ or for all similar agencies /__/ ?

ADVISORY FORM F

APPLICATION FOR EMERGENCY CLASSIFICATION OF DATA - PAGE 2

4. Name and title of Responsible Authority making the application.

_____

_____

M.S. 15.1642 states that only the Responsible Authority for an agency or subdivision, as described in M.S. 15.162, subdivision 6 can prepare this application.

5. Describe all data or types of data to be covered by this classification. This description must be as explicit and detailed as possible. Although item by item listings of data items are not required, general terms such as "all personnel records", "all police records", etc., are not acceptable. Where possible specific file or record titles may be used.

As part of your description you may exempt specific items that are public information. Attach separate sheet, if necessary.

6. Is there a Minnesota statute or federal law which currently allows classification of this data as non-public?

_____ YES _____ NO

If you are able to specifically cite such a statute or federal law, there is NO need to submit this application. The data you desire to classify is already classified by law.

7. Applicants must clearly establish that "data similar to that for which the emergency classification is sought has been treated as either private or confidential by other state agencies or political subdivisions and by the public." Please describe below, or on a separate attached sheet, how this data has been treated by other similar agencies, including examples where possible.

**2 MCAR § 1.220**

ADVISORY FORM F

APPLICATION FOR EMERGENCY CLASSIFICATION OF DATA - PAGE 3

8. Has any of the data covered by this application ever been made available to the general public, including the media, in the past?

_____ YES _____ NO

If yes, explain below, or on separate sheet and attach.

9. Describe, on a separate sheet and attach, why your agency feels an immediate emergency classification is needed. Pay close attention to the provisions of M.S. 15.1642, Subdivision 2 (c) which states: "That a compelling need exists for immediate emergency classification, which is not granted could adversely affect the public interest or the health, safety, wellbeing or reputation of the data subject."

Consult with your legal advisor about the meaning of the phrase "compelling need". It is not sufficient to merely affirm that a "compelling need" exists. You are required to state explicitly the nature of the compelling need and to cite facts supporting your assertions. For example, how might the data damage an individual's reputation if released?

I affirm that all of the above statements are true, to the best of my knowledge, and that I am aware that any classification made under this application expires July 31, 1979.

Date: _____ _____

Signature of Applicant

All Applicants please note:

Pursuant to M.S. 15.1642 (as amended 1978), upon the filing of a NEW application, the data for which private or confidential classification has been requested is deemed to receive the requested classification for a period of 30 days, or until the commissioner approves or disapproves the application, (whichever is earlier). In the case of an AMENDED application, the time period is 15 days.
Your agency will be notified shortly regarding the progress on your application.

# STATE CONTRACTS

**Pursuant to the provisions of Laws of 1978, ch. 480, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.**

**Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.**



Known as "Bluff Alex," Alexander Ramsey was appointed governor of the Minnesota Territory in 1872 by President Zachary Taylor. In 1855 he was mayor of St. Paul and built a home there. He became the second governor of the state in 1860, served for 12 years as a U.S. senator, and later was Secretary of War under President Rutherford B. Hayes. (Minnesota Historical Society)

## Energy Agency

### Notice of Request for Proposals for Consultant Services

Notice is hereby given of a Request for Proposals from qualified consultants for preparation of a book summarizing results of a Design Competition for energy efficient homes.

An amount not to exceed $15,000 is available for this project. All proposals must be received by September 25, 1978, by the close of business.

For additional information contact:

Jan Nicklay
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-5769

## Energy Agency
## Data and Analysis Division

### Notice of Request for Proposals for Consulting Engineering Work to Help Develop Outdoor Display Lighting Standards

Proposals are requested from lighting engineers to help develop rules governing the permissible hours of operation, the quantity and efficiency, and the definition of outdoor display lighting. Proposals must be submitted no later than September 29, 1978. The estimated amount of the contract is $3,000.

Direct inquiries to:

Richard A. Wallen (612) 296-7457
Division of Data and Analysis
Minnesota Energy Agency
150 East Kellogg Blvd.
St. Paul, MN 55101

### Notice of Availability of Contract for the Development of a Computer Based Systems Model

Notice of availability of contract is hereby given for the development of a computer based systems model for com-

munity decision-making in solid waste management and resource recovery, with an emphasis on energy and economic assessments.

The contractor shall provide a computer model capable of handling solid waste optimization procedures which will include different paths for handling wastes from source to ultimate disposal. The model must be flexible, capable of covering a range of resource recovery facility types. The contractor will also provide training in the use of the model along with operating manuals. Proposals must be submitted no later than September 21, 1978. The estimated amount of the contract is $8,000.

Direct inquiries to:

Tom Abeles (612) 296-1001
Division of Data and Analysis
Minnesota Energy Agency
150 East Kellogg Blvd.
St. Paul, MN 55101

# Housing Finance Agency

## Notice of Request for Proposals for Annual Report

The Minnesota Housing Finance Agency is seeking proposals to write, edit and prepare the layout for its 1978 annual report. The report is expected to be approximately 30 pages long, including approximately 10-12 pages of financial statements, and 18-20 pages of photographs and text describing agency activities. Photographs will be supplied by the agency and will be kept to a minimum.

The text should include descriptions of agency programs, figures on volume of activities and features on the impact of agency activities on local communities. Preparation of the text will involve interviews with local officials, lenders, builders, tenants and borrowers in the Twin Cities area as well as out-state areas.

The final product should be submitted to the agency by November 1, 1978.

General inquiries and proposals should be directed to:

Ms. Riva Lee
Minnesota Housing Finance Agency
Director of Research and Information Division
333 Sibley Street, Nalpak Building — Suite 200
St. Paul, Minnesota 55101
(612) 296-9820

The cost is expected to be in the range of $5,000-$7,500.

Proposals should be submitted to the agency by 4:30 p.m., September 19, 1978.

# The City of Minneapolis Acting as An Agent to the Minnesota Department of Transportation

## Notice of Availability of Contract for Preliminary Engineering for Highway Corridor Studies

The City of Minneapolis requires the services of a qualified consultant to perform preliminary engineering services for the following segment of T.H. 55:

T.H. 55 (Hiawatha Ave.) from Franklin Ave. to C.S.A.H. 62 in south Minneapolis.

The work will consist of conducting project development studies in accordance with the Minnesota Department of Transportation's "Action Plan" for a major project with significant environmental impacts. The work will include data collection and analysis, draft and final environmental statements, location study report, design study reports, public hearings and any auxiliary reports (i.e., air, noise, water quality) as may be necessary.

The estimated fee is anticipated to be in excess of $500,000 for this project. Firms based or having established offices in the State of Minnesota are to be given first consideration.

Firms desiring consideration shall express their interest and submit their current Federal Forms 254 and 255 to the City of Minneapolis before September 15, 1978.

This is not a request for proposals. Send your response to:

Marvin A. Hoshaw
Director, Engineering Design and Planning
1800 A Government Center
Minneapolis, Minnesota 55487
(612) 348-2456

# Department of Public Welfare
# Social Services Division

## Notice of Availability of Contract for Day Care Services

The Department of Public Welfare/Division of Social Services is seeking an agency to develop a procedural handbook for members of local child care advisory committees and training seminars for the purpose of introducing and explaining the handbook topics to committee members.

The handbook and seminars should include, but are not limited to, the following topics: purpose of Child Care Advisory Committees, Child Care Facilities Act Funding Process, other funding sources, relationship of local committees to county social services agencies, Minnesota Child Care and Development Advisory Council and the Department of Public Welfare, DPW rules relating to CCFA process, child development training resources, public information, needs assessment, and priority setting.

The applicant will act as consultant and coordinator of the training seminars. Primary training responsibilities will be handled by DPW — Division of Social Services personnel. Funds allocated for training seminars will be used primarily by local committee members for expenses related to attending the training seminars.

Project funding level: $25,000

Final submission date: September 22, 1978

Inquiries and formal expressions of interest should be directed to:

Jerry Ferguson
Division of Social Services
Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155
(612) 296-5766

## Notice of Availability of Contract for Migrant Child Day Care Services

The Department of Public Welfare/Division of Social Services is seeking an agency to organize and implement a short-term bilingual/bicultural day care service program for the children of Minnesota's migrant farm workers.

It is expected that a total of 38,660 days of developmental day care services would be provided to approximately 1,200 Spanish-speaking children (0-5 years of age) of migrant farm workers in Minnesota. Direct services shall be provided between the months of May and September, 1979, in cooperation and coordination with Department of Education — Migrant Special Education Programs, Minnesota Migrant Head Start Programs, USDA Summer Feeding Program, and Migrant Health Services, Inc.

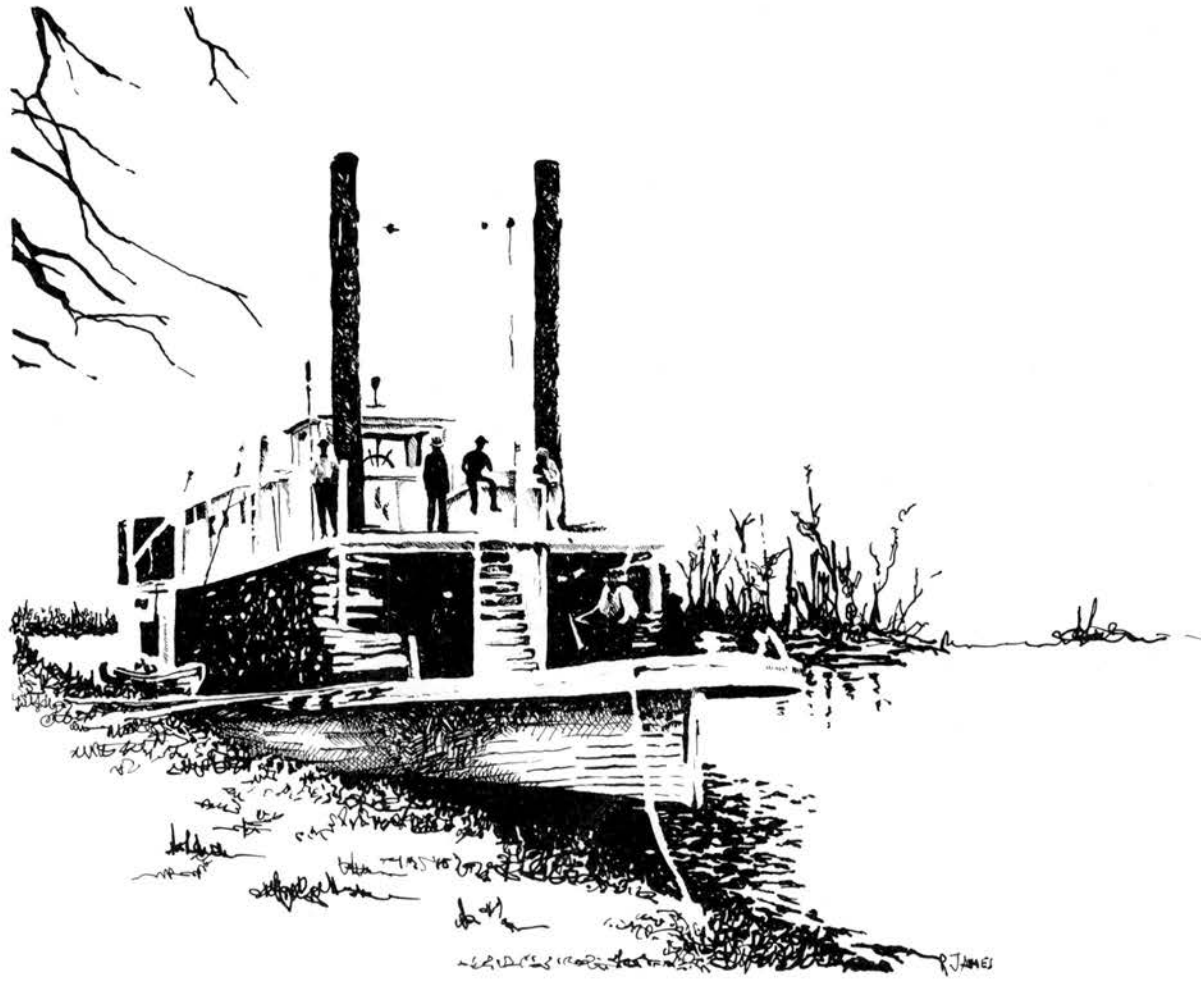
Project funding level: $600,000

Final submission date: September 22, 1978

Inquiries and formal expressions of interest should be directed to:

Cherie Kotilinek
Division of Social Services
Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155
(612) 296-3929

# OFFICIAL NOTICES



From the mid-1880s to its peak period in 1905, lumbering in Minnesota was second only to fur trading as an industry. Sternwheel steamboats carried logs and towed lumber rafts down the state's many rivers to sawmills such as the one built in 1839 at Marine-on-the-St. Croix, which fostered the town of Stillwater, and the sawmill built at St. Anthony Falls in 1848. (Drawing by Rick James)

**Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.**

**The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.**

## Cable Communications Board

### Notice of Intent to Solicit Outside Opinion Regarding Rules Governing the Length of Municipal Franchise Renewal Terms

Whereas the Minnesota Cable Communications Association has requested that the Minnesota Cable Communications Board (MCCB) modify its rules so as to change the maximum length of a franchise renewal term from 10 to 15 years, through a rulemaking petition re: 4 MCAR §§ 4.121 B. 2. and 4.134 filed with the Board on July 14, 1978; and,

Whereas the MCCB subsequently determined to seek outside opinion prior to proposing a change in the above-cited rules:

Notice is hereby given that the MCCB is seeking opinion and information from sources outside the MCCB regarding the length of a franchise renewal term. The Board is especially interested in obtaining financial data supporting a need to lengthen the franchise renewal term from 10 to 15 years.

A hearing on this matter is scheduled for Friday, October 13, 1978, 1:00 p.m., at 500 Rice Street, St. Paul, Minnesota. Interested persons are invited to submit data or views on this subject at this hearing, or by writing to the Minnesota Cable Communications Board, 500 Rice Street, St. Paul, MN 55103 by October 13, 1978.

Any written material received by the MCCB on or before October 13, 1978 shall become a part of a hearing record in the event rules governing this subject are promulgated.

August 21, 1978

Robert J. McDonald
Executive Director

# Department of Natural Resources

## Notice of Intent to Solicit Outside Opinion Regarding Inclusion of the Minnesota River (Franklin to Le Sueur) in the Minnesota Wild Scenic and Recreational Rivers System

Notice is hereby given that the Department of Natural Resources has begun consideration of the possible designation of the Minnesota River (Franklin to Le Sueur) as a state Wild and Scenic River. In order to adequately determine the nature and utility of any rules associated with this designation, the Department of Natural Resources hereby requests information and comments from all interested individuals or groups concerning the subject matter of this proposed designation.

All interested or affected persons or groups are requested to participate. Statements of information and comments may be made orally or in writing.

Please address these comments to:

Department of Natural Resources
Rivers Section
B-95 Centennial Office Building
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-4780, and in person at the above address.

No final action on this proposal can be taken until public hearings are conducted according to the rulemaking provisions of Minn. Stat. ch. 15. Sixty days notice of these public hearings will be published in the *State Register*. All statements of information and the comments will be received until the hearing record closes.

Any proposed rules, if adopted, could regulate land uses, recreational development, and use of this river. Designation as a state Wild and Scenic River would also give the Department of Natural Resources the authority to purchase riverside lands or interests in land from willing sellers.

Theresa Bailey-Morrow
Office of Regulation

# Office of the Secretary of State Administration Division

## Open Appointment Process: Notice of Openings on State Agencies — Application Procedures

Pursuant to Laws of 1978, ch. 592, the legislature has implemented an Open Appointment process by which the public is informed of openings on state multi-member agencies (boards, commissions, councils) created by statute and having statewide jurisdiction.

Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, MN 55155, (612) 296-3266. Contact the Secretary of State for the Open Appointment Process information brochure and specific agency related information. Applications due by September 22, 1978.

**Occupational Safety and Health Advisory Council:** One vacancy for person knowledgeable in safety and safety regulation; open immediately.

**Minnesota Board of Psychology:** One vacancy for masters level psychologist; open immediately.

**Veterans Advisory Committee:** One vacancy for a public member; open immediately.

# Department of Commerce Board of Architecture, Engineering, Land Surveying and Landscape Architecture

## Notice of Regular Meeting of Board

The regular September meeting of the Board of Architecture, Engineering, Land Surveying, and Landscape Architecture will be held in the Department of Commerce Hearing Room, 500 Metro Square, St. Paul, Minnesota at 9:00 a.m., Friday, September 29, 1978 pursuant to Section 326.07, Minnesota Statutes.

# ERRATA

1. At 2 S.R. 2312: Adopted rules PSC 410-418 were incorrectly cited as published at "(1 S.R. 988)" and should read "(1 S.R. 998)".

2. At 2 S.R. 3212: PSC 410 D. should read, "Public utility" is defined in Minn. Stat. § 216B.02, subd. 4, as amended by Laws of 1978, ch. 795~~,~~ ~~and~~ ~~shall~~ ~~also~~ ~~include~~ ~~municipally~~ ~~owned~~ ~~utilities~~.

3. At 2 S.R. 2313: PSC 412 B.9. should read, "taxes accrued, prepaid and charged during the year."

4. At 2 S.R. 2314: Change "of" to "or" in paragraph following PSC 415 B.9.

5. At 2 S.R. 2314: Do not strike out the colon following "include" in seventh line of PSC 416 B.

6. At 2 S.R. 2315: Insert comma following "filing" in third line of PSC 418.

7. At 2 S.R. 2315: Delete "Rules" following "PSC" in second line of PSC 420.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

## ORDER FORM

***State Register.*** Minnesota's official weekly publication for agency rules, notices and executive orders.

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STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

RECEIVED
OCT 5 1978
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DATA PRIVACY UNIT GOVERNING THE ENFORCEMENT AND ADMINISTRATION OF THE "MINNESOTA DATA PRIVACY ACT"

AFFIDAVIT OF MAILING

Rita Meyer, being duly sworn deposes and says:

That on the 14th day of September, 1978, at the city of St. Paul, County of Ramsey, State of Minnesota, she served the attached Memorandum, Notice of Hearing and Proposed Rules by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid to all persons and associations at the addresses listed on the Certificate of the Secretary of State, to all cities at addresses provided by the League of Minnesota Cities, to all counties at addresses provided by the Association of Minnesota Counties, to all school districts at addresses provided by the Department of Education, to all state agencies and departments at addresses provided by the Department of Administration, to all community action agencies at addresses provided by the Department of Economic Security, to all mental health centers and developmental achievement centers at addresses provided by the Department of Public Welfare, to regional development commissions at addresses provided by the State Planning Agency, to district courts at addresses provided by the 1978 edition of the State of Minnesota Telephone Directory and by the County of Hennepin, to the University of Minnesota at an address provided by the University, and to county and municipal courts at addresses provided by the 1978 edition of the guide to Minnesota Elected Officials, published by the Secretary of State's office.

Rita Meyer
Department of Administration

Subscribed and sworn to before me
this 22nd day of September, 1978

Colleen T. Kisch
Dakota County, Minnesota
My Commission expires 4/24/85.

COLLEEN T. KISCH
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Commission Expires April 24, 19...

Dept Exhibit No. C
File No.
Date

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

RECEIVED
OCT 5 1978
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules of the Data Privacy Unit Governing the Enforcement and Administration of the "Minnesota Data Privacy Act"

CERTIFICATE OF DELIVERY OF THE SECRETARY OF STATE LIST

---

I hereby certify that the attached 529 labels 3 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:30 o'clock A.M, this 8th day of September, 1978, have requested pursuant to M.S. 1974, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Ronnie Reed

---

Depts Exhibit No. F

File No.

Date

In the Matter of the Proposed Adoption of Rules of the Department of Administration Governing Enforcement and Administration of the "Minnesota Government Data Practices Act." (2 MCAR §§ 1.201-1.220)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Robert R. Nardi, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Robert R. Nardi

ROBERT R. NARDI
Special Assistant
Attorney General

Dated: 4-14, 1981

RECEIVED
APR 17 1981
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

RECEIVED
OCT 5 1978
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DATA PRIVACY UNIT GOVERNING THE ENFORCEMENT AND ADMINISTRATION OF THE "MINNESOTA DATA PRIVACY ACT"

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Brooke Manley, being duly sworn on oath deposes and says:

That she is an employee of the Data Privacy Unit of the Department of Administration, State of Minnesota.

That on the eighth day of September, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

That on the eighth day of September, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.
Subscribed and sworn to before me this 22nd day of September, 1978.

Colleen T. Kisch
Dakota County, Minnesota

My Commission expires 4/24/85.

Brooke L. Manley
Brooke Manley
Data Privacy Unit
Department of Administration

COLLEEN T. KISCH
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Commission Expires April 24, 1985

Dept Exhibit No. E
File No.
Date

Department of Administration
Data Privacy Unit
Proposed Rules Governing the Enforcement and
Administration of the "Minnesota Data Privacy Act"

RECEIVED
AUG 21 1978
OFFICE OF HEARING
EXAMINERS

Notice of Hearing

Notice is hereby given that the public hearing in the above entitled matter will be held in the Auditorium Hearing Room, Room Number 83, State Office Building, St. Paul, Minnesota, on October 31, commencing at 9:00 a.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted by mail to Steve Mihalchick, Hearing Examiners Office, Room 300, 1845 University Avenue, St. Paul, Minnesota 55104, (612) 296-8112 either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, define terms used in Minn. Stat. §§ 15.162 through 15.1671, establish procedures concerning collection, use and dissemination of data on individuals and define and implement duties of state and local officials who are responsible for data on individuals. One copy of the proposed rules will be mailed to each state agency and political subdivisions as required by Minn. Stat. § 15.1671. Copies of the proposed rules are available and one free copy may be obtained by writing to the Data Privacy Unit, Room 203 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules in contained in Minn. Stat. § 15.1671.

Please be advised that pursuant to Minn. Stat. § 10A. 01, subd. 11 (1976) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the Ethical Practices Board, Room 41, State Office Building, St. Paul, Minnesota (612) 296-1720 as a lobbyist within five days of the commencement of such activity by the individual.

Notice: Any person may request notification of the date, on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted to the Attorney General by the agency. If you desire to be so notified, you may so indicated at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposal rules. Copies of the Statement of Need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Pursuant to Minn. Stat. § 15.0412, subd. 7, notice is hereby given that the Department of Administration's reasonable estimate

of the total cost to all local public bodies in the state to implement the attached proposed rules for the two years immediately following adoption may exceed $100,000 in either of the two years.

An exact figure of the costs to each local unit of government is virtually impossible to present. The cost for each local unit will depend on, among other factors, the size of the population served by the local unit, the number of records retained and maintained by the unit, and the degree of the unit's current compliance with the "Data Privacy Act" and with other statutes and regulations governing data on individuals.

Richard L. Brubacher
Commissioner

Date:

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

RECEIVED
OCT 5 1978
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF ADMINISTRATION GOVERNING ENFORCEMENT AND ADMINISTRATION OF THE MINNESOTA "DATA PRIVACY ACT"

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Room 83, State Office Building, St. Paul, Minnesota on October 31, 1978 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of association or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED THAT the Notice of Hearing be published in the State Register.

Richard L. Brubacher

Richard L. Brubacher
Commissioner

Date: August 21, 1978

Dept's Exhibit No. B
File No.
Date

# OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

## Department of Administration

## Data Privacy Unit

### Notice of Intent to Solicit Outside Opinion Regarding Data Privacy Act

Notice is hereby given that the Department of Administration is drafting rules to implement and enforce the provisions of Minn. Stat. §§ 15.162 through 15.1671, popularly known as the "Minnesota Data Privacy Act." The rules governing implementation and enforcement of the "Data Privacy Act" are authorized by Minn. Stat. § 15.1671.

It is the intent of these rules to provide definitions; to clarify various questions relating to access to governmental data; and to provide procedures and guidelines concerning duties of those authorities in state agencies and political subdivisions responsible for data on individuals.

The Department invites all interested persons or groups to provide information, comments, advice or opinions on the subject in writing to:

Donald A. Gemberling
Data Privacy Unit
2nd Foor, State Administration Building
50 Sherburne Street
St. Paul, Minnesota 55155

All statements of information or comment must be received by June 26, 1978. Any written material received by the Department will become part of the public hearing record.

## Department of Agriculture

## Food, Meat and Poultry Division

### Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Licensing of Certain Coin Operated Food Vending Machines

Notice is hereby given that the Minnesota Department of Agriculture has begun consideration of proposed rules governing the licensing of certain coin operated food vending machines pursuant to Laws of 1978, ch. 502, § 2. In order to adequately determine the nature and utility of such rules, the Department of Agriculture hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Bernard J. Steffen, Director
Food, Meat and Poultry Division
Minnesota Department of Agriculture
530 State Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-2627, and in person at the above address.

All statements of information and comment must be received by July 7, 1978. Any written material received by the department shall become part of the hearing record.

The proposed rules, if adopted, would establish a means of identification of certain coin operated food vending machines required to be licensed by either the Department of Agriculture or home rule charter or statutory cities or counties pursuant to the Act.

Bill Walker
Commissioner

June 5, 1978

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS

# Office Memorandum

TO : DON GEMBERLING
Data Practices Division

DATE: 1/16/81

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: ADM-79-001-SM PROPOSED ADOPTION OF RULES RELATING TO MINNESOTA DATA PRACTICES ACT

Enclosed with this memorandum I am herewith returning the record in the above proceeding together with the original and one copy of the Report of the Chief Hearing Emaminer. Pursuant to Rule 9 MCAR § 2.111 (1978 edition), a copy of this Report has been served on Jerry S. Anderson, Special Assistant Attorney General.

DRH:sh
Enc.
cc: Jerry S. Anderson

RECEIVED
JAN 19 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADM-79-001-SM

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF ADMINISTRATION GOVERNING ENFORCEMENT AND ADMINISTRATION OF THE "MINNESOTA DATA PRACTICES ACT" (2 MCAR §§ 1.201 - 1.220)

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter was first noticed for hearing at 3 S.R. 346 on September 4, 1978. The Notice set the public hearing for October 31, 1978, at which time a hearing was held before Steve M. Mihalchick, a Hearing Examiner assigned by the Chief Hearing Examiner of the Minnesota Office of Administrative Hearings. On February 5, 1979, the Hearing Examiner issued his Report including Findings of Fact, Conclusions and Recommendations. On January 8, 1981, James J. Hiniker, Jr., Commissioner of the Department of Administration (hereinafter "Commissioner" and "Department" respectively) issued his Order Adopting Rules and Findings of Fact and Conclusions. On January 9, 1981, the Department submitted a copy of the rules as originally proposed, the Commissioner's Order Adopting Rules and his Findings of Fact and Conclusions, and a copy of the rules as proposed for final adoption. At the request of the Chief Hearing Examiner, on Monday, January 12, 1981, the Department delivered the entire record of the proceeding to the Chief Hearing Examiner for review.

Between the date the Hearing Examiner issued his Report and the date of the Commissioner's Order, the Minnesota Legislature amended the Minnesota Data Practices Act (Minn. Laws 1979, Chapter 328) and the Minnesota Administrative Procedure Act (hereinafter "APA") (Minn. Laws 1980, Chapter 615). In both instances, the Legislature made significant changes which affect the rules as proposed for adoption, including the Department's statutory authority, the substantive and procedural requirements to be followed by agencies in adopting rules, and the nature and extent of the review by the Chief Hearing Examiner.

With respect to the nature and extent of the Chief Hearing Examiner's review, since August 1, 1980, the effective date of the amendments to the APA, to the knowledge of the Chief Hearing Examiner, there have been no requests made of and thus no opinions issued by the Attorney General relative to the question of whether the Chief Hearing Examiner's review should be completed under the APA as it existed prior to or subsequent to August 1, 1980. The same issue arises relating to the rules of the Office of Administrative Hearings which were amended effective October 6, 1980. However, since August 1, 1980, the Chief Hearing Examiner has applied the pre-existing APA and rule requirements relating to his review to all matters wherein the Hearing Examiner's Report was issued prior to that date. Therefore, this review has been conducted and this order issued pursuant to the provisions and requirements of the APA as it existed prior to August 1, 1980, and the rules of the Office of Administrative Hearings as they existed prior to October 6, 1980.

Another issue raised by the submission of these rules is the applicability of a new provision added to the APA by the 1980 legislation which section is now codified as Minn. Stat. § 15.0412, subd. 9. The relevant portion of that section provides that unless an agency has published its adopted final action in the State Register within six months of the issuance of the Hearing Examiner's Report, it may not proceed to adopt the rules without rehearing them pursuant to all of the procedures of the APA. The question of the applicability of this provision has not been determined by any courts nor, to the knowledge of the Chief Hearing Examiner, has it been the subject of a request for and thus an opinion by the Attorney General. Therefore, the Chief Hearing Examiner is of the opinion that, given the prior approval of the Attorney General to the Chief Hearing Examiner's application of the pre-existing law as discussed previously, that the same procedures should be followed herein. The Chief Hearing Examiner, having been present at all subcommittee and committeee hearings of the Legislature during 1979 and 1980 wherein this provision was discussed, can state without reservation that at no time did any legislator indicate that this section of the law should have retroactive effect so as to affect rules wherein the Hearing Examiner's Report was issued prior to the effective date of the law. While it can be argued that no legislator commented that he/she intended the section to apply to all rulemaking proceedings, no matter where in the process it was on the effective date of the law, it is clear that laws must be interpreted to have prospective effect only, unless specifically stated in the legislation. Additionally, since August 1, 1980, the Chief Hearing Examiner has reviewed several other agency rule adoptions wherein six months or more had elapsed from the issuance of the Hearing Examiner's Report, which rules have subsequently been approved by the Attorney General. Therefore, the Chief Hearing Examiner is of the opinion that his review of the rules is appropriate in this instance.

In the Hearing Examiner's Report, as discussed in the Commissioner's Order, questions were raised relating to statutory authority. Minn. Laws 1979, Chapter 328, was passed subsequent to the issuance of the Hearing Examiner's Report. That enactment gave the Commissioner authority to adopt certain of the rules which had been questioned by the Examiner. The issue of whether an agency can rely on subsequently passed laws to adopt rules which had previously been proposed prior to passage of the law was first addressed and approved in the case involving adoption of rules by the Minnesota Energy Agency relating to outdoor display lighting (6 MCAR §§ 2.2101 - 2.2120) in file EA-79-005-MG. In that case, the Hearing Examiner had found the agency lacking statutory authority to adopt rules in a certain area. Subsequent to the Hearing Examiner's Report but prior to the submission of the rules to the Chief Hearing Examiner after final adoption, the Legislature amended the law giving the agency the necessary statutory authority. The Chief Hearing Examiner approved the rules and the agency submitted the rules to the Attorney General. The Attorney General subsequently approved the rules. Therefore, the question should be resolved in the same manner in this case.

In its submission, the agency has made changes to certain of the rules which are necessary to conform the rules to the language of the Data Practices Act as amended by Minn. Laws 1979, Chapter 328. Additionally, certain changes

were made in the rules as the Hearing Examiner recommended. Lastly, other changes were made by the Department which are discussed in their Findings of Fact. Unless discussed specifically herein, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing.

Rule 2 MCAR § 1.205 C.3. includes an incorporation by reference of Title 45, Code of Federal Regulations, Part 99, Section 99.3. At the request of the Chief Hearing Examiner, the Department submitted the materials for review by the Chief Hearing Examiner. Having reviewed the materials, the Chief Hearing Examiner finds that the definition of "education record" in the above-cited material does not exceed 3,000 words in length nor would it exceed five printed pages in the State Register. Therefore, the Department may not incorporate this material by reference but must, instead, repeat the definition in the rule.

Throughout the rules, there are sections which either paraphrase or quote directly from the statute. In its Statement of Need and Reasonableness, the agency discussed the need for such repetition of statutory language. The Hearing Examiner failed to make a finding that duplication of the language of the statute is crucial to the ability of a person affected by the rule to comprehend its meaning and effect. Having reviewed the record herein, the Chief Hearing Examiner so finds.

Throughout the Minnesota Data Practices Act, the Legislature makes much reference to "federal law". In duplicating statutory language, the Department has carried forward this language in the rules. As the use of the term "federal law", without citing to the specific federal law involved, is vague, it must be concluded that the use of such term fails to make specific the law administered by the Department in contravention of the requirements of Minn. Stat. § 15.0411, subd. 3, the definition of rule. Additionally, it would appear that the use of the term "federal law" is an incorporation by reference for which the approval of the Chief Hearing Examiner has not been obtained. The Chief Hearing Examiner is unable to determine whether or not approval for incorporation by reference can be given without a specific cite to the applicable federal law and an opportunity provided for review. Therefore, it must be concluded that in those instances where the use of the term "federal law" is deemed to be an incorporation by reference, that the Department has failed to comply with the requirements of Minn. Stat. § 15.0412, subd. 4 (1978) or Minn. Stat. § 15.0412, subd. 4a (1980). Lastly, on the issue of the use of the term "federal law" it would appear that the Department is attempting to unlawfully delegate its authority to a federal agency. The Attorney General's attention is directed to this issue.

Rule 2 MCAR § 1.217 contains the title of this office as the "Office of Hearing Examiners". This rule should be amended to note the proper title as "Office of Administrative Hearings". In Section B of 1.217, the agency requires that notice of appeals be submitted to the Commissioner within "a reasonable time". The term is not defined anywhere in the rule. Therefore, the use of the phrase "reasonable time" is vague and fails the requirement of specificity as required by Minn. Stat. § 15.0411, subd. 3. A specific time must be inserted or the phrase defined. Section B.3. of 1.217, allowing the

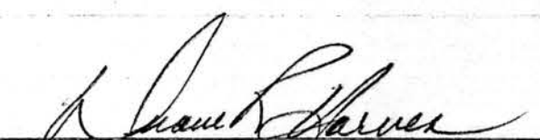
Commissioner to "require additional information if it is reasonably necessary in order to establish the contested case proceeding" grants the Commissioner unfettered discretion and, additionally, is vague. Thus, this section fails to comply with the specificity standard contained in Minn. Stat. § 15.0411, subd. 3.

Section C of 1.217 is an entirely new section. It was discussed at the hearing and the Hearing Examiner made a recommendation regarding the issue. As this rule (2 MCAR § 1.217) originally spoke to provisions relating to administrative appeals, this section would not be a substantial change under the criteria of rule 9 MCAR § 2.110. However, the rule as adopted was not identical to the rule as recommended by the Hearing Examiner. As adopted, the rule would allow the Commissioner to dismiss contested case hearings, without a hearing, after first making a determination of the merits of the case. As such, the rule is in violation of the provisions of the Minnesota Administrative Procedure Act and would also be violative of the procedural rules of the Office of Administrative Hearings relating to contested cases, which rules supersede all of the rules with which they are in conflict. Therefore, the words "any sham, capricious or frivolous appeal or" must be deleted from the rule as the Commissioner is without authority to dismiss contested case hearings until such time as a hearing has been conducted and a Hearing Examiner's Report has been issued. On the other hand, inherent in the authority to order a hearing is the authority to refuse to order a hearing wherein jurisdiction does not lie.

Minn. Stat. § 15.0412, subd. 4, requires all agencies, when adopting rules, to fulfill all relevant substantive and procedural requirements imposed on the agency by law or rule. As noted above, and for the reasons stated therein, the Chief Hearing Examiner finds that the agency has failed to meet that requirement.

NOW, THEREFORE, pursuant to the provisions of Rule 9 MCAR § 2.111, the agency shall either withdraw the proposed final rules specifically discussed above or reconvene the rule hearing.

Dated: January 16, 1981.



DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT of Administration

# Office Memorandum

TO : Attorney General's Office
Administration Division

DATE: April 17, 1981

DAG

FROM : Donald A. Gemberling, Director
Data Privacy Division

PHONE: 296-6733

SUBJECT: Data Practices Act Rules

Contained in the manila folder to which this memo is attached are the various documents which comprise the complete record in the matter of the adoption of rules to implement and enforce the "Minnesota Government Data Practices Act", Minnesota Statutes Section 15.162 through 15.1699.

DAG/nb

Attachment

RECEIVED
APR 1 1 1
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

RECEIVED
APR 1 1
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

THE MINNEAPOLIS STAR
*Evening*

THE MINNEAPOLIS TRIBUNE
*Morning and Sunday*

*Minneapolis, Minnesota 55488*

April 27, 1981

Office of the Attorney General
102 State Capitol
St. Paul, Minnesota 55155

To: Attorney General's Office

As active participants in the lengthy process of consideration of the proposed Data Practices rules, the First Amendment Rights Committee of The Minneapolis Star and the Minneapolis Tribune remains vitally interested in consideration of the rules by the Attorney General.

The First Amendment Rights Committee believes that portions of the proposed Data Practices Act rules are deficient in matters of form and legality. Numerous comments have been entered by the Committee at all stages of the rulemaking process, some of which are restated in the attached memorandum. In the years between the hearing on the Proposed Rules and your review, the enabling act has been amended in numerous sections. These amendments have created new conflicts with the Rules, on which the Committee has not heretofore had an opportunity to comment.

The First Amendment Rights Committee respectfully requests that the Attorney General consider the attached memorandum in reviewing the Proposed Rules and take appropriate action. If we can be of further assistance, please let us know.

Sincerely,

Rodgers Adams

Rodgers Adams
Chairman, First Amendment Rights Committee
The Star and Tribune Newspapers

RECEIVED
APR 27 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

MEMORANDUM IN SUPPORT OF REQUEST
TO DISAPPROVE AND REMAND DATA PRACTICES RULES

The proposed Data Practices Rules, Proposed 2 MCAR 1.201 et seq., (hereinafter "Proposed Rules"), conflict with the Data Practices Act, Minn. Stat. 15.1611 et seq. (hereinafter "Act"), in significant respects. Several of the conflicts were apparent in 1978, between the Proposed Rules and the Act as it was then. In the intervening three years, several other conflicts between the Proposed Rules and the Act have been created by amendments to the enabling act. Because of these conflicts, and because of the length of time between the hearing on the Proposed Rules and their adoption, we urge the Attorney General to disapprove and remand the Proposed Rules.

1. CONFLICTS

We urge the Attorney General not to endorse even minor conflicts between the Proposed Rules and the Data Practices Act. The Legislature has carefully balanced the need for protection of individuals and the right of the public to monitor its government. That balance must not be disturbed or confused by conflicting rules.

The Minnesota Data Practices Act (Minn. Stat. 15.1611 to 15.1699 (1980) is constantly changing. In every legislative session since the initial creation of "data privacy" in Minnesota (see C.479, Laws of 1974), portions of the law have been added or amended. The present session is no exception (see, e.g., Senate File 470). In fact, the law itself now requires annual review by the Legislature of temporary classifications for adoption as statute, or rejection. Minn. Stat. 15.1642, Subd. 5a. Legislative change increases the difficulty of promulgating rules consistent with applicable law. However, this does not eliminate the requirement that the rules must not conflict with the law.

A. 2 MCAR S1.207. ACCESS TO ARREST INFORMATION.

1. The Proposed Rule conflicts with the Act by referring to the timeliness of a request for arrest information. The Proposed Rule in effect, creates a window which when closed, forever bars disclosure of arrest data. The Act itself does not create this barrier to release. Therefore, inclusion of that barrier by administrative rulemaking exceeds the proper bounds of agency action.

Because of Legislature's concern about possible abuse of the arrest process, the Act imposes a special guarantee that information about each arrest will not be closed to the public. That guarantee applies to the specified data insofar as it is valid about the arrested person at the time of the arrest in question, "reasonably contemporaneous with an arrest." Minn. Sta. 15.162, Subd. 2a. This special guarantee does not extend to other information about the arrested person, including criminal history information. That other information is to be treated according to its statutory classification.

The legislative purpose clearly revealed in the words of the Act was to make a distinction between relevant information that was to have

a special and express prohibition against being closed to the public, and other outdated and unrelated information that was to be treated in accordance with the other, general provisions of the statutes. The Attorney General has previously so defined the phrase "reasonably contemporaneous with an arrest." Op. A.G. 852 (August 2, 1976) (Copy attached). The First Amendment Rights Committee has repeatedly urged that this definition be implemented by the Department of Administration.

We have no disagreement with the Hearing Examiner and the Department of Administration that the legislative purpose of the reference to "arrest information" was to guard against secret arrests. A valuable protection against abuse of the power of arrest is to make arrest information permanently public, the result we believe was intended by the Legislature. The Proposed Rule, by incorrectly interpreting the statute, does not fully guarantee this.

Moreover, the Proposed Rule clearly conflicts with the legislative purpose by creating a potential for secret arrests if inquiries about the arrested person are not promptly made. That this was not and is not the legislative intent may be made still clearer by the end of this session. Proposals have emerged from both houses to altogether eliminate the phrase "reasonably contemporaneous" from the definition. (S.F. 470, H.F. 931).

Guarantees against secret arrests are amongst the most fundamental in this country. Because of the important public policy involved, we urge the Attorney General to disapprove the Proposed Rule as clearly conflicting with the Act on its face.

Compounding this is the addition of a new provision since the hearing on the Proposed Rules. Proposed 2 MCAR S1.207 B.2 now makes disclosure of arrest information improper if the data subject "is released from the supervision of any component of the criminal justice system." In many cases, it is not a simple matter to determine that supervision of the criminal justice system has ended: persons on probation, supervised or unsupervised; persons released before trial on personal recognizance; persons released to the custody of their attorney are not clearly covered. This Proposed Rule was created without benefit of public comment, and in itself creates new problems.

B. 2 MCAR 2.202B. DEFINITION OF ARREST. The Proposed Rules incorrectly define arrest information in terms of who is authorized to make arrests, a distinction that is not based on any words in the statute and that blunts an intended protection against unauthorized or otherwise improper arrest. We have continuously objected to this unauthorized interpretation of legislative intent, especially in a case such as this where there is no indication that the statutory language is unclear so as to require administrative interpretation.

C. 2 MCAR 1.202I. DEFINITION OF FEDERAL LAW. The Proposed Rules, in defining "federal law," include court rulings and federal agency decisions that have no force of law in Minnesota. There is no statutory authority for this provision.

conducted on October 31, 1978, and the Hearing Examiner's Report of his findings regarding the rules was issued February 5, 1979. Nearly two years after the Hearing Examiner's Report, the Commissioner of Administration issued his statement adopting the Proposed Rules and took the remaining necessary steps for implementation (January 8, 1981). This led to the report of the Chief Hearing Examiner on January 16, 1981. The final action taken by the Department of Administration was the submission to the Attorney General on April 17, 1981, for review of form and legality of these Proposed Rules.

In the interim, the Minnesota Administrative Procedures Act, Minn. Stat. 15.0412 et seq. (1980, hereafter MAPA) has been amended. An amendment was adopted during the 1980 session which has at least advisory bearing on the process used for consideration of the present rules.

This rulemaking procedure does not comply with the time limits imposed by Minn. Stat. 15.0412, Subd. 9 (1980, as amended by Laws of 1980, C.615). This section of the Minnesota Administrative Procedures Act mandates that agencies either complete the process of adoption of the rules within six months of the Hearing Examiner's Report, or withdraw the rules. The rulemaking process here encompasses nearly two-and-a-half years.

The Chief Hearing Examiner commented on this issue in his report on these rules on January 16, 1981. He has taken the position that rulemaking which began before the effective date of the amendment to the MAPA (August 1, 1980) can proceed according to the version of the law which existed at the time the rulemaking commenced. The Chief Hearing Examiner states there is no interpretation of this section of the MAPA.

Implicit in the MAPA amendment is a legislative recognition of the necessity for rulemaking to be conducted within a reasonable time. As here, the effectiveness of and sensitivity to the public comments at hearings so long ago will be lost. The Legislature apparently found such delays to be tantamount to a denial of due process in the broad view of administrative rulemaking procedure.

While the Legislature is presumed not to intend retroactive application of amendments, the application of that principle in this instance is not entirely clear. At a minimum, the Attorney General's review should include consideration of a clearly expressed legislative policy.

Due to the delay, problems have resulted. Recent proposals and changes in the Act, especially those regarding information generated as a result of arrest, will be unaddressed by the Proposed Rules. Substantive changes in the Proposed Rules have taken place without the benefit of public comment (see Hearing Examiner's Report).

Since the release of the Hearing Examiner's Report in early 1979, the Department of Administration has made several substantive changes in the Proposed Rules, as noted by the report of the Chief Hearing Examiner. Making substantive changes in rules without a new hearing is inconsistent with the mandate of MAPA, and violates the procedural rules of the Office of Administrative Hearings.

MAPA, by implication, requires a public hearing on substantive changes, Minn. Stat. 15.0412, Subd. 4, 4h. The Hearing Examiner's rules require that a hearing

The Proposed Rule would deprive Minnesota of the freedom to make its own decisions, a freedom specifically permitted by some federal statutes covering treatment of data gathered under federally-funded programs. Decisions in most federal court jurisdictions are not binding in Minnesota, and may contradict Minnesota precedents. We also object to the Proposed Rule's extension of the definition of "federal law" to federal agency decisions that do not have the force and effect of law.

D. 2 MCAR S1.208. ACCESS TO INVESTIGATIVE DATA.

This Proposed Rule is legally insufficient, being in direct conflict with the enabling act.

First, the Proposed Rule fails to reflect the statutory burden of proof as to whether an investigation is active. Minn. Stat. 15.162, Subd. 2a (1980) provides: "... the burden of proof as to whether such investigation is active or in anticipation of a legal action is upon the agency." In an attempt to provide for this, the Proposed Rule requires the responsible authority to determine whether data maintained by "His entity is investigative data ..." Proposed 2 MCAR S1.208.A. However, this attempt is at best confusing, and at worst disregards the statutory language.

Second, the Act only permits closure of data in an "active investigation." The Proposed Rules do not reflect this test. Proposed 2MCAR 1.208A.1.d. permits "any entity which has a reasonable expectation that certain data in its possession may become the subject of legal action..." to not disclose the data.

The statutory mandate that an investigation be active or that data be held in anticipation of a legal action in order to close it from public scrutiny is clear. The mandate of the Proposed Rule quoted above is far less restrictive.

Third, the Act stresses the preparatory nature of investigations covered. The Act refers to "the commencement of a legal action" and to "anticipation of a legal action." The Proposed Rules do not reflect this test. Instead, they would apply the "active" description to investigations long after legal action has been commenced.

The Proposed Rules, 2 MCAR1.208.A.3.a-d, include as "active data" not subject to disclosure all data in legal disputes until the final right of appeal has been exhausted. This provision includes criminal trials, civil actions, arbitrations, and license revocation hearings. Not only do these sections place a requirement contrary to the Act in the path of disclosure, they violate basic rights concerning public trials. (See, Richmond Newspapers v. Virginia, _____ U.S. _____, 100 S.Ct. 2814, 1980).

Fourth, the responsible authority cannot make a finding that data are investigative data unless "all criteria listed in (Proposed 2MCAR S1.208A) 1, 3, are met." (Proposed 2MCAR S1.208A). Many of these criteria are mutually exclusive. Notwithstanding the drafter's intent to make the 15 provisions segregable, the clear statement in Proposed 2 MCAR S1.208A requires all criteria to be met. This cannot be done. Therefore, at a minimum an objection to the form of Proposed 2 MCAR S1.208 is in order.

E. 2 MCAR §1.209. ACCESS TO SUMMARY DATA.

This section in Proposed 2 MCAR §1.209A provides that summary data is public unless classified by statute, federal law, or temporary classification as non-public.

The reference in 2 MCAR §1.209A to classifications other than temporary classifications as provided by Minn. Stat. 15.1642 (1980) is incorrect. The Act in part states: "Unless classified pursuant to Section 15.1642, summary data is public," i.e., unless subject to a temporary classification. Minn. Stat. 15.163, Subd. 7 (1980). The enabling act does not permit federal law or other statutes to be considered; it states that unless the data is covered by temporary classification pursuant to 15.1642, it is public pursuant to the summary data section. The Proposed Rule disturbs the balance struck by the legislature.

The rules are only to apply to data on individuals, Proposed 2 MCAR §1.201A.1. But, the reference is to classifications that make data "non-public." "Non-public data" is defined by Minn. Stat. 15.162, Subd. 5c (1980) as data not on individuals. This may be a small point. However, it indicates one of the many failures of the Proposed Rules to comply with statute that can be attributed to the long delay in enactment of the rules.

F. 2 MCAR §1.202C.3. DATA ON INDIVIDUALS.

In this Proposed Rule, the lapse of time has resulted in a further conflict with the statute. The Act gives the following definition: "Data on individuals 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 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." Minn. Stat. 15.162, Subd. 3 (1980, amendment underlined). The definition given by the Proposed Rule is: "All data, in whatever form it is maintained, is 'data on individuals' if it can in any way identify any particular individual." Proposed 2 MCAR §1.202.C.3. "Data is 'data on individuals' if it identifies an individual in itself, or if it can be used in connection with other data elements to uniquely identify an individual. Such data shall include, but is not limited to, street addresses, job titles and so forth where the particular data could only describe or identify one individual." Proposed 2 MCAR §1.202.C.5. Thus, the Legislature's clarification of that definition is reversed by the Proposed Rule.

Doubtless, the conflict was unintended by the drafters of the Proposed Rule. This is but one of the conflicts which necessarily arises with a lengthy rulemaking procedudre and frequent amendments to the enabling act. The increased likelihood of conflict, however, does not mean that the Proposed Rules can be exempted from the basic requirement of all agency rules: that they not conflict with the statute on which they are based.

2. PROCEDURAL ISSUES

Consideration of these Proposed Rules began in 1978. They were announced in the State Register September 4 of that year (3 S.R. 346). A public hearing was

be reconvened when the Chief Hearing Examiner finds a proposed final rule is substantially different from the rule which was initially considered. 9 MCAR §2.111 (B, C and D) (1978).

These Proposed Rules have been presented to the Attorney General notwithstanding the obvious failure to comply with this provision.

In summary, the Proposed Rules contain new and old conflicts with the Act which authorizes their creation. The long rulemaking process has increased the likelihood of conflicts with the Act, and is contrary to present legislative policy on timing and change in administrative rulemaking.

Prepared by the Legal Department
The Star and Tribune Newspapers
April 27, 1981

OFFICE OF ATTORNEY GENERAL WARREN SPANNAUS
Opinion Division
102 State Capitol
Saint Paul, Minnesota
296-6196

OPINION SYNOPSIS
For Immediate Release
August 3, 1976

Attorney General Warren Spannaus ruled today that a city police department cannot refuse to release arrest information solely on the grounds that the information is requested six days after the arrest.

The question arose when Bloomington police refused to disclose the identity of an individual arrested in the Minnesota Vikings bottle-throwing case.

Interpreting a 1976 amendment to the Minnesota Data Privacy Act, Spannaus ruled that the time at which a request for arrest information is made is irrelevant to determining whether the arrest information is private or confidential under the act.

The opinion was issued in response to a request by Gary Gandrud, attorney for the city of Bloomington.

# # #

DATA PRIVACY ACT: The time that a request for arrest information is made does not affect the classification of the arrest information as "private" under Minn. Stat. § 15.162 subd. 5a or as "confidential" under Minn. Stat. § 15.162 subd. 2a.

August 2, 1976

852

Mr. Gary Gandrud, Esq.
City Attorney
City of Bloomington
2215 West Old Shakopee Road
Bloomington, Minnesota 55431

Dear Mr. Gandrud:

In your letter to Attorney General Warren Spannaus, you present substantially the following

FACTS

> Six days after the police of the City of Bloomington had arrested an individual, the city was asked to release "arrest information" regarding the arrest. At the time the request was made, the individual was no longer in custody and the investigative files had been turned over to the Hennepin County Attorney for prosecution. The city refused to release the arrest information on the grounds that the request was not "reasonably contemporaneous" with the arrest under Minn. Stat. §§ 15.162-15.169 (1975 Supp., as amended, Minn. Laws 1976, ch. 283) and that the arrest information was therefore "private" or "confidential" under Minn. Stat. §§ 15.162-15.169 (1975 Supp., as amended, Minn. Laws 1976, ch. 283).
>
> Minn. Stat. § 15.162 subd. 2a (1975 Supp., as amended, Minn. Laws 1976, ch. 283 § 2) provides in part that "[c]onfidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. ..."
>
> Similarly, Minn. Stat. § 15.162 subd. 5a (1975 Supp., as amended, Minn. Laws 1976, ch. 283 § 4) provides that "[p]rivate data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration."

You then ask substantially the following

QUESTIONS

1. Under Minn. Stat. § 15.162 subds. 2a and 5a (1975 Supp., as amended, Minn. Laws 1976, ch. 283 §§ 2 and 4), must a request for arrest information be reasonably contemporaneous with an arrest?

2. Where a request for arrest information is made six days after the arrest, is the request reasonably contemporaneous with the arrest?

OPINION

1. Minn. Stat. § 15.162 subds. 2a and 5a (1975 Supp., as amended, Minn. Laws 1976, ch. 283 §§ 2 and 4) is not a limitation on the time for making a request for arrest information.

Sections 2 and 4 of ch. 283 of Minn. Laws 1976, cited above, refer to "arrest information" only, and not to requests for the arrest information. Therefore it appears from the plain words of the statute that the provision does not speak to the issue of the time for making a request for arrest information. "Reasonably contemporaneous" refers to the temporal relationship between the arrest information and the arrest. The time at which a request for the information is made is irrelevant to determining the temporal relationship between an arrest and arrest information.

August 2, 1976

There appear to be no statutory restrictions on the time for making a request for arrest information.1/ We therefore answer your first question in the negative.

Because the first question is answered in the negative, an answer to your second question is unnecessary.

Very truly yours,

WARREN SPANNAUS
Attorney General

JOAN VOLZ
Special Assistant
Attorney General

WS/JV/mb

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1/ Some limitations on obtaining other types of criminal history record information are provided elsewhere in Minnesota Statutes. For example, information on individuals convicted of felonies or gross misdemeanors may be expunged after 10 years. Minn. Stat. § 299C.11 (1974). Sealing of conviction records pursuant to a pardon is provided for in Minn. Stat. § 638.02 (1974). Minn. Stat. § 152.18 (1974) makes nonpublic the records of certain proceedings on drug charges.

ADM-79-001-SM

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF ADMINISTRATION GOVERNING ENFORCEMENT AND ADMINISTRATION OF THE "MINNESOTA DATA PRACTICES ACT" (2 MCAR §§ 1.201 - 1.220)

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter was first noticed for hearing at 3 S.R. 346 on September 4, 1978. The Notice set the public hearing for October 31, 1978, at which time a hearing was held before Steve M. Mihalchick, a Hearing Examiner assigned by the Chief Hearing Examiner of the Minnesota Office of Administrative Hearings. On February 5, 1979, the Hearing Examiner issued his Report including Findings of Fact, Conclusions and Recommendations. On January 8, 1981, James J. Hiniker, Jr., Commissioner of the Department of Administration (hereinafter "Commissioner" and "Department" respectively) issued his Order Adopting Rules and Findings of Fact and Conclusions. On January 9, 1981, the Department submitted a copy of the rules as originally proposed, the Commissioner's Order Adopting Rules and his Findings of Fact and Conclusions, and a copy of the rules as proposed for final adoption. At the request of the Chief Hearing Examiner, on Monday, January 12, 1981, the Department delivered the entire record of the proceeding to the Chief Hearing Examiner for review.

Between the date the Hearing Examiner issued his Report and the date of the Commissioner's Order, the Minnesota Legislature amended the Minnesota Data Practices Act (Minn. Laws 1979, Chapter 328) and the Minnesota Administrative Procedure Act (hereinafter "APA") (Minn. Laws 1980, Chapter 615). In both instances, the Legislature made significant changes which affect the rules as proposed for adoption, including the Department's statutory authority, the substantive and procedural requirements to be followed by agencies in adopting rules, and the nature and extent of the review by the Chief Hearing Examiner.

With respect to the nature and extent of the Chief Hearing Examiner's review, since August 1, 1980, the effective date of the amendments to the APA, to the knowledge of the Chief Hearing Examiner, there have been no requests made of and thus no opinions issued by the Attorney General relative to the question of whether the Chief Hearing Examiner's review should be completed under the APA as it existed prior to or subsequent to August 1, 1980. The same issue arises relating to the rules of the Office of Administrative Hearings which were amended effective October 6, 1980. However, since August 1, 1980, the Chief Hearing Examiner has applied the pre-existing APA and rule requirements relating to his review to all matters wherein the Hearing Examiner's Report was issued prior to that date. Therefore, this review has been conducted and this order issued pursuant to the provisions and requirements of the APA as it existed prior to August 1, 1980, and the rules of the Office of Administrative Hearings as they existed prior to October 6, 1980.

Another issue raised by the submission of these rules is the applicability of a new provision added to the APA by the 1980 legislation which section is now codified as Minn. Stat. § 15.0412, subd. 9. The relevant portion of that section provides that unless an agency has published its adopted final action in the State Register within six months of the issuance of the Hearing Examiner's Report, it may not proceed to adopt the rules without rehearing them pursuant to all of the procedures of the APA. The question of the applicability of this provision has not been determined by any courts nor, to the knowledge of the Chief Hearing Examiner, has it been the subject of a request for and thus an opinion by the Attorney General. Therefore, the Chief Hearing Examiner is of the opinion that, given the prior approval of the Attorney General to the Chief Hearing Examiner's application of the pre-existing law as discussed previously, that the same procedures should be followed herein. The Chief Hearing Examiner, having been present at all subcommittee and committeee hearings of the Legislature during 1979 and 1980 wherein this provision was discussed, can state without reservation that at no time did any legislator indicate that this section of the law should have retroactive effect so as to affect rules wherein the Hearing Examiner's Report was issued prior to the effective date of the law. While it can be argued that no legislator commented that he/she intended the section to apply to all rulemaking proceedings, no matter where in the process it was on the effective date of the law, it is clear that laws must be interpreted to have prospective effect only, unless specifically stated in the legislation. Additionally, since August 1, 1980, the Chief Hearing Examiner has reviewed several other agency rule adoptions wherein six months or more had elapsed from the issuance of the Hearing Examiner's Report, which rules have subsequently been approved by the Attorney General. Therefore, the Chief Hearing Examiner is of the opinion that his review of the rules is appropriate in this instance.

In the Hearing Examiner's Report, as discussed in the Commissioner's Order, questions were raised relating to statutory authority. Minn. Laws 1979, Chapter 328, was passed subsequent to the issuance of the Hearing Examiner's Report. That enactment gave the Commissioner authority to adopt certain of the rules which had been questioned by the Examiner. The issue of whether an agency can rely on subsequently passed laws to adopt rules which had previously been proposed prior to passage of the law was first addressed and approved in the case involving adoption of rules by the Minnesota Energy Agency relating to outdoor display lighting (6 MCAR §§ 2.2101 - 2.2120) in file EA-79-005-MG. In that case, the Hearing Examiner had found the agency lacking statutory authority to adopt rules in a certain area. Subsequent to the Hearing Examiner's Report but prior to the submission of the rules to the Chief Hearing Examiner after final adoption, the Legislature amended the law giving the agency the necessary statutory authority. The Chief Hearing Examiner approved the rules and the agency submitted the rules to the Attorney General. The Attorney General subsequently approved the rules. Therefore, the question should be resolved in the same manner in this case.

In its submission, the agency has made changes to certain of the rules which are necessary to conform the rules to the language of the Data Practices Act as amended by Minn. Laws 1979, Chapter 328. Additionally, certain changes

were made in the rules as the Hearing Examiner recommended. Lastly, other changes were made by the Department which are discussed in their Findings of Fact. Unless discussed specifically herein, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing.

Rule 2 MCAR § 1.205 C.3. includes an incorporation by reference of Title 45, Code of Federal Regulations, Part 99, Section 99.3. At the request of the Chief Hearing Examiner, the Department submitted the materials for review by the Chief Hearing Examiner. Having reviewed the materials, the Chief Hearing Examiner finds that the definition of "education record" in the above-cited material does not exceed 3,000 words in length nor would it exceed five printed pages in the State Register. Therefore, the Department may not incorporate this material by reference but must, instead, repeat the definition in the rule.

inserted in full p. 17, 18, 19

Throughout the rules, there are sections which either paraphrase or quote directly from the statute. In its Statement of Need and Reasonableness, the agency discussed the need for such repetition of statutory language. The Hearing Examiner failed to make a finding that duplication of the language of the statute is crucial to the ability of a person affected by the rule to comprehend its meaning and effect. Having reviewed the record herein, the Chief Hearing Examiner so finds.

Throughout the Minnesota Data Practices Act, the Legislature makes much reference to "federal law". In duplicating statutory language, the Department has carried forward this language in the rules. As the use of the term "federal law", without citing to the specific federal law involved, is vague, it must be concluded that the use of such term fails to make specific the law administered by the Department in contravention of the requirements of Minn. Stat. § 15.0411, subd. 3, the definition of rule. Additionally, it would appear that the use of the term "federal law" is an incorporation by reference for which the approval of the Chief Hearing Examiner has not been obtained. The Chief Hearing Examiner is unable to determine whether or not approval for incorporation by reference can be given without a specific cite to the applicable federal law and an opportunity provided for review. Therefore, it must be concluded that in those instances where the use of the term "federal law" is deemed to be an incorporation by reference, that the Department has failed to comply with the requirements of Minn. Stat. § 15.0412, subd. 4 (1978) or Minn. Stat. § 15.0412, subd. 4a (1980). Lastly, on the issue of the use of the term "federal law" it would appear that the Department is attempting to unlawfully delegate its authority to a federal agency. The Attorney General's attention is directed to this issue.

see Addend. to F of F.

Rule 2 MCAR § 1.217 contains the title of this office as the "Office of Hearing Examiners". This rule should be amended to note the proper title as "Office of Administrative Hearings". In Section B of 1.217, the agency requires that notice of appeals be submitted to the Commissioner within "a reasonable time". The term is not defined anywhere in the rule. Therefore, the use of the phrase "reasonable time" is vague and fails the requirement of specificity as required by Minn. Stat. § 15.0411, subd. 3. A specific time must be inserted or the phrase defined. Section B.3. of 1.217, allowing the

changed p. 44

so defined

Commissioner to "require additional information if it is reasonably necessary in order to establish the contested case proceeding" grants the Commissioner unfettered discretion and, additionally, is vague. Thus, this section fails to comply with the specificity standard contained in Minn. Stat. § 15.0411, subd. 3.

deleted P. 45

Section C of 1.217 is an entirely new section. It was discussed at the hearing and the Hearing Examiner made a recommendation regarding the issue. As this rule (2 MCAR § 1.217) originally spoke to provisions relating to administrative appeals, this section would not be a substantial change under the criteria of rule 9 MCAR § 2.110. However, the rule as adopted was not identical to the rule as recommended by the Hearing Examiner. As adopted, the rule would allow the Commissioner to dismiss contested case hearings, without a hearing, after first making a determination of the merits of the case. As such, the rule is in violation of the provisions of the Minnesota Administrative Procedure Act and would also be violative of the procedural rules of the Office of Administrative Hearings relating to contested cases, which rules supersede all of the rules with which they are in conflict. Therefore, the words "any sham, capricious or frivolous appeal or" must be deleted from the rule as the Commissioner is without authority to dismiss contested case hearings until such time as a hearing has been conducted and a Hearing Examiner's Report has been issued. On the other hand, inherent in the authority to order a hearing is the authority to refuse to order a hearing wherein jurisdiction does not lie.

See changes P. 45

Minn. Stat. § 15.0412, subd. 4, requires all agencies, when adopting rules, to fulfill all relevant substantive and procedural requirements imposed on the agency by law or rule. As noted above, and for the reasons stated therein, the Chief Hearing Examiner finds that the agency has failed to meet that requirement.

NOW, THEREFORE, pursuant to the provisions of Rule 9 MCAR § 2.111, the agency shall either withdraw the proposed final rules specifically discussed above or reconvene the rule hearing.

Dated: January 16, 1981.

DUANE R. HARVES
Chief Hearing Examiner

**STATE OF MINNESOTA**
OFFICE OF HEARING EXAMINERS
ROOM 300 — 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

February 5, 1979

Mr. Don Gemberling, Manager
Data Privacy Unit
Department of Administration
2nd Floor, Administration Building
St. Paul, Minnesota - 55155

RE: In the Matter of the Proposed Adoption of Rules of the Department of Administration Governing Enforcement and Administration of the "Minnesota Data Privacy Act." (2 MCAR §§ 1.201 - 1.220)
HE Docket NO. ADM-79-001-SM

Dear Mr. Gemberling:

I enclose herewith and serve upon you by mail the Report of the Hearing Examiner in the above-entitled matter together with the official Record, and I am closing our file in this case.

Yours very truly,

Steve M. Mihalchick (per eag)

STEVE M. MIHALCHICK
Hearing Examiner

SMM/eag
Encs.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE COMMISSIONER OF ADMINISTRATION

In the Matter of the Proposed Adoption of Rules of the Department of Administration Governing Enforcement and Administration of the "Minnesota Data Privacy Act." (2 MCAR §§ 1.201 - 1.220)

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing on October 31, 1978, in St. Paul before Steve M. Mihalchick, Hearing Examiner assigned by the Chief Hearing Examiner.

This is a rules hearing pursuant to Minn. Stat. ch. 15, to determine whether proposed rules governing the enforcement and administration of the Minnesota Data Privacy Act should be adopted.

The following persons appeared for the Department of Administration: Daniel McGraw, Assistant Commissioner; Donald Gemberling, Manager of Data Privacy Unit; Sheila Fishman, Special Assistant Attorney General.

Eighty-eight persons attending the hearing signed the hearing register. The hearing continued until all interested persons and all interested groups had had an opportunity to be heard.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Commissioner shall, if he proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Commissioner on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. The Commissioner will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon the record herein, the Examiner makes the following:

## FINDINGS OF FACT

### PROCEDURAL REQUIREMENTS

1. On August 21, 1978, the Department filed the following documents with the Chief Hearing Examiner:

   (a) A copy of the proposed rules.
   (b) The Order for Hearing proposed to be issued.
   (c) The Notice of Hearing proposed to be issued.
   (d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On September 4, 1978, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 346.

3. On September 14, 1978, the Department mailed the Notice of Hearing and proposed rules to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice and to all state agencies, political subdivisions, and other interested entities.

4. On October 5, 1978, the Department filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list and affected governmental agencies.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 2 State Register 2167 (6/5/1978)
(h) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(i) An Affidavit of Review by the Intergovernmental Information Systems Advisory Council.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through November 20, 1978, for the receipt of written comments and statements. Thirty-nine public comments were received following the hearing.

6. On December 20, 1978, the Department and Hearing Examiner requested that an extension be granted to the 30-day requirement for filing of the Examiner's Report. The extension was granted by the Chief Hearing Examiner.

7. Minn. Stat, § 15.1671, provides:

> The commissioner /of administration/ shall with the advice of the intergovernmental information services advisory council promulgate rules, in accordance with the rulemaking procedures in the administrative procedures act which shall apply to state agencies, statewide systems and political subdivisions to implement the enforcement and administration of sections 15.162 to 15.169. The rules shall not affect section 15.165, relating to rights of subjects of data, and section 15.169, relating to the powers and duties of the privacy study commission. Prior to the adoption of rules authorized by this section the commissioner shall give notice to all state agencies and political subdivisions in the same manner and in addition to other parties as required by section 15.0412, subdivision 3, of the date and place of hearing, enclosing a copy of the rules and regulations to be adopted.

NEED AND REASONABLENESS OF THE PROPOSED RULES

8. Except as found below, the Examiner adopts the attached Statement of Need and Reasonableness as findings that the Department has demonstrated the need for and reasonableness of its proposed rules and that the proposed rules fulfill all substantive requirements of law and rule. As a number of persons stated, Mr. Gemberling has done an excellent job of developing comprehensive and fair rules to implement and enforce a complex and sometimes controversial Act. The rationale provided in the Statement of Need and Reasonableness is also comprehensive and well done.

2 MCAR § 1.201 - SCOPE AND PURPOSE

9. Section 1.201 A. simply states that the rules shall apply to those government entities defined in cited portions of the Data Privacy Act. This is necessary and reasonable for reasons stated in the Statement of Need and Reasonableness. The Department of Public Welfare proposed that the Statement should be expanded and, consequently, that the scope of the rules should be expanded, to include all agencies under contract to a state agency or political subdivision which, by the terms of their contract, subject themselves to all privacy laws and rules to which the agency or subdivision letting the contract is subject. DPW acknowledges that such a reference would go beyond the mandatory coverage of the privacy law which, by definition in Minn. Stat. § 15.162, subd. 5, includes social service agencies and non-profit corporations that handle data on individuals because of a contract with a state agency, political subdivision or statewide system. The Commissioner may wish to consider this addition to the rules though the Examiner would view it as not being necessary. If a contracting party wishes to bind itself by some law, it may generally do so.

See FoF 6 no change necessary.

10. Section 1.201 B. clarifies the application of the Act to non-profit social service agencies. The Minnesota Association of Community Mental Health Programs, Inc., commented that this subsection seemed vague (Pub. Ex. 39). This section is not vague at all, and perhaps what was really feared was the burden these rules would impose on purchase of service contracts by the political subdivisions. For example, the Ramsey County Commissioners were concerned about the massive effort that would be entailed in terms of requiring and monitoring compliance by these agencies (Pub. Ex. 18). As was pointed out many times at the hearing, most of the requirements imposed are done so by the Act and not by these rules. As should become more clear later, many of the burdens imposed by the rules are not as onerous as they first appeared.

The Minnesota Association of Health Care Facilities (MAHCF), in comments at the hearing, and in writing (Pub. Ex. 21), expressed its concern about whether non-proprietary nursing homes that contract with the State through written provider agreements to provide nursing care services to medical assistance recipients fall within the definition of non-profit social service agency. Mr. Gemberling expressed his opinion at the hearing that they would be included within the definition. MAHCF noted that nursing homes are not providing a traditionally "governmental" service which seems to be the type of agency intended to be covered by Minn. Stat. § 15.162, subd. 5. Further, the statute only applies to non-profit social service agencies, and thus, the statute would treat proprietary nursing homes differently from non-proprietary nursing homes, even though both types provide services to medical assistance recipients under contracts from the Department of Public Welfare. The Department should clarify the rule.

11. Section 1.201 D. provides:

> Nothing in these rules shall limit the discovery procedures available at law to any party in a civil or criminal action or administrative proceeding as described in the Minnesota

Rules of Civil Procedure and the Minnesota Rules of Criminal Procedure as adopted by the Supreme Court or in Minnesota Statutes.

The Examiner would note first of all that procedural rules of administrative proceedings are not described in the civil or criminal rules and would suggest that the final portion of the sentence should read:

". . . or in Minnesota Statutes and rules adopted thereunder." added p.2

The law firm of Holmes, Kircher & Graven attacked this provision rather strenuously. They note first that the Act itself does not create the exception and that the Act provides that private or confidential data on individuals shall not be used, collected, stored or disseminated for any purposes other than those stated to an individual at the time of collection. Thus, they argue, unless an individual is notified at the time of collection that data he or she discloses will be subject to discovery, the proposed rule is clearly in excess of the scope of the Act, and as such, is beyond the Commissioner's authority to adopt as a rule (Pub. Ex. 2). In summary, the firm states:

> "If the courts choose to create an exception to the Act for the operation of their independent powers, that is for the courts to determine. But the Department, as the agency charged with the implementation and administration of the Act, should take the strongest and most protective position possible, creating no exceptions not provided for in the Act."

It is the interpretation of the Department that the Act was not intended to affect the operation of discovery procedures because the discovery rules are a fundamentally important provision essential to the workings of the judicial system. The Department's position is not unreasonable.

The Department of Public Welfare submitted a good comment on this subsection:

> "The Department of Public Welfare operates many of its programs under regulations issued by the United States Department of Health, Education and Welfare. The most significant of these regulations as regards data privacy is 45 CFR 205.50. These regulations require that all agencies which receive federal monies for public assistance and social services must have in place, a state plan which protects the confidentiality of recipient information. The State Data Privacy Act and the proposed rule substantially put into effect for the welfare system in Minnesota all that is required by these federal regulations, with one exception dealing with how court orders may be issued for nonpublic information. /But see Finding No. 18/ Court orders and/or discovery are not precluded under the federal regulation guidelines, but they do require substantially that:
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> > "In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning an applicant or recipient, the court's attention is called, through the proper channels, to the statutory provisions and the policies or rules and regulations against disclosure of information."
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> We would like to see similar language added to 2 MCAR 1.201 D which would require that:
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> > "In the event of the issuance of a subpoena for any private or confidential information (to use the state language applicable to all agencies) or for any en-

see additional to 1.201 E p.2

> tity representative to testify concerning any individual on whom private or confidential data is maintained, the court's attention should be called, through the proper channels, to these statutory provisions, policies and/or rules and regulations against disclosure of such information."
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> This language would not limit the court in its jurisdiction over the data, it would merely serve as a reminder to the court that there does exist, some limitations on disclosure which should be reviewed before any subpoena or search warrant is issued or before any individual is compelled to testify concerning private or confidential information. Such language would parallel the federal regulations and would bring to light alternatives such as in-camera review by the court prior to open court disclosure of private or confidential information. (Pub. Ex. 30)

The Examiner would suggest that language like that suggested by DPW should be added to this subsection. As suggested by Holmes, Kircher & Graven, there are sometimes alternative procedures available, and, as suggested by DPW, a provision such as this would help bring them to light. The Examiner would further suggest that whatever language is adopted by the Commissioner, it should include references to discovery orders as well as subpoenas and to administrative agencies as well as courts in order that it be consistent with the already proposed provisions of this subsection.

12. The comments by Holmes, Kircher & Graven in the previous subsection were also applied to section 1.201 E. which provides that the rules shall not restrict or limit the scope or operation of any judicial order or rule. In addition to its position taken in subsection D., the Department noted that the generalized operation of the Act should not take preeminence over the unique circumstances of a given case which has necessitated a judicial order.

13. The Minnesota Hospital Association was very concerned about the effect the rules would have upon the medical records maintained by approximately one-half of the hospitals in the state of Minnesota which are governmental entities of one sort or another and thereby subject to the Act. (Pub. Ex. 31) They request that a specific exclusion be included in § 1.201 of the rules stating that the rules shall not apply to medical records maintained by governmental entities. The Association argues that medical records are already protected by statutes and case law, that procedures already exist to protect the information adequately, and that the additional requirements imposed by the Data Privacy Act and the proposed rules would be extremely burdensome to these hospitals. The Association relies heavily on Minn. Stat. § 144.335 as a "more recent and more specific enactment than the Data Privacy Act /that/ deals very specifically with medical records." An examination of that statute shows, however, that it actually deals only with patient access to his own records and the discretion of the entity to refuse access if harm would result, but not at all with any of the other aspects of the Data Privacy Act or the proposed rules. The Act, itself, creates no exception for medical records and the Department's decision not to do so is not unreasonable.

14. The Dakota County Attorney also suggested the addition of a subsection to section 1.201 to read as follows:

"Compliance with these rules will relieve responsible authorities, their agents and/or employees from the sanctions imposed by Minn. Stat. § 15.166 and Minn. Stat. § 15.167 of the Data Privacy Act. (Pub. Ex. 31)

The writer apparently feels that there may be some liability exposure for noncompliance with the Act as a result of compliance with the rules. Since whatever rules are finally adopted are meant to clarify and make specific the Act, it is, technically, impossible for that result to occur. At any rate, the Commissioner has no authority to excuse violations of the Act. The Examiner does not recommend inclusion of this suggestion.

2 MCAR § 1.202 - DEFINITIONS

15. Section 1.202 B. defines arrest information to include only those elements of data listed in Minn. Stat. § 15.162, subd. 1a, in information that is collected by law enforcement agencies. The editors of the Minneapolis Star and the Minneapolis Tribune newspapers state that the first provision of the rule does nothing more than reference the statute and therefore is not needed. That is not quite true, because the statute does not explicitly exclude other elements. The rule thus clarifies the statute. Secondly, the editors object to the second portion of the definition defining arrest information in terms of who collects it. They feel the language of the statute is clear enough without further interpretation. Yet comments from the Department of Economic Security (Ex. 17) and the Department of Corrections (Pub. Ex. 29) indicate that there is indeed some confusion about the statutory definition of arrest information. For the reasons stated in the Statement of Need and Reasonableness, this definition is reasonable.

16. Section 1.202 C. defines "data" as a shorthand term for "data on individuals" as defined in the Act. Three provisions are added to make it clear that data on individuals is an all-encompassing term: (1) Data can be in any form; (2) the duration of the existence of the data is not relevant, and (3) all data is "data on individuals" if it can in any way identify a unique individual. The Mayor's office of St. Paul suggested that the last provision could be clarified by changing the term "a unique" to "any particular" (Pub. Ex. 33). This, and a number of the other grammatical suggestions made by the Mayor's office, should be adopted. changed p4

Section 1.202 C.4. states that code numbers representing unique individuals constitute "data on individuals" if a list or index of any type is made available by which the individual can be identified. But, such data may qualify for treatment as summary data pursuant to 2 MCAR § 1.209. The Office of the Hennepin County Attorney (Pub. Ex. 26), and the Minnesota Association of Community Mental Health Programs, Inc. (Pub. Ex. 39) both expressed concern over the possible loss of confidentiality where code numbers were treated as summary data and therefore publicly available. Hennepin County expressed some confusion as to what the rule actually meant. The Examiner agrees that the section is confusing. If the underlying data is confidential or private, then, under § 1.202 M.2., it is not summary data if the list or index by which any individual can be identified is available to persons who gain access to or possession of the underlying

data. On the other hand, if that index or list is not available, then the underlying data would not be "data on individuals" under the definition here. This rule should be clarified. clarified p. 4

17. Section 1.202 D., Confidential Data. This term is defined in terms of who can gain and who is denied access to the data and requires that a state statute or federal law "provide substantially" for certain treatment. Comments on this section dealt with the term "provides substantially", calling it vague. (Pub. Exs. 14 and 23) In its posthearing response to the Minnesota School Boards Association's comments on this issue (Pub. Ex. 14), the Department stated:

> The concern evidenced by MSBA's comments in the first paragraph under 2. and 3. seems to be with the "substantially provides" language in certain definitions and with the "discretion" of responsible authorities to classify data. It is clear from a reading of the statute that in actuality responsible authorities have little or no discretion in classifying data. Responsible authorities are required to make a determination based on a reading of Minnesota Statutes and federal law as to whether certain data under their custody is anything other than public. The sole purpose of the "substantially provides" language is to allow responsible authorities to make a proper reading of old state statutes and federal law where those references do not use the specialized definitions of the terms private, public and confidential that are in use in Minnesota.
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> It is the opinion of the Department that "substantially provides" is not vague. The full text of the definitions provides the Responsible Authority with necessary guidance in evaluating authority to withhold data from the public as required by Minnesota law. We completely fail to see how use of this language makes these rules unreasonable as suggested by the MSBA comments. The assertion by MSBA that "substantially provides" is the only guidance provided to Responsible Authorities is not correct. Each of the definitions the MSBA comments identify contain substantial guidance, within the statutory limits. Again, it appears to us that MSBA's argument goes to the statute and not to the Rules. (Dept. Ex. O)

It might first be noted that "vagueness" is a constitutional due process concept most used to measure the validity of laws that described criminal conduct or infringe in some manner on First Amendment rights. Its application to administrative rulemaking is less stringent, but some rules have been held to be unreasonable because they were so unclear as to have little or no meaning. At any rate, the Examiner agrees with the Department that the use of the term "provides substantially" is not unclear and is, in fact, necessary and reasonable so that responsible authorities can properly apply state statutes and federal law as they are required to do by the Act.

The Ramsey County Commissioners felt that the definition was clear as to state statutes and federal law but remained vague as to court decisions. They suggested that it would be helpful if the proposed rules specifically addressed the general impact of state court decisions relating to the issue of data privacy (Pub. Ex. 18). The comment points out specifically the case of County of Sherburne v. Schoen, 306 Minn. 171, 236 N.W.2d 592 (1975), as a case that held certain data to be confidential. As far as state law is concerned, the Data Privacy Act, itself, allows data to be confidential or private only if so required by the state statute. Thus, the Department cannot broaden that definition to include case law or administrative regu-

lations. Further, in County of Sherburne v. Schoen, the Court actually interpreted the Data Privacy Act as it existed at that time and said that certain data was confidential under the Act. The effect of such cases is to assist responsible authorities in determining whether data they maintain is confidential, private or public.

18. Section 1.202 E. defines private data. There were a great number of comments about this subsection.

One major concern involves a situation where federal regulations may require that in order to receive federal monies, the state must provide some certain amount of privacy for data on individuals obtained under the program. These same federal regulations do not, however, themselves classify that data as private or confidential and thus, do not provide the legal authority for a responsible authority to do so. The comments of the Hennepin County Attorney (Pub. Ex. 26) state the problem well:

> 2 MCAR § 1.202 E.3.(as indicated on the erata (sic) sheet) stating that a federal agency rule requiring that political subdivisions provide for the confidentiality of data does not of itself make data private, poses serious problems for the welfare programs of the state. There are numerous federal regulations in this area requiring that the state system or political subdivision provide for the confidentiality of data obtained from data subjects. If this is not done, the potential exists for a violation of the Federal regulations resulting in serious penalty for the state or political subdivisions, including loss of federal participation in the funding of various programs. Thus, if the Legislature fails to provide for the confidentiality of this data, and if it is not provided for by emergency classification, the present regulations would seem to indicate that the data is public and could result in very costly consequences for the state and political subdivision, particularly in the welfare area.
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> An example of this is the scheme required by the U. S. Department of Health, Education and Welfare under Titles IV-A, XIX and XX of the Social Security Act, which require that "state plans" comply with 45 CFR 205.50. This federal regulation requires each state to safeguard information obtained in the running of programs of aid to families with dependent children and medical assistance. We see no rational (sic) for Minnesota to oppose this federal requirement since it has been complied with for several years. In addition, compliance is a necessary condition in order to receive millions of dollars from the federal government.
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> This office believes that the statute is ambiguous on the question of whether federal regulations of this type actually classify data. We believe, therefore, that the ambiguity could be clarified in either direction by the proposed regulations. We would, therefore, strongly urge that 2 MCAR § 1.202, E.3. be rewritten to provide substantially that federal rules of this kind do in and of themselves make the data referred to private.

Currently, the absence of a specific state statute classification is dealt with by the power granted to the Commissioner to grant emergency classifications under Minn. Stat. § 15.1642, but that system is only to be used ". . . until a proposed statute can be acted upon by the legislature." Further, the Commissioner's authority to grant emergency classifications will expire July 31, 1979. It would be contrary to the statute to attempt to implement Hennepin County Attorney's suggestion that federal rules

requiring state agencies to provide for the protection of data on individuals in and of themselves make that data private or confidential. By their own terms, they do not do so. Under the Act and those federal requirements, the governmental entities must seek legislation properly classifying the data they maintain before July 1, 1979. It is also possible to imagine some changes to the Act that would cure the problem.

19. A second major problem that applies to classification of data on individuals is that there exists under some statutes data that is sometimes private and sometimes confidential. That is, the subject of the data may or may not have access to it, depending on different factors. The most glaring example of this is pointed out by the Minnesota Hospital Association, again referring to medical records and Minn. Stat. § 144.335. The first two paragraphs of Minn. Stat. § 144.335, subd. 2, require health care providers to supply a patient's health record to him upon request. Assuming that some other state statute or federal law makes such health records non-public, this would mean that such data is private data. However, the third paragraph of that subdivision provides:

> If a provider, as defined in subdivision 1, clause (b)(1), reasonably determines 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, he may withhold the information from the patient. The information may be supplied to an appropriate third party or to another provider, as defined in subdivision 1, clause (b)(1). The provider or third party may release the information to the patient.

Thus, if the provider makes such a determination, the data becomes confidential data by operation of the statute. Logically, the way to handle such data is to call it confidential and handle it as confidential but release it to the patient except where a determination of harm is made.

The proposed rules deal with this situation in § 1.202 E.1.d. which provides the following example of private data:

> Data is private if a state statute or federal law provides substantially that:
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> * * *
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> d. Certain data shall be confidential and may be shown to the data subject at the discretion of the person holding the data. Such data shall be private if the state statute or federal law does not provide standards which limit the exercise of the discretion of the person maintaining the data.

(Due to a typographical error in the errata sheet submitted by the Department at the hearing (Dept's Ex. L), it appeared that this paragraph had been deleted from the proposed rules; that was not the Department's intent.) The implication of that paragraph is that if standards limiting the exercise of discretion do exist, the data is confidential data, but that is not very clear. Several comments requested that it be clarified (e.g., Pub. Exs. 8, 27 and 31) The Minnesota Hospital Association suggested specific language that could be used to clarify this issue. Its suggestion is as follows:

> The first alternative would be to further define confidential data so that 2 MCAR § 1.202 D. would read as follows:

Confidential Data as defined in § 15.162, subd. 2 of the Act, shall only include data which is expressly classified by either a state statute, including the provisions of § 15.1642 of the Act, or federal law.

1. Data is confidential only if a state statute or federal law provides substantially that:

   a. Certain data shall not be available either to the public or to the data subject; or
   b. Certain data shall not be available to anyone for any reason except agencies which need the data for agency purposes.
   c. Certain data shall be confidential if a a state statute or federal law provides that the data may be shown to the data subject only at the discretion of the person holding the data, and if such state statute or federal law provides standards which limit the exercise of the discretion of the person maintaining the data.

this wording added to S.D.1 P.5

2. Data is not confidential if:

   a. A state statute or federal law provides that the data is confidential, but the context of the statute or federal law, in which the term confidential appears, reasonably indicates that data is accessible by the data subject, or if the data subject is given access to the data only upon the discretion of the person holding the data and the state statute or federal law does not provide any standards which limit the exercise of such discretion.

this wording added to S.D.2 P.5

3. A state agency rule, an executive order, an administrative decision, or a local ordinance shall not classify data as "confidential," or use wording to make data inaccessible to the data subject unless there is a state statute or federal law as the basis for the classification.

The foregoing amendments would clarify that under certain circumstances, data which may sometimes be confidential can be considered as such within the formal classification system and still be accessible to the data subject upon the proper exercise of discretion by the person holding the data. In the case of medical records as access to those records is defined by Minn. Stat. § 144.335, this would be a compatible and workable method of classifying these records. In other words, the records would be classified "confidential/private," and access would depend on the different variables that have already been contemplated in the enactment of Minn. Stat. § 144.335.

The second amendment would be relative to 2 MCAR § 1.202 E. which should be amended to read as follows:

Private Data, as defined in § 15.162, subd. 5a of the Act shall only include data which is expressly classified by either a state statute, including the provisions of § 15.1642 of the Act or federal law.

1. Data is private if a state statute or federal law provides substantially that:

   a. Certain data shall not be available to the public but shall be available to the subject of the data;

b. Certain data shall not be available to anyone, except the data subject or his designated representative such as an attorney;
c. Certain data shall be confidential and the person the data is about may view the data at reasonable time; or
d. Certain data shall be ~~confidential and may be~~ shown to the data subject at the discretion of the person holding the data~~.--Such data shall be private if~~ , but the state statute or federal law does not provide standards which limit the exercise of the discretion of the person maintaining the data, in which case the data shall be private.
e. The data is confidential, but the context of the statute or federal law in which the term confidential appears, reasonably indicates the data is accessible by the data subject.

this wording added to § E.1. p.7

* * *

We would also urge changes in the substantive provisions, as distinguished from the definitional provisions which define the kinds of access that persons have to different types of data. Specifically, it is the recommendation of the Minnesota Hospital Association that 2 MCAR § 1.204 A be amended to read in relevant portion as follows:

A. Access to private data shall be available only to the following:

1. The subject of such data, limited only as provided in Minn. Stat. s 144.335.

Further amendment would be appropriate relative to 2 MCAR § 1.206 which could be amended to read in relevant portion as follows:

A. Access to confidential data is available only to the following:

1. Individuals within the entity, whose work assignments reasonably require access.
2. Entities and agencies who are authorized by statute, including § 15.1641 of the Act, or federal law to gain access to that specific data.
3. Individuals to whom access to otherwise confidential data has been authorized by the responsible authority under the provisions of Minn. Stat. § 144.335.

The combination of these various amendments would, we believe, allow the type of flexibility that is absolutely essential in properly serving the public in terms of appropriate handling of medical records. (Pub. Ex. 27)

The Examiner recommends that the changes or additions suggested for §§ 1.202 D.1.c., 1.202 D.2.a. and 1.202 E.1.d. except the last proviso, should be adopted for the reasons given by the Association. Their other suggestions seem unnecessary and could be confusing. Finally, the suggested addition to § 1.206 A.3. should not be limited to Minn. Stat. § 144.335. There are no doubt other state statutes and federal laws that create this shifting type of non-public data on individuals, so more general language should be used.

20. The Hennepin County Chiefs of Police Association and the Minnesota Police Chiefs Association have both passed a resolution recommending

legislation to classify certain criminal justice information as confidential and private. (Pub. Exs. 7 and 13) The resolution recognizes that classification must be done by statute and not by these rules.

21. Section 1.202 F. defines public data on individuals. The Department testified that the confusion and controversy surrounding the meaning of public data has been the main stumbling block to implementation of the Act over the past few years. Minn. Stat. § 15.162, subd. 3, states: "Data on individuals are classified as public, private or confidential." Under Minn. Stat. § 15.162, subd. 5b, "Public data on individuals" means "Data which is accessible to the public in accordance with the provisions of section 15.17." Whether records are "public records" under Minn. Stat. § 15.17, subd. 1, depends on whether they are "necessary to a full and accurate knowledge" of official activities. Kottschade v. Lundberg, 280 Minn. 501, 160 N.W. 2d 135 (1968), Minnesota Medical Association v. State of Minnesota, ___ Minn. ____, ___ N.W. 2d ___ (November 24, 1978) The Kottschade case placed some "reasonable limits" on the statutory language when it determined that the legislature did not intend anything so sweeping as to require that "public record" include "any casual jotting, any tear-sheet observation, which discloses the promptings of official action. . . . " The Court imposed the reasonable limits by defining "official activities" to be limited to "official actions" as distinguished from "thought processes." Thus, there may be records kept by political subdivisions which relate to the processes by which decisions are reached but which are not required to be kept of record as information pertaining to an official decision. They therefore, are not accessible to the public under Minn. Stat. §. 15.17 and interpreted by Kottschade.

Stating that it is vital for the definition of public data on individuals to be as clear as possible, the Department proposes a rule that says data is public if (1) a statute or federal law says it must be available to the public; (2) a statute or federal law requires the data to be collected and does not classify it private or confidential; and (3):

> c. A state agency, statewide system, or political subdivision, without any express enabling authority to do so, collects certain data because that data is necessary to its operations; as defined in 2 MCAR § 1.216 B.1.

In § 1.216 B.1., the term "necessary" has a specialized meaning. At the hearing, Mr. Gemberling testified that he intended "necessary" as used in this section to have its normal meaning; that is, if governmental personnel feel that certain data is necessary to the operation of governmental agencies and programs, access to that information is equally necessary to anyone trying to understand that agency or program. If that is the Department's intention, then, at the least, the reference to § 1.216 B.1. should be deleted from this rule.

A number of comments noted that the proposed rules attempt to adopt and expand the Kottschade reasoning still left the definition of public data unclear (Pub. Exs. 14, 16, 20, 31 and 33) The comments of the Dakota County Attorney state the problem well:

> Our second comment concerns the definition of public data under 2 MCAR § 1.202, Subsection F. This subsection presents serious problems. Many of these problems were pointed out at the hearing but for the sake of emphasis some

of these problems will be set forth here. The primary problem regarding public data is the attempt under the proposed rules to define public under the standards set forth in Kottschade v. Lundberg, 280 Minn. 501, 160 N.W. 2d 135 (1968), without taking into consideration the exceptions set forth in this case. The difficulty here is that the Kottschade case labeled certain data which is collected by public officials as not being public data. In effect, the Kottschade case determined that there was an exception to the public data statute (Minn. Stat. § 15.17). The problem arises from the fact that the same data which was stated not to be public under the Kottschade case is not defined as being private or confidential by any state statute or federal law. The proposed rules make no attempt to classify such data and hence, there is a "gap" which exists between the definitions of data which are set out in the Data Privacy Act and in the proposed rules. It is vital to clear up the confusion found under the rules defining public data, because subsequent rules (i.e. 2 MCAR 1.210, 1.215, and 1.216) direct the Responsible Authority to identify all data and freely disseminate data defined as public. In addition, Minn. Stat. § 15.166 states that a Responsible Authority who violates any provision of the Act itself is liable to a person who suffers any damage as a result of the violation. The wilful violation of any provision of the Act constitutes a misdemeanor under Minn. Stat. § 15.167.

Our suggestion to this problem is defining public data under 2 MCAR § 1.202, subs. F as follows: "Public data is all data which is not classified by state statute or federal law as private or confidential data." This would eliminate the confusion created by the Kottschade case. At the Hearing held on October 31, 1978, the Department of Administration expressed its belief that Minn. Stat. § 15.162, Subd. 3 (which provides in part that: "Data on individuals are classified as public, private or confidential") gives them the rule making power to come to such a determination, i.e. that all data which is not private or confidential is public. If you believe this to be the case, 2 MCAR § 1.202, Subs. F should be amended as described above in your report. If not, it is our suggestion the promulgation of these rules be delayed until such time as the legislature has had a chance to take further action delineating exactly what public data includes in light of the Kotschade (sic) case.

As presently proposed, the rule fails to meet substantive requirements of law that persons affected by or required to perform some act by a rule must be able to reasonably understand the rule. The Department noted the great need to make "public data" clear, but by this rule, has not done so. It is still unclear to those governmental entities that must operate under it. The Examiner would recommend that the rule could be made reasonable by adopting Dakota County Attorney's suggestion that if data on individuals is not classified private or confidential by proper authority, it is public data on individuals. As pointed out by counsel for the League of Minnesota Cities at the hearing, that is probably what the proposed rule says now, especially in light of §§ 1.202 D.3. and 1.202 E.3., which prohibit governmental entities from classifying data on individuals as confidential and private without appropriate authority to do so. In its posthearing comments, the Department stated that it had the following dilemmas in dealing with public data:

5.a. If the so-called "gap" theory is a viable theory of statutory construction, then assessor's field cards are not official records within the meaning of Minn. Stat., Section 15.17 and therefore they are not accessible to the public. However, as we pointed out

at the hearing, we are faced with the following dilemmas in dealing with publid data:

(a) The Kottschade case is ten years old and was decided on very narrow grounds.

(b) The intervening ten years has seen an explosion in the concepts of freedom of information and openness in government.

(c) Although the subject of Minn. Stat. 15.17 is official records, the subject of the privacy act is all data on individuals maintained by the state and its political subdivisions.

(d) The last sentence of Minn. Stat., Section 15.162, Subdivision 3 states very clearly: "Data on individuals are classified as public, private or confidential."

(e) Over and over public administrators have told us they cannot implement the privacy law because they cannot establish, given the definitions of public data in the statute, what data is public within their agencies.

The Examiner agrees with the Department that it has the authority to define public data on individuals as that which is neither private nor confidential. As Mr. Gemberling pointed out at one point in the hearing, by § 15.162, subd. 3. the Legislature, at least as to data on individuals, said that there were only three types of data. The problem is created by Minn. Stat. § 15.162, subd. 5b which states, "Public data on individuals means data which is accessible to the public in accordance with the provisions of section 15.17." The Examiner would suggest that it is not appropriate to use that subdivision to determine whether certain data on individuals is public, because that determination is to be made by elimination under section 15.162, subd. 3. Rather, subdivision 5b should be read to mean that the accessibility methods and procedures of section 15.17, subd. 4, must be applied to all public data on individuals. The "Gap" should only apply to records that do not contain any form of data on individuals.

It must be noted that some of the public comments did not support the concept of defining all data on the individuals that was neither confidential nor private as public. The Office of the Mayor of St. Paul suggested that it needed the fourth non-public records category found under the Kottschade theory ". . . to protect the individual from public disclosure of the information which would constitute an invasion of personal privacy." (Pub. Ex. 33) They stated that if the fourth category is eliminated ". . . the State of Minnesota and its governmental subdivisions will be faced with an election to either destroy, and in the future not record, much of the data necessary to its operation or to risk grave and substantial abuses of the individual liberties of its citizens."

see FOF 11 and p. 7

22. Minn. Stat. § 15.162, subd. 8, provides:

"Statewide system" includes any record-keeping system in which data on individuals is 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.

According to the Statement of Need and Reasonableness, although the term is defined by the Act, a clearer statement of the definition is necessary to assure that all statewide systems are indeed regulated. Section 1.202 H.3. of the proposed rules provides:

> 3. Statewide systems shall include, but are not limited to, recordkeeping and data administering systems established by statute, federal law, administrative decision or agreement, or joint powers agreement.
>
> a. Statewide systems shall include, but are not limited to, the Criminal Justice Information System administered by the Bureau of Criminal Apprehension, the Statewide Accounting System, the Minnesota Education Computing Consortium, and the various welfare systems primarily administered by the Department of Public Welfare.

This provision was the subject of a comment from the Minnesota School Districts Data Processing Joint Board, also known as TIES. This organization provides data processing services to each of the school member districts acting at the direction of each district. TIES does not collect initial information nor does it make decisions concerning the use of the information. These functions are performed by the individual school districts. The MECC referred to in the rule is a state entity formed by joint powers agreement which serves primarily to coordinate the data processing systems used by educational entities in Minnesota. The comment states:

> We do not know whether it was the intent of the Department to make all school district information systems part of a "statewide system" and thus remove from each school district the responsibilities pertaining to collection and use of data. If this was the intent, it would be a very far-reaching step which has no rational basis and no statutory basis, and which was neither explained nor justified in the Department's Statement of Need and Reasonableness. If this was not the intent, the draft should be clarified. It should provide only that whatever information is collected initially by MECC itself is a statewide system, and not that all school district data become part of a statewide system, merely because of the limited functions performed by MECC. (Pub. Ex. 34)

It would appear that TIES and MECC squarely fall within the proposed rule's examples because TIES is a record-keeping and data administering system established by joint powers agreement and the MECC is expressly named in the rule. However, it does not follow that such inclusion would . . . "Thus remove from each school district responsibilities pertaining to collection and use of data." It seems quite logical that confidential and private data must be protected under the provisions of the Act no matter where the governmental entities store that data or whom they have process it. On the other hand, it is not so clear whether the protection of that data requires the appointment of a responsible authority at the data processing center or whether the responsible authority, in this case, at the school district is adequate. It would seem that the latter would be adequate but the Examiner makes no specific recommendation on this comment.

See p. 9. + FoF 12

23. Under the Act and these rules, data may be classified as confidential or private only by state statute or by federal law. Section 1.202 I. defines federal law because it is not defined by the Act. It provides:

Federal law means United States Code, rules of Federal agencies as published in the Federal Register, and Federal case law including decisions of any court in the Federal judicial system.

The Office of the Hennepin County Attorney noted that the official compilation of the Federal rules, however, is in the Code of Federal Regulations and suggested that the Code of Federal Regulations be substituted for the Federal Register. The Department may wish to consider that change but the Examiner would caution that both the Federal Register and the Code of Federal Regulations publish items such as Federal guidelines which do not have the force and effect of law.

The Minnesota School Boards Association stated that by the definition of federal law, ". . . an extreme and unfair burden had been placed upon each responsible authority, that person's delegatees, and in the instance of school districts, the respective governing boards. It is unrealistic and impossible to expect each entity to be aware of all Federal agency rules and Federal case law." (Pub. Ex. 14) In fact, the Act provides that it is the responsible authorities who must classify the data and so they must know the law. The rule provides some assistance by telling them where they can look for the federal law. It is also apparent that each type of political subdivision should be more aware of the law that affects it than anyone else. In other words, school districts should be more aware of federal laws affecting pupil records, for example, than the Department of Administration. If they aren't, the MSBA is not doing its job.

24. Section 1.202 L. clarifies some of the confusion caused by the Act's definition of responsible authority. The rule lists who shall be the responsible authority in a number of situations. The Department of Veterans Affairs points out that Minn. Stat. § 197.603, subd. 2, makes the county veterans service officer the responsible authority with respect to all records in his custody and that this would pre-empt the statement in the rule that county boards appoint the responsible authority. Veterans Affairs suggests that "Unless otherwise provided by state law," type language be inserted within the rule. Such language already appears in Minn. Stat. § 15.162, subd. 6, but the Examiner would recommend that it be restated within this rule to avoid any possible confusion. reinstated p. 9, 10, 11

The law firm of Holmes, Kircher & Graven, cited an instance in which the Department returned an emergency classification application of the St. Paul Housing and Redevelopment Authority because the City of St. Paul had appointed the City Clerk as responsible authority. The Department did not wish to grant a classification for only that portion of the City's records administered by the Housing Authority. The law firm pointed out that under Minn. Stat. § 15.162, subds. 5 and 6, Housing and Redevelopment Authorities are political subdivisions and thus may appoint responsible authorities. They state that the conflict between the Act and the Department's policies is not resolved by the proposed rules and should be clarified. It appears to the Examiner that there are two separate questions involved here. First, who shall be the responsible authority in the various forms of governmental entities? That is addressed by the rule. The

question raised by the law firm deals with the Department's reasons for denying an emergency classification when one political subdivision is created by or a part of another political subdivision. That is not addressed by the rule. The Department should determine whether such relationships change any of the duties and requirements specified in these rules and, if necessary, clarify the rule.

Counsel for the League of Minnesota Cities pointed out that the rule requires cities (and all other political subdivisions) to appoint individuals who are employees. In some instances, they may want to appoint some other official; for example, a City Clerk who may not technically be an employee. The rule is not unreasonable, but the Department may wish to modify it.

25. Section 1.202 M. defines "Summary Data". The term is defined in the Act, but because of questions that have been raised, the rule provides an expanded definition and gives examples.

The editors of the Minneapolis Star and the Minneapolis Tribune criticized this rule because ". . . it does not recognize the responsible authority's statutory duty to permit a person outside the agency to prepare the summary data if the person agrees in writing not to disclose the private or confidential data from which the summary data is prepared." (Pub Ex. 23) The rule is reasonable as proposed. It says what summary data is, not who prepares it. The latter subject is dealt with in section 1.209.

but see changes P. 11

2 MCAR § 1.203 - ACCESS TO PUBLIC DATA

26. The editors of the Minneapolis Star and Minneapolis Tribune argued that the Commissioner has no authority to adopt this section. They stated:

> Sec. 1.203: This entire section is objectionable because it exceeds the scope of authority granted the Commissioner of Administration. Minn. Stat. 15.1671 empowers the Commissioner to "promulgate rules . . . to implement the enforcement and administration of sections 15.162 through 15.169." Although these sections deal with the collection, storage, and accuracy of public data, they do not address the dissemination of private and confidential data to third parties. See especially 15.1641 and 15.165. The issue of general public access to public data is addressed in Minn. Stat. 15.17, which is outside the scope of rule-making authority granted by Minn. Stat. 15.1671. (Pub. Ex. 23)

The Department replied specifically to this comment:

> We fail to understand the comment's assertion that the rule has some effect on "third parties". It is clear under the proposed rule that public data is accessible to anyone. As we stated at the public hearing, we are aware of the problems associated with the rule's dealing with public data. However, we fail to see how we can comply with the statutory requirement of Minn. Stat. Section 15.1671 without addressing the subject of public data. Without a clear understanding of what public data is, agencies will never be able to implement the privacy act. (Department's Ex. N)

The editors of the Minneapolis newspapers are correct that the proposed rule goes beyond the scope of the Commissioner's rulemaking authority because it deals with the dissemination of data to the public and attempts to implement the provisions of Minn. Stat. § 15.17, subd. 4. The Minnesota Medical Association case is controlling on this issue. In that case, the

Court held that certain records were necessary to the full and accurate knowledge of the Department of Public Welfare's official activities; were, therefore, public records accessible to the public under Minn. Stat. Sec. 15.17; and that the information contained in such records was "public data on individuals" under Minn. Stat. Sec. 15.162, subd. 5b. An issue was raised as to the effect of lack of rules to implement the Act. The majority opinion stated in part:

> Minn. St. 15.1621 requires the commissioner of administration to adopt, in accordance with the Administrative Procedures Act, rules "to implement the enforcement and administration of sections 15.162 to 15.169." The commissioner has not done so. Nevertheless, this failure cannot affect public access to "public" information. Nothing in sections 15.162 to 15.169 purports to govern dissemination of public data. Dissemination is governed by Minn. St. 15.17 to 15.174. Minn. St. 15.171 expressly authorizes the use of "alternative methods for the compilation, maintenance and storage of information contained in /official/ records" and provides that such methods must provide for access to the information "by those authorized by law to have access." Since the information sought here is public information, the Catholic Bulletin is authorized to have access to it. Its access is thus determined under the Official Records Act, and the commissioner's failure to promulgate rules under the Data Privacy Act is immaterial. See, Reyburn v. Minnesota State Board of Optometry, 247 Minn. 520, 527, 78 N.W. 2d 351, 1356 (1956).

The Examiner finds, therefore, that the Department has failed to demonstrate its statutory authority to adopt Section 1.203 as proposed. If the Department desires to address the subject of access to public data, the rule could simply state:

see F&F #1 + p. 12

> "The responsible authority shall provide access to public data in the manner provided in Minn. Stat. Sec. 15.17, subd. 4."

The following findings regarding Section 1.203 are made for the sake of completeness recognizing that the Department may disagree with this finding of lack of authority.

27. With a few minor exceptions, the need for and reasonableness of this rule was generally supported by most interested persons. Such support was expressed at the hearing by counsel for the League of Minnesota Cities and counsel for the Minnesota Newspaper Association. The Newspaper Association especially supported the provision in Section 1.203 A. that access must be provided to any person regardless of that person's interest in the data. This, as explained in the Statement of Need and reasonableness is in accordance with the "modern" principles of access to government records. That not all persons agree with such principles was perhaps made most clear by comments from the city manager of Brooklyn Center who suggested that it should be within his authority to draw the fine line between the public's right to know and a person's right to privacy. (Pub. Ex. 28) For example, he would make certain records not available to salespersons but would make them available to individual citizens wishing to buy a certain piece of property. As the majority of the Court pointed out in Minnesota Medical Association, supra, the power to restrict public access to information has been retained exclusively by the legislature:

> The legislature has provided mechanisms by which the public may be denied access to information controlled by state agencies. It has further determined that public records are

to be available to the public "except as otherwise expressly provided by law." Minn. St. 15.17, subd. 4. These provisions evidence a legislative intent to retain full control of public access to information. The power to restrict access is given to administrative agencies only in emergency situations, and even that power is subject to legislative action. No power to restrict access is granted to the courts.

The provisions of Section 1.203 A. are necessary and reasonable.

28. Section 1.203 A.1. requires the responsible authority to establish procedures to describe how access may be gained. This is a very general requirement that does not require such procedures to be in writing. Such procedures may, under the provisions of the rule, limit the time of public access to normal office hours. The procedures must require the responsible authority to respond to a request for access within a "reasonable" time.

The Minnesota Newspaper Association and the Minnesota School Boards Association requested some further definition of the word "reasonable". Time limits and number of days have been considered by the Legislature in reviewing amendments to Minn. Stat. § 15.17. One reason such limits were not adopted was that no consensus or compromise emerged as to what the number of days should be. Given the broad range of data covered by the Official Records Act, including data which may be up to 50 years old and maintained in warehouse-type facilities, no better standard can be given than "reasonable time". (Department's Ex. O)

The Higher Education Coordinating Board suggested that the technical requirements for access procedures in this rule and following similar rules would cause great expense, especially since state agencies would be required to adopt such procedures through the rulemaking process. (Pub. Ex. 38) Assuming that the HECB is correct that formal rulemaking would be required, the requirements imposed are minimal and are necessary to implement the Act.

29. Section 1.203 A.1.c. requires the responsible authority to charge a reasonable fee for providing copies of public data unless the entities' costs are minimal. Section 1.203 A.1.d. lists five factors to be considered in determining reasonable fees. Support was expressed for permitting a reasonable fee to be charged (Pub. Exs. 12, 28 and 31), but clarification was requested to reconcile the requirement of the proposed rule with the statutory prohibition against most state agencies collecting any type of fee except as specified by law. (Pub. Exs. 9 and 11) Other comments suggested simply that charging a fee should be permissive with the entity providing the data. (Pub. Exs. 18 and 32) It was also suggested that in determining a reasonable fee, the cost of labor should include the cost of research and files as well as simply preparing the copies.

The Examiner finds that the requirement to charge a fee for providing copies is unreasonable because some agencies are prohibited by statute from doing so and because it is a matter of judgment that should be left up to the responsible authority. Further, the Department relied on the provisions of Minn. Stat. Sec. 15.17, subd. 4, in proposing this particular rule. That subdivision permits copying of public records at reasonable

times and further provides:

> . . . Upon the demand of any person, [the custodian of public records shall] furnish certified copies thereof on payment in advance of fees not to exceed the fees prescribed by law."

Whether or not that language requires the custodian to charge a fee is not clear, but at any rate, it is clearly limited to certified copies and whatever the fee is may not exceed any fee that is set by law. The proposed rule would be reasonable if the word "shall" were changed to "may". - changed p. 12

2 MCAR § 1.204 - ACCESS TO PRIVATE DATA

30. Section 1.204 A. lists the persons to whom access to private data shall be available. In addition to the subjects of the data and individuals within the entity whose work requires access, the rule lists entities and agencies who are authorized access to that specific data by appropriate law and entities or individuals given access by ". . . the express written direction of the data subject." see p. 13

Two state agencies raised questions as to access to private data by agencies that exchange information with other agencies (Pub. Exs. 17 and 29). These agencies are apparently asking whether certain types of access are authorized by appropriate law. They should talk to Mr. Gemberling directly.

The editors of the Minneapolis papers objected to the requirement for written direction (Pub. Ex. 23). They state:

> Minn. Stat. 15.1641(C)(3) permits disclosure of private or confidential data on individuals if the data subject gives "informed consent." The proposed rule does not necessarily guarantee that consent will be "informed." Nor is there any statutory authorization for the limitation that the informed consent must be expressed in writing.

In its Statement of Need and Reasonableness, the Department stated that this provision reinforces an underlying rationale of the Act that data subjects retain some control over the data they provide to the government. In response to the editors' comment, the Department stated:

> The comment makes reference to "informed consent" as the authority for an individual to have an agency disseminate data about him or her. This comment reflects a misreading of the act. "Informed consent" only comes into play when the agency seeks to initiate a new purpose or make a new use of private or confidential data previously collected from a data subject. (See Minn. Stat. 15.1641 (c)). The rule deals with assuming the individual's ability to direct the dissemination of private data about himself or herself. Problems with this situation are common. They arise from the act, but are not expressly handled by the statute. (Depts. Ex. N)

Describing to whom access is granted is clearly a part of implementing the Act and is, therefore, within the statutory authority of the Department. Just as clearly, requiring authorization to be in writing is not unreasonable.

31. Section 1.204 B. requires responsible authorities to establish written procedures to assure that access is gained only by those parties identified in Section 1.204 A. and requires that those procedures include reasonable measures that will assure that the person seeking access is actually the subject of the data or his authorized representative. The proposed rule then goes on to state:

2. Such reasonable measures include, but are not limited to, the following:

a. Requiring the person seeking to gain access to appear at the offices of the entity to gain such access or requiring the notarized signature of any data subject who is unable to appear at the offices of the entity.

b. Requiring the person to provide reasonable identification.

Only the Dakota County Attorney supported the requirement for a notarized signature stating that, "Although realistically, the requirement of a notarized signature may not greatly eliminate false requests, such a requirement does serve to protect the responsible authority from liability exposure. . . ." (Pub. Ex. 31) Otherwise, there was uniform opposition to the requirement (Pub. Exs. 23, 24, 25, 27, 30, 32, 38 and 39). Insurance companies and hospitals stated that the requirement would unduly increase insurance costs and inject administrative delay in the claim process with no real increase in security of the data (Pub. Exs. 24 and 27) The Ramsey County Welfare Department stated that the requirement would impose a potential hardship on welfare clients that may not have funds for or access to a notary (Pub. Ex. 25). The editors of the Minneapolis papers put it another way: "Requiring a notarized signature is not the only way — nor always the best way -- to carry out the intent of the statute." (Ex. 23) They then suggest that the introductory line of this paragraph should read:

"Examples of such reasonable measures include, but are not limited to, the following:"

The Examiner finds the requirement for notarized signatures, to the extent that it is an absolute requirement, to be unreasonable because of the burdens and costs it would impose without any practical benefit to the security of private data. The word "notarized" should be deleted from the rule.

Deleted p. 14

The comment of the editors that the rule should be modified to state that it is listing merely examples may, in fact, be what was intended in the first instance. The language as originally proposed is unclear but it does not say that "such reasonable meausres must include . . . ." Unless the rule is clarified one way or the other, the rule fails to fulfill substantive requirements of law because it is unclear. If the Department chooses to call these items examples, then the requirement of a notarized signature is not unreasonable because responsible authorities are given the option of determining whether such a procedure would be reasonable in their given set of circumstances. Nonetheless, the Examiner would still suggest that the requirement not even be made an example.

32. The editors of the Minneapolis papers also suggested that a third example of a reasonable measure be added as follows: Determining through personal knowledge that the person authorizing release is the data subject." The Department may add more examples to its list should it believe them to be necessary.

33. Section 1.204 E. requires the responsible authority to charge the subject a reasonable fee for providing copies of private data. Unlike the parallel rule in the section on access to public data, Section 1.203,

p. 15

the requirement here is based on a requirement in the Data Privacy Act, namely, Minn. Stat. Sec. 15.165, subd. 3, and so there is authority in the Department to impose the requirement. It should also be noted that if the Department deletes the rule regarding access to public data, it will be necessary to restate the factors used to determine a reasonable fee within this rule and to change subsequent references to Section 1.203.

2 MCAR Sec. 1.205 - ACCESS TO PRIVATE DATA CONCERNING DATA SUBJECTS WHO ARE MINORS

34. Under Minn. Stat. Sec. 15.162, subd. 4, parents, guardians or persons acting in their place have access to private data concerning their children, ". . . except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interests of the minor."

This rule implements that provision of the statute. The Minnesota School Boards Association stated:

> 2 MCAR 1.205 B.2.a. establishes a presumption that the parents have the authority to access the data unless the responsible authority is provided with evidence that there is a state law, court order or legally binding instrument providing to the contrary. Thus, in the case of a divorce or custody situation, either parent should be granted access unless the other has produced an order, etc. that denies it. The responsible authority does not appear to have to seek out this information. The burden in this instance does not appear to be on the responsible authority or on the parent seeking access but rather is on the parent seeking to deny access. This paragraph, however, provides less than complete protection to the responsible authority. It should state that the "responsible authority shall provide data to parents unless . . . ." (Pub. Ex. 14)

It is difficult to see how the MSBA suggestion would clarify anything or provide any greater protection to the responsible authorities. Further, as was pointed out by the Department in its posthearing comments (Dept. Ex. O), this particular rule was taken verbatim from the HEW rules implementing the Family Educational Rights and Privacy Act of 1974 (FERPA), which rule was adopted by HEW at the urging of educators.

35. Section 1.205 C. requires responsible authorities to establish procedures to provide access by the parents of a minor data subject and imposes certain requirements that must be contained in those procedures.

Section 1.205 C.1. allows the responsible authority to require that requests by minors to deny access to parents or guardians be in writing. The Office of the Mayor of St. Paul addressed one area which they thought was unclear (Pub. Ex. 33). They noted that no mention was made of the possibility that the child may not know of his parents' request for access to the data. They wondered whether the rules required the child to be informed of each request or not. They requested that it be clarified either way. At the hearing, clarification was requested regarding procedures to be used where a person has been adjudicated mentally incompetent and the Commissioner of Public Welfare has been appointed guardian. As the Department stated in its Statement of Need, this particular exception has raised many questions, especially from educators and social service

see F&F 20

agencies, and the proposed rule attempts to answer those questions. The rule is not unreasonable as proposed, but the Examiner would recommend that the Department attempt to clarify these questions, too.

see added language p. 16

36. Section 1.205 C.2. lists factors by which responsible authorities should be guided in making a determination of whether to honor a request by a minor to deny parental access; tests by which to determine ". . . that withholding the data would be in the best interests of the minor," as required by the statute. The MSBA complained that the determinations to be made on the factors listed might be beyond the skill and training of the responsible authority, and that they might have to be referred to doctors, lawyers, social workers or a psychologist. The section of the Act cited above clearly requires the responsible authority to make the determination The factors listed are helpful, but nothing prevents the responsible authority from consulting an appropriate professional for advice.

37. Section 1.205 C.2.a.(6) was added to the proposed rules during the drafting stage at the urging of various public bodies. It states that the responsible authority should consider:

> Whether the data concerns medical, dental or other health services provided pursuant to Minn. Stat. §§ 144.341 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.

Two agencies requested that "other health services" be defined (Pub. Exs. 25 and 39). It appears to the Examiner that that would be beyond the Department's authority because the cited sections of the statutes are not within the scope of the Commissioner's rulemaking authority and these rules can do no more than refer to them.

see p. 17 + FoF 21

Comments raised the issue of denying parental access at the responsible authority's discretion, even when not so requested by the minor, if disclosure to the parents could cause harm to the minor. The Minnesota Hospital Association stated:

> First, we wish to make it clear we understand that Minn. Stat. § 15.162, subd. 4, as well as Minn. Stat. § 144.335 provides that parents are in the same position, and have the same legal rights, as their minor children, except that Minn. Stat. § 15.162, subd. 4, provides an exception where the minors register an objection to the release of records. It is acknowledged that this presents difficult questions in terms of parent/child relationships, but it is a matter of state law and these rules may not countermand such a legislative pronouncement.
>
> However, in an apparent effort to countermand the statutory provision, the rules provide in an explicit statement that the responsible authority may deny access to private data when the minor requests that access by (sic) denied. Conversely, absent such an express request, the responsible authority could not deny access to the parents.
>
> We strongly object to the very narrow approach taken regarding this matter. As indicated above, it is contrary to Minn. Stat. § 144.335, which vests discretion in the health care provider. It runs contrary to the spirit of the statutes dealing with child abuse and indeed presents a very serious threat in the context of child abuse cases. Specifically, it is well-known that in many instances of child abuse (and we emphasize that this is a life threatening problem) advance notice to parents

that child abuse is suspected will immediately precipitate the removal of the child from the health care facility, even before a child in jeopardy cah be taken into protective custody. Our primary concern is that the child himself is required to initiate the request for withholding information. This does not adequately serve a young victim of child abuse, for example, who neither understands that access may be denied nor is capable of making such a decision. To compound this, a written request may be required. Again, the child who is too young to write or who is intimidated by a writing is not protected. If the physician makes his own decision to withhold information from the parents, it is unclear as to what his potential liability may be.

Carrying forward with 2 MCAR § 1.205 C.1. as proposed, especially if the rules are extended to include medical records, would be contrary to the best interests of the public. Accordingly, we suggest a new provision to be added as 2 MCAR § 1.205 C.1. which would read as follows:

1. A provider may deny parental access to medical data of minors as provided in Minn. Stat. § 144.335.

2. The Responsible Authority may deny parental access to private data when the minor, who is the subject of that data, requests that the Responsible Authority deny such access.

Subsequent paragraphs would then be renumbered accordingly. This, we believe, would remedy the problem described above.

At the hearing, Mr. Gemberling had stated that the Data Privacy Act and the proposed rule were, to the best of his knowledge, harmonious with Minn. Stat. Sec. 144.335 and that there were no conflicts. There is obviously a difference of opinion. Both the Data Privacy Act and Section 144.335 start by defining the "individual" or "patient", in the case of a minor, to include the parent or guardian or person acting in that capacity. The Data Privacy Act, as stated above, includes the exception on release to parents. Such a provision does not appear in 144.335. What does appear is the language previously quoted in Finding No. 19 that the health provider may withhold information from the patient if he reasonably determines that the information would be detrimental to the patient. Given that in the case of a minor patient, the term "patient" means either the minor or his parents or guardian, it is possible to read that provision (as the Minnesota Hospital Association apparently does) to permit the provider to withhold the information from the parent if the provider reasonably determines that the information would be detrimental to the minor. While the Hospital Association has grossly misstated the Department's intent, the proposed rule is not harmonious with Section 144.335. The problem is that the statutes conflict. In resolving this conflict, the Data Privacy Act should be considered the general law, specifying how data on minors will normally be handled. Minn. Stat. Sec. 144.335 is a specific law dealing with the treatment of health records. Therefore, in dealing with health records, 144.335 controls, but the rule does not so provide. The Examiner would recommend that the modification such as that suggested by the Hospital Association should be adopted, but that it should not be limited strictly limited to Minn. Stat. § 144.335, for there may well be other state statutes or federal law dealing with this subject. Such as the following could be added:

1. The responsible authority may deny parental access to private data on a minor pursuant to the provisions of Minn. Stat. § 144.335 or other state statute or federal law that allows or requires the person holding the data to deny parental access if such state statute or federal law provides standards which limit the exercise of the discretion of the person holding the data.

see new language added p. 20

2 MCAR § 1.206 - ACCESS TO CONFIDENTIAL DATA

38. Section 1.206 A. states that access to confidential data is available only to individuals within the entity whose work requires access and to entities and agencies who are authorized by statute or federal law to gain access to that data. /See Finding No. 19 for a suggested modification of this section/. The Department of Commerce, Securities Division, questioned the effect of the rule on investigative data which is, by definition, a type of confidential data. Specifically, they wondered whether information uncovered by the Securities Division during an investigation which indicates illegal activities under the jurisdiction of a different governmental agency could be provided to that agency. Inability to do so would be clearly contrary to public policy. The Securities Division requested that § 1.206 A. be revised to clearly reflect that investigative agencies are authorized to provide evidence of a crime to other appropriate agencies when that evidence is uncovered in an ongoing investigation. (Pub. Ex. 20) The Department should consider the suggestion. The Examiner would hazard a guess that there are state statutes or federal law that require governmental agencies to report discovered evidence of criminal activities to the appropriate authority. If there are not any such laws, then the Examiner would question whether such transfer of information is, indeed, in the public interest, and the legislative intent.

39. Section 1.206 B. requires the responsible authority to establish procedures to assure that access is gained only by appropriate parties and measures by which data subjects shall be informed upon request if they are the subjects of confidential data. The rule goes on to require that the responsible authority take reasonable measures to assure that the person making such an inquiry is actually the data subject. One comment suggested that the clause ". . . or the authorized representative of the data subject," should be added to that provision (Pub. Ex. 5). That appears to be an appropriate modification and should be adopted.

so modified p. 21

40. At the hearing, counsel for the University of Minnesota noted that the rule did not address a situation addressed in the federal regulations, that is, whether a data subject may be granted access to private data that is contained in an otherwise confidential record. Mr. Gemberling stated that he had not considered such a provision but would think about it.

2 MCAR § 1.207 - ACCESS TO ARREST INFORMATION

41. In the Act, "Arrest information that is reasonably contemporaneous with an arrest or incarceration" is excluded from the definitions of private and confidential data. Therefore, for the duration of time that arrest information is "reasonably contemporaneous", it is, by elimination, public. Section 1.207 A. attempts to make it clear that such data is public for that duration of time by requiring the responsible authority to

"make such information available to anyone who requests it in writing, by personal appearance, by telephone inquiry, or any other means." The Minneapolis City Attorney objected to the telephone inquiry provision:

> This is a bad practice. It not only subjects the person who has been arrested to "crank" calls and announces to the world that he has been taken into custody, but it places a great burden on the police and our office. As to the latter, the bureaucratic difficulties inherent in having someone available who is sufficiently knowledgeable to give arrest information accurately is phenomenal, given that our office handles upwards of 60,000 cases per year. As well, this procedure would, no doubt, affect the police and sheriff's departments in much the same fashion. Finally, the possibilities of miscommunication over the telephone are immense and might well lead to legal action. Perhaps, it would be better to eliminate the telephone inquiry completely. (Pub. Ex. 16)

Being that such arrest information is public, it must be accessible to the public in accordance with the provisions of Minn. Stat. § 15.17, subd. 4. The Department's authority is limited to referring to that statute. See Finding No. 26. See FoF F 22 + p. 21

42. Section 1.207 B. defines "duration of time" which, in effect, defines the term "reasonably contemporaneous" found in the Act. This subsection states that the duration of time "commences with the creation or recording of arrest information subsequent to the actual detention or citation of the arrested party" and ends when the arrested person is either released without a criminal complaint being filed or appears before a judicial officer for the offense for which he or she was arrested. The editors of the Minneapolis papers objected strongly, even to the basic approach of this rule.

> We disagree strongly, however, with the interpretation set forth in the Proposed Rules as now written. This is a complex area, and we could get bogged down in detailed discussions of legislative intent and dictionaries and things. But the bottom line is the fact that the Proposed Rules impose a criterion based on the timeliness of a request for arrest data, despite the fact that nothing in the words of the law authorize such a test.
>
> The key phrase in the law is "reasonably contemporaneous." It indisputably modifies the words "arrest information." The plain meaning of the words is that it is the information itself that must be reasonbly contemporaneous with the arrest or incarceration. In other words, the words say that arrest information is the name, age, address, charge, time of arrest, and place of incarceration that are contemporaneous with the arrest. Old aliases, previous addresses, other charges, other jail terms are not covered by this provision.
>
> Given the fact that the words are clear and have a logical meaning that does not contradict other provisions of law, arguments about legislative intent become irrelevant. The Department of Administration is not authorized to rewrite the words of the law to give them a new meaning. That the Proposed Rules are an unreasonable interpretation of the words of the law is attested to by an Attorney General's opinion* that the law does not refer to the timeliness of requests for information, and by the obvious meaning of the words in the law. Of all the provisions of the Proposed Rules, we object most strongly to this misuse of rule-making authority. The rules should be revised to make clear that arrest information about any particular arrest remains public indefinitely, under provisions of this statute.
>
> *Dated Aug. 2, 1976, in response to a question from the Bloomington City Attorney. (Footnote in original) (Pub. Ex. 3)

Despite the editors' and the Attorney General's opinion to the contrary, the interpretation given by the rule of "reasonably contemporaneous" seems more correct. It is difficult to imagine any purpose whatsoever being served by making a legislative distinction between old addresses and new addresses of persons arrested. In fact, under the editors' interpretation, even the old addresses would remain indefinitely public, and the distinction would not exist at all; this interpretation is internally inconsistent. On the other hand, the Department's interpretation that the Act intended to provide an exception so that the Act itself could not be used to foster secret arrests is very reasonable and is effectuated by the definition given in this subsection.

Comments at the hearing and in writing suggested that the beginning of the "duration of time" was not clear. The Minneapolis City Attorney's office listed the following issues.

> Although the information required to be given as "arrest information" is minimal, certain problems do arise in terms of the Rules' definition of "duration of time". Most of these problems will probably arise where people are arrested on several different charges at the same time. It is not unusual for a person to be held on a new offense and have several old warrants outstanding on which he is also in custody. As well, there may be "holds" from several jurisdictions at the time of detention. Given that a person can be held for up to thirty six hours without being charged, several problems could be created. First, the police may not know what the person is "charged" with, since he may not have been charged with anything at that point. Second, the police may not know what information to give out as arrest information if the person is held on both new charges and old warrants. In this regard, the wording of 1.207 B is somewhat suspect, since it states that "duration of time" commences with the "creation or recording" of the information. In this sense, old warrants and new charges might be both created and/or recorded. This could lead to problems of releasing too much information, especially if the warrants are old warrants. Third, the police are the only entity on duty twenty-four hours a day seven days a week. Should an individual be detained on the weekend there would be no interaction with the charging authority who would know what charges are to be filed, if any. Fourth, assuming a person is detained and then released without being charged, it seems to run against that person's right to privacy to release arrest information to all and sundry who desire it. Fifth, to allow arrest information to be released while a person is in custody without having been charged might well lead to a situation where potential witnesses might be harassed, (sic) since the mere arrest of an individual on a given charge might sufficiently alert others involved and prompt them to action. (Pub. Ex. 16)

The Department did not address these concerns specifically at the hearing and may wish to do so. The Examiner would note that if no data is created, the Data Privacy Act does not come into operation. Other laws and rules control the detention of persons without being charged and similar matters.

43. Section 1.207 C. allows the responsible authority to release information other than arrest information in its own discretion and provides some guidelines to be considered by the responsible authorities. The authority for this section is actually based on the discretion granted to responsible authorities in classifying and handling "investigative data". The purpose of the rule is to give some flexibility and provide some guid-

ance to responsible authorities in making public certain data they are not required to make public. Media representatives objected to this provision as giving responsible authorities discretion to decide whether to release data that may, in fact, be public data. As pointed out, the rule, in fact, does just the opposite, and for that reason, is necessary and reasonable. The Department did state in posthearing comments that it would consider modifying or deleting this section entirely.

See FOF 23 and p. 22

44. Section 1.207 D. prohibits responsible authorities from making public any data concerning the detention of juveniles except to the juveniles' parents. It was noted at the hearing and by the Ramsey County Commissioners in Public Exhibit 18 that current law allows arresting authorities to release the age and sex of juveniles. This point should be clarified in the rule, especially since the Department has stated that it did not intend to change the discretion afforded to juvenile judges by Minn. Stat. § 260.161 (Dept. Ex. N).

see added language p. 23

2 MCAR § 1.208 - ACCESS TO INVESTIGATIVE DATA

45. Under Minn. Stat. § 15.162, subd. 2a(b), confidential data on individuals includes data which is:

> Collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of proof as to whether such investigation is active or in anticipation of a legal action is upon the agency.

Thus, responsible authorities have some discretion in designating certain data as investigative data. Section 1.208 A. clarifies the statute by stating that investigative data is confidential data and that responsible authorities must comply with section 1.206 concerning access to confidential data.

now designated .208 A.

46. Section 1.208 B. interprets the elements listed by the statute. The Statement of Need and Reasonableness gives the following general introduction to this subsection of the rules.

> To provide guidance to the responsible authority in determining what investigatory data consists of, this section of the rule sets forth three criteria that must be met before any data can be determined to be investigatory data. The confidential classification, as applied to investigatory data, presents a potentially serious problem. As confidential data, investigatory data can be withheld from both data subjects and the general public. This condition prevents the operation of checks on agency abuse represented by either the subject's demand for correction or the possibility of public exposure through public access. Therefore, it is necessary that this exercise in discretion operate within the tightest possible guidelines. The rule presents those guidelines as criteria that must be met before any data can be designated as investigatory data. The criteria are drawn from the implied definition of investigative data found in 15.162, Subdivision 2a.
>
> The three criteria that must be met are referred to in the rule as: 1) the collecting agency criteria; 2) the purpose of collection criteria; and 3) the active data criteria. Requiring the responsible authority to determine that the data in question can meet all of the criteria is the method adopted by the rule to assure that this exercise in administrative discretion operates within the requirements of the Act, and with the minimum possible abuse of discretion.

47. Section 1.208 B.1. deals with the "collecting agency" criteria. One of the types of agencies specifically listed by the rule is "any agency given statutory authority to revoke or suspend licensure." Several state agencies who make investigations and take actions different from license discipline suggested that this item should be broadened or another item added to cover their particular situations. There are, for example, other forms of authority granted by state agencies in addition to licensure. These include granting of charters, certificates of authority, permits and registration. Several agencies also have authority to prohibit certain activites by individuals and entities who have not been granted the proper authority through the issuance of cease and desist or similar orders. Other agencies have the authority to assess fines for inappropriate activities. All these actions are invariably the result of some form of investigation by the agency which may, or may not, be required to be conducted with some degree of secrecy in order to be effective. This section of the rule should be clarified to include all agencies who may take any of these similar actions. clarified p.24

48. Section 1.208 B.2. clarifies the meaning of "legal action" by listing several examples. The editors of the Minneapolis papers objected strenuously to broadening the definition of "legal action" beyond the standard definition of "any proceeding in any court of this state," found in Minn. Stat. § 645.45 (Pub. Ex. 23). The Examiner agrees with the Department and with the Department's counsel (Dept. ex. M) that the context in which the word is used indicates that a broader definition was intended and that the proposed rule is necessary and reasonable to clarify that intent.

Again several agencies requested further clarification as to the application of this subsection to certain types of investigations, including presentence investigations and diversion programs, cease and desist orders, fines and discipline against charters, certificates of authority, and registration. The Examiner would again recommend that these matters be more clearly included in the rule. clarified p.25

49. Section 1.208 B.3. deals with the "active data" criteria. This particular rule is one of the best examples of the reasonable results obtained by the Department in attempting to balance extremely divergent views of the statute. The editors of the Minneapolis papers point out that some government officials have attempted to try to apply the words of the statute to any fact-gathering process that might sometimes lead to an investigation. They cite the example of police departments keeping records of complaints telephoned in by the public and attempting to classify such records as investigative under the Act. They call this an abuse (Pub. Ex. 23). Another view of that type of data was expressed by Paul J. Tschida, Superintendent of the Bureau of Criminal Apprehension:

> The appropriate investigative agency has the responsibility to accept information regarding possible criminal activity and to resolve such allegations as time and resources allow. Such information clearly should not be made public until an arrest is made and the relevant information is revealed as part of a court process.

"If a case goes to trial, the prosecutor, and ultimately the court, make determinations as to relevancy and whether the individual's right to privacy must succumb to the state's and the defendant's interests in resolution of the criminal charge. If the matter is otherwise resolved, I can see no overriding public interest in surfacing information which is so often damaging to character and reputation. (Pub. Ex. 10)

The Minneapolis City Attorney suggests that criminal actions may remain active after all perpetrators have been apprehended, the statute of limitations, and all rights of appeal have been exhausted. The City Attorney then suggests that the rule should allow more discretion to the agency to determine on a case-by-case basis whether or not the invesigation is in "active" status or not.

The Examiner finds that the criteria given in the rule are not unreasonable for the reasons given in the Statement of Need and Reasonableness.

50. The Hennepin County Attorney's office pointed out a typographical error in section 1.208 B.1.a.; the reference in that section should be to 2 MCAR § 1.202 B.1. corrected p.24

2 MCAR § 1.209 - ACCESS TO SUMMARY DATA

51. Section 1.209 D.1. requires the responsible authority to respond to a written request for preparation of summary data within ten days of such request by either (a) providing the summary data requested, (b) providing a statement to the requestor describing a time schedule for preparing the requested summary data, or (c) providing access to the requestor to the private or confidential data for the purpose of the requestor's preparation of the summary data. The third option raised the most concerns in this particular rule. The Hennepin County Attorney's office suggested that it should be made absolutely clear that the choice of the three options was up to the responsible authority. The Ramsey County Commissioners, the Ramsey County Welfare Department, and the Minnesota Association of Community Mental Health Programs, Inc., were all concerned that the protections provided by the rule were inadequate to prevent access to private and confidential data by inappropriate persons (Pub. Exs. 18, 25 and 39). This same concern was raised at the hearing. see FofF 25

This rule is an attempt to implement the provisions of Minn. Stat. § 15.1641(d) which provides in part:

The responsible authority may delegate the power to prepare summary data to the administrative officer responsible for any central respository of summary data, or to a person outside of its agency if the person agrees in writing not to disclose private or confidential data on individuals.

Mr. Gemberling stated at the hearing that the statute is permissive, that is, it states that the responsible authority may delegate the power to prepare summary data to a person outside of the agency and that the purpose of the provision is to prevent the Data Privacy Act from thwarting the efforts of researchers into government processes. It was requested at the hearing that the rule be clarified to indicate that the responsible authority may restrict outside persons to qualified researchers or a similar person for "research type" purposes. The Examiner would recommend that language similar to that suggested be added to the rule so that responsible

authorities are absolutely clear that they may reject the request of any person for access to confidential or private data for the supposed purpose of preparation of summary data. It is possible under the present language for a person interested in confidential data on a particular individual to gain access to that data by requesting preparation of summary data; there should be some attempt by responsible authorities to assure that the outside person is really only seeking summary data. A non-disclosure agreement is little security.

52. Section 1.209 B.5. describes various methods of preparing summary data. Included within the rule under § 1.209 B.5.c.(3) is removing all unique personal identifiers by "programming computers in such a way that printed or terminal output does not contain personal identifiers." The manager of the Information Service Division of the Department of Administration points out that there are several forms of output media from computers not embraced by the underlined term. He suggests, and the Examiner agrees, that the term should be broadened. Perhaps the underlined term could be changed to "output in any form". changed p.30

2 MCAR § 1.210 - CLASSIFICATION OF DATA

53. This proposed rule states that in order to comply with the Act, responsible authorities must classify the data in their control and gives four steps for doing so: (a) review all types of data maintained, active and inactive; (b) determine the private, confidential or public classification of each type of data; (c) identify a state statute or federal law supporting the determination of private of confidential; and (d) administer the data in accordance with the determinations made. The Dakota County Attorney offered the following comment: see p.30 + Fof F27

> It is our contention that this rule both exceeds statutory authority and is unnecessary. While Minn. Stat. § 15.163 speaks of preparing a public document describing each category of record, file, or process, a close reading of the statute shows that such a requirement exists only for private and confidential data and not for public data, as would be required under § 1.210. We are well aware of the fact that Minn. Stat. § 15.1641(e) requires the Responsible Authority to establish procedures and safeguards to ensure that all public, private or confidential data on individuals is accurate, complete and current. However, we do not believe the mandate of this statute gives the Department of Administration the rule making authority to establish such procedures and safeguards for the Responsible Authority, as 2 MCAR § 1.210 attempts to do. Minn. Stat. § 15.1641(e) specifically places this burden upon the Responsible Authority and not upon the Department of Administration. It should be noted that Minn. Stat. § 15.1671 which gives the Commissioner of Administration the power to implement the enforcement and administration of the Data Privacy Act, does not give the Commissioner authority to supersede any provision of such Act. We believe 2 MCAR § 1.210 is an attempt to supersede the discretion granted in the statute to the Responsible Authority. Additionally, the implementation of the provisions of Minn. Stat. § 15.163 is satisfactorily taken care of in 2 MCAR § 1.214. Hence, we see no need whatsoever for 2 MCAR § 1.210 and respectfully request you to delete this section in its entirety in your report. Deleting this section would eliminate a great deal of the implementation cost of complying with these rules in addition to making these rules consistent with the Data Privacy Act. (Pub. Ex. 31)

The Department has the authority to adopt this rule, for it is a method of implementation of the Data Privacy Act. The Statement of Need and Reasonableness offered the following justification for this rule:

> Sections A through D of this rule set forth the reasonable steps that should be taken to comply with the classification requirement. The steps to be taken are a logical progression beginning with identification of all the data being maintained by the agency. If these steps are not followed, the appropriate actions taken by the responsible authority, it will be impossible for the agency to comply with the detailed requirements of the Act.

This rule amounts to the Department's suggestion as to the best way for responsible authorities to comply with the requirements of the Act. Normally, such suggestions should not be elevated to rule status - they become too inflexible. However, given the many requests for guidance made by responsible authorities, even on the smallest details, this rule is necessary and reasonable.

54. Several persons at the hearing and in written comments objected to the requirements to review inactive data and to determine "public" classifications as being unnecessary and very expensive (Pub. Exs. 12, 18 and 28). It was suggested that there would be little objection if the rule merely required reviewing active data and determining classifications for only private or confidential data.

The Ramsey County Commissioners had the following comment in regard to inactive data:

> This provision is extremely expensive in terms of staff hours. The provisions in 1.210 A requiring a review of active and inactive data puts upon local governmental units and departments the apparent duty of going into archives closed record systems, and any record storage area to classify whatever information is there. This is a near impossible task and we recommend that the words "and inactive" be deleted from 1.210 A. We base this opinion on the fact that on the rare occasions when access is needed, data specifically requested could be reviewed and classified according to the "active" file procedures outlined by this law. To do otherwise might well require thousands of staff-hours to review literally hundreds of thousands of documents which are almost never asked for. Such a requirement is incredibly wasteful in terms of staff time and effort. It's cost is outrageous, whether it be born (sic) by local or state taxpayers. Again we note this burden is placed upon local governmental units with no state provision for reimbursement. (Pub. Ex. 18)

The task is not really so burdensome because the entities only have to look at record "types", and there is some time limit on what records could be expected to contain unique identifiers of living persons. Whether all inactive data must be reviewed depends upon whether such data must be listed on the § 15.163, subd. 1, list (See Finding 57). Since that statute requires a list of all private and confidential data maintained by the entities, the entire problem hinges on whether inactive data is being "maintained". The Department's apparent position that even inactive data is being "maintained" and must therefore be reviewed and listed is a reasonable reading of the statute. Any change here should be requested from the Legislature.

As the Dakota County Attorney pointed out above, the real need is to identify private and confidential data in order to comply with the reporting and handling requirements of the Data Privacy Act. It was, however,

classifying data as "public" that seemed to cause the most problems for the political subdivisions. This again stemmed from the so-called "gap theory" which makes responsible authorities unsure of whether something is really public or not. If the so-called gap is deleted as suggested in Finding No. 18, then this objection to this rule would also be eliminated. However, it may still be reasonable to simply delete the requirement here to classify anything other than private and confidential data, and the Examiner would so recommend.

55. Counsel for the League of Minnesota Cities pointed out at the hearing that municipalities had not budgeted for the expenses of complying with these rules during the current year, and so requested that a 12 to 18-month delay be built into all the requirements these rules will be imposing upon responsible authorities. The Department indicated at the hearing that it would consider putting a delay on this particular rule. no delay.

2 MCAR §§ 1.211, 1.212 and 1.213 - AUTHORITY, APPOINTMENT AND APPOINTMENT POWER OF THE RESPONSIBLE AUTHORITY.

56. There were few comments on these sections. Counsel for the League of Minnesota Cities called all three good and necessary clarifications of the duties of responsible authorities. These three sections are reasonable and necessary for the reasons given in the Statement of Need and Reasonableness.

2 MCAR § 1.214 - DUTIES OF THE RESPONSIBLE AUTHORITY RELATING TO PUBLIC ACCOUNTABILITY

57. Minn. Stat. § 15.163, subd. 1, states:

> On or before August 1, 1976, the responsible authority shall prepare a public document containing his name, title and address, and a description of each category of record, file, or process relating to the private or confidential data on individuals maintained by his state agency, statewide system, or political subdivision. Forms used to collect private and confidential data shall be included in the public document. Beginning August 1, 1977 and annually thereafter, the responsible authority shall update the public document and make any changes necessary to keep it accurate.

The proposed rule implements that section of the statute by first requiring that until the list required by the statute has been prepared or updated, the responsible authority must post a notice identifying himself or his designees as the persons responsible for answering inquiries concerning provisions of the Act, and secondly, by describing what the list required by the Act must contain.

In describing the contents of the list, the Department departed from the statutory language, ". . . a description of each category of record, file or process", and provided the following in § 1.214 B.:

> In the public document to be prepared or updated by August 1 of each year as required by section 15.163 of the Act, the Responsible Authority shall identify and describe all records, files, or processes maintained by his entity, which contain private or confidential data.

The Department stated at the hearing that it did not use the word "category" because it did not find it particularly helpful in describing what had to be listed. However, as pointed out at the hearing, and in several

comments (Pub. Exs. 12, 18, 25 and 33), the language of the proposed rule can be read to require that the responsible authority review and identify on the list every individual file or record which he maintains. The example given at the hearing was that the responsible authority would not merely have to identify personnel records as containing private data, but would have to identify each and every employee's personnel record on the list. Mr. Gemberling stated that that was not his intent and pointed to the sample form printed at 3 State Register 365 to show that the rule actually intended to address types or categories, as the word is used in the statute, of files and records rather than each individual entry within that file or record. Being that the rule is possibly confusing to a number of persons, it should be clarified by some means to indicate that not every individual data entry has to be identified and listed. In § 1.215 C.1., the language used is, ". . . for each type of record, file or process. . .". That would also be appropriate here. Or perhaps the Act's use of the word "category" is the best that can be hoped for.

58. Several persons thought this rule would be a high expense item for the political subdivisions. However, those comments seemed to be based primarily on the confusion just discussed and the expense that would be encountered if every individual data entry had to be reviewed and listed. Properly interpreted and having the rule clarified will eliminate most of the anticipated cost of this particular rule. It should further be noted that the rule does not add anything to the requirements that already exist in the statutes except for the minimal requirements of requiring citation of authority to withhold data and identification of designees of the responsible authority.

2 MCAR § 1.215 - DUTIES OF THE RESPONSIBLE AUTHORITY RELATING TO THE ADMINISTRATION OF PRIVATE AND CONFIDENTIAL DATA

59. Minn. Stat., § 15.1641(c) states:

> Private or cofidential data on individuals shall not be used, collected, stored or disseminated for any purposes other than those stated to an individual at the time of collection in accordance with section 15.165 or, in the case of data collected prior to August 1, 1975, for any purpose other than those originally authorized by law, unless (1) the responsible authority files a statement with the commissioner describing the purpose and necessity of the purpose with regard to the health, safety or welfare of the public and the purpose is approved by the commissioner, or (2) the purpose is subsequently authorized by the state or federal legislature, or (3) the purpose is one to which the individual subject or subjects of the data have given their informed consent.

This section of the rules defines and clarifies the procedures responsible authorities must follow in order to comply with the statute and also with the duties imposed upon responsible authorities by Minn. Stat. §§ 15.1641(b) and 15.165. The logical first step in this process is for each responsible authority to determine the purposes for the collection of private or confidential data and the legitimate uses of such data. However, as can be seen from the statute, that may depend upon whether the data was collected prior to or after August 1, 1975. Therefore, the first requirement of § 1.215 is:

In order to administer the requirements of § 15.1641(c) of the Act, the Responsible Authority shall determine for each record, file, or process identified in 2 MCAR § 1.214 whether the data contained therein was collected prior to or subsequent to August 1, 1975.

It first should be noted that the items identified under § 1.214 are types or categories of records, files and processes, and so the language here should be changed to state, ". . . for each type of record, file, or process identified. . . " It might further be noted that technically, the rule never tells what happens to data collected on August 1, 1975. References to data collected "subsequent to August 1, 1975," should state, "on or subsequent to August 1, 1975." changed p.35

60. Section 1.215 A. relates to records, files and processes containing data collected prior to August 1, 1975 and requires the responsible authority to review the legal authorities which required that private or confidential data to be collected, determine the lawful purposes for collection of the data at the time it was collected, and direct the staff of the entity that such data may be used or or disseminated only for those lawful purposes. Similarly, for data collected since August 1, 1975, § 1.215 B. requires the responsible authority to review the legal authority which requires the collection of the data and identify the purposes for the collection of and the intended uses of such data that have been or should have been communicated to the data subjects when the data was collected.

Several agencies objected to the expense that the requirement for reviewing pre-1975 data would generate (Pub. Exs. 12, 26, 28 and 33). They all recommend that such data could be reviewed for legal authority purpose and intended use whenever it was requested or needed to be used. The basic reason is that many agencies have many, many files and records which are stored away in some basement and never used.

It is difficult for the Examiner to understand how the duties imposed regarding pre-1975 data could add much cost for the political subdivisions. There may be some confusion as to whether the rule requires review of each individual piece of data, but the rule only requires a review for each type of record, file or process identified in 2 MCAR § 1.214. If those items have already been identified for § 1.214, then the responsible authority already knows what each of those items is and the legal authority for its classification as private or confidential.

The Minnesota School Boards Association pointed out (Pub. Ex. 14), there may be some types of records that contain data collected both prior to and subsequent to 1975. No particular burden is created there because it would generally be the same legal authority that stated the purpose for collection and legal uses of that data, regardless of when it was collected.

61. Section 1.215 C. requires the responsible authority to use the purposes and uses identified in either of the two prior subsections to (1) prepare lists which identify the uses and purposes for each type of record, file or process identified under § 1.214, and (2) to make the purposes and uses known by any of a number of methods to persons from whom data, private or confidential, is collected. The Minnesota School Boards Association questioned whether the responsible authority becomes civilly liable if, for

instance, a person or entity authorized by federal law to receive any data disseminated from the record is not listed (Pub. Ex. 14). The Department replied that the liability may very well be present but would arise from the entity's violation of Minn. Stat. §§ 15.165, subd. 2, or 15.1641(b) and (c) (Dept. Ex. O). This rule provides a method by which responsible authorities can be more certain of complying with the requirements of the Act and is reasonable as proposed.

2 MCAR s 1.216 - DUTIES OF THE RESPONSIBLE AUTHORITY AS THEY RELATE TO THE ADMINISTRATION OF ALL ENTITY DATA.

62. Most of this section of the rules deals with the steps responsible authorities must take in order to be able to comply with Minn. Stat. s 15.164 (b) which limits collection and storage of all types of data on individuals and use and dissemination of private and confidential data on individuals to that "necessary for the administration and management of programs specifically authorized by the Legislature, local governing body or mandated by the federal government." The method adopted by the rules is to require responsible authorities to formulate a plan for review and analysis of their data administration practices within 18 months of the effective date of these rules.

63. Section 1.216 A. requires that the plan at least provide for the preparation of a list of, or index to, all data or types of data currently collected, stored, used or disseminated by the entity. The list or index must include identification of the laws that authorize the programs or functions for which the data is collected or which authorize the actual data collection, storage, use or dissemination; must be updated when new or different collection, storage, use or dissemination is authorized; and must be available to members of the general public upon request.

Mr. Gemberling stated at the hearing that this section could well be the most expensive to political subdivisions of any of the requirements of the proposed rules, and that concern was expressed by a number of persons (Pub. Exs. 18, 27 and 33). Counsel for the League of Minnesota Cities again requested that this rule be made clear to the effect that the list or index was not to all data elements but to the categories or types of data maintained by the agency. This should be clarified. clarified p. 40

64. At the hearing, counsel for the League of Minnesota Cities opposed requiring "stored" data to be indexed because it would be a very expensive and difficult task. As Mr. Gemberling pointed out at the hearing however, the statute refers to the storage of data, and so such data must be reviewed in order to comply with the requirements of Minn. Stat. § 15.1641(b). (See Finding No. 54)

65. Section 1.216 D. implements the requirements of Minn. Stat. § 15.1641(e) that requires responsible authorities to establish procedures and safeguards to ensure that all public, private or confidential data on individuals is accurate, complete and current. It does so by defining the terms "accurate", "complete" and "current". The Department of Economic Security suggested that more clarification was needed as to the administrative process that is necessary to review and correct inaccurate or in-

complete records. It was pointed out in the Statement of Need and Reasonableness that the previous versions of this rule, though perhaps not this particular section, were much more detailed in the specific steps required to be in the responsible authorities' plan. That specificity was criticized because it could be enormously expensive for some particular responsible authorities and because it was not flexible enough for all the various types of governmental entities who may be responsible authorities. In a similar vein, it is not unreasonable for the Department not to specify every specific step for this particular section of the plan.

2 MCAR § 1.217 - DUTIES OF THE RESPONSIBLE AUTHORITY AS THEY RELATE TO COMPUTERIZED DATA

66. Minn. Stat. § 15.1641(e) states in part:

> Emphasis shall be placed on the data security requirements of computerized files containing private or confidential data on individuals which are accessible directly via telecommunications technology, including security during transmission.

see FoF 30 + p. 43, 44 section deleted.

This section of the rules implements that statute by requiring an audit of the security measures within 180 days of the effective date of these rules and on an annual basis and then provides some examples of appropriate security measures. Again, some concern was expressed as to the cost of implementing this rule. In particular, the Department of Economic Security stated that the requirement for an audit within 180 days may cause extra expense where there has been an audit within the last year (Pub. Ex. 17). It would seem reasonable that if an audit within the previous year adequately assessed the concerns expressed in the rule, it should not have to be performed again, except on the annual basis. The Examiner would recommend that language to that effect be added to the rule.

67. The manager of the Information Systems Division of the Department of Administration pointed out that the rule refers to the integrity of "directly accessible files". He stated:

> I feel this term may communicate that not all of the data stored in ISD, or in any of the other data processing centers serving state agencies, is at risk. This is not so. Advances in data processing technology have put capabilities in the hands of people outside of data processing centers that allow access to all of the data maintained at the center.

The statute says that emphasis should be placed on files that are accessible directly, but it does not state that files otherwise accessible should be ignored . However, the definition of "directly accessible files" in § 1.217 A. means all files to which access can be made or updating performed through use of any type of communications terminal. That again may be too narrow as access may be achieved through other than communications terminal, such as simply by walking into the data center and picking up a magnetic tape and leaving. The Examiner would recommend that § 1.217 A., the definition of "directly accessible files" be deleted and that § 1.217 B. be modified to read:

> Within 180 days of the effective date of these rules, the Responsible Authority shall perform an audit of the physical and softwear security measures that the entity has installed to protect the integrity of <u>computerized files containing private or confidential data on individuals</u>.

renumbered .217

2 MCAR § 1.218 - ADMINISTRATIVE APPEAL

68. This rule clarifies the provisions of Minn. Stat. § 15.165, subd. 4, by stating that the administrative appeal provided for by the Act shall be to the Commissioner of Administration. Section 1.218 C. provides:

> The Department of Administration shall be reimbursed for all costs associated with Contested Case Proceedings by the entity whose Responsible Authority has been the impetus for the individual's appeal to the Commissioner of Administration.

Almost all the political subdivisions thought this was unfair and unreasonable (Pub. Exs. 14, 16, 18, 26, 29, 30 and 32). The Department's reason for this procedure is that it does not have the funds to pay the cost of contested case proceedings, itself. Unless the costs are billed to the agencies, the appeal mandated by the statute cannot be provided. The main objection to this provision is that the political subdivisions would have to bear the costs of frivolous and unwarranted appeals. In response to that, the Department pointed out that it believed that the Commissioner must make a determination as to whether it was appropriate to convene a contested case proceeding and that they seriously doubted that he would do so in the instance of a frivolous or unwarranted appeal. The Department suggested that it was open to the possibility of adding words to that effect in the proposed rule (Dept. Ex. O). It is not absolutely necessary to so provide in this rule because the rules of the Office of Hearing Examiners in 9 MCAR § 2.203 C.4. grant hearing examiners the authority to hear and rule on motions. Such motions have often included motions to dismiss a contested case for any number of reasons. If the Department does desire to include such a provision within the rule, the Examiner would suggest the following language which was adapted from the procedural rules of the Department of Human Rights:

> The Examiner, at any stage of the proceedings, after all parties have had an opportunity to present their views, may recommend dismissal of any sham, capricious, or frivolous case, or any case not within the jurisdiction of the Department.

inserted p. 45

Such a provision would not eliminate all hearing costs, but it would provide a method to avoid unnecessary costs.

2 MCAR §§ 1.219 - GENERAL POWERS OF THE COMMISSIONER OF ADMINISTRATION; 1.220 - DUTIES OF THE COMMISSIONER OF ADMINISTRATION RELATING TO EMERGENCY CLASSIFICATION OF DATA; and 1.221 - SEVERABLE PROVISIONS

69. These sections are necessary and reasonable for the reasons given in the Statement of Need and Reasonableness.

COSTS OF IMPLEMENTATION

70. Many comments were made concerning the cost to implement the proposed rules (Pub. Exs. 9, 12, 14, 15, 16, 18, 19, 27, 31, 32, 36 and 37). As has been noted in the previous findings, many of the costs estimates were based upon misinterpretations of the rules or can be resolved by the clarifications and modifications to the rules suggested in the previous Findings. Even if the Department adopts all the recommendations made by the Examiner, or makes other cost-savings changes of its own, the costs of implementing the Data Privacy Act will still be significant. As pointed

out by counsel for the League of Minnesota Cities at the hearing, these rules will help focus and better define what the costs will actually be and should aid those responsible for public funding to make the appropriate decisions.

## CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and published by the Department. All other procedural requirements of statute and rule have been fulfilled.

2. Except as noted in the Findings, the Department has demonstrated its statutory authority to adopt the proposed rules.

3. Except as noted in the Findings, the proposed rules fulfill substantive requirements of statute and rule.

4. Except as noted in the Findings, the Department has demonstrated that the proposed rules are necessary and reasonable.

5. The recommendations made by the Examiner in the Findings are not intended to in any way preclude the Department from making its own non-substantial changes or improvements to the rules.

## RECOMMENDATION

The Hearing Examiner recommends that the proposed rules be modified as suggested in the Findings, and that so modified, they be adopted.

Dated this 5th day of February, 1979.

STEVE M. MIHALCHICK
Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA DEPARTMENT

OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF ADMINISTRATION GOVERNING ENFORCEMENT AND ADMINISTRATION OF THE "MINNESOTA GOVERNMENT DATA PRACTICES ACT." (2 MCAR §§ 1.201-1.220)

No. ADM 79-001-SM

FINDINGS OF FACT AND CONCLUSIONS

The above entitled matter came on for hearing before Steve M. Mihalchick, Hearing Examiner, assigned by the Chief Hearing Examiner on October 31, 1978, at 9:00 a.m. in Room 83 of the State Office Building in St. Paul, Minnesota. Proper notice was served upon all persons, associations, and other interested groups registered with the Secretary of State and upon all those agencies subject to the "Minnesota Government Data Practices Act" (hereinafter "Act") as required by Minnesota Stat. § 15.1671. All interested persons and governmental agencies were afforded the opportunity to be heard concerning the adoption of the proposed rules captioned above by the submission of either oral or written data, statements or arguments.

After affording all interested persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced and upon the records and proceedings herein, the Department of Administration (hereinafter "Department") hereby accepts and adopts the Findings of Fact and Conclusions of the Hearing Examiner, dated February 5, 1979, and incorporates them herein by reference with the following amendments and exceptions thereto:

1. In 1979, the Legislature made a significant number of amendments to the Act. (See Minnesota Session Laws, 1979, Chapter 328.) Section 24 of Chapter 328 repealed Minnesota Statutes Section 15.1641 which detailed the duties and responsibilities of Responsible Authorities. Many of the provisions of the Department's proposed rules were based on this section. However, in Chapter 328, Section 8, the Legislature restored much of the operative language of what had been Section 15.1641. Section 8 is now coded as Minnesota Statutes Section 15.163. A comparison of repealed Section 15.1641 with the current Section 15.163 reveals that the statutory change has little impact on the language of the rules which are proposed to be adopted. However, the statutory change has necessitated changing statutory references throughout the rules from a reference to Section 15.1641 to a reference to Section 15.163. In light of the amendments to the Act, this change is clearly reasonable and necessary.

This statutory change also affects statutory references in the Hearing Examiner's Findings of Fact and Conclusions. Each time the Hearing Examiner's report makes a reference to Minnesota Statutes Section 15.1641, that reference should be read as changed to the appropriate portion of Minnesota Statutes Section 15.163. To properly read those changes, the following is offered as a guide:

A. Section 15.1641 (a) has been repealed.

B. Section 15.1641 (b) is now Section 15.163, subd. 3.

C. Section 15.1641 (c) is now a part of Section 15.163, subd. 4.

D. Section 15.1641 (d) is now Section 15.163, subd. 7.

E. Section 15.1641 (d) has been repealed in part and in part appears in Section 15.163, Subd. 5.

2. Prior to the enactment of Chapter 328, the Act was unofficially referred to as the "Data Privacy Act." This appellation was included in the proposed rule definition at 2 MCAR § 1.202 A. However, in Chapter 328, Section 1, subdivision 2, the Legislature has officially entitled the Act as the "Minnesota Government Data Practices Act." On account of that change, the appellation in the proposed rules has been changed to reflect the official title of the Act. Given the legislative change, this name change is clearly reasonable and necessary.

3. In Chapter 328, the Legislature extended the coverage of the Act to all data maintained by governmental agencies. (See Chapter 328, Minnesota Session Laws 1978, section 5.) Prior to that change, the Act had only regulated data on individuals. However, the statutory changes raise the possibility that the Department's rules may be interpreted to regulate both data on individuals and data not on individuals. Given this potential for confusion, the Department has determined that it is reasonable and necessary to make certain changes to the rules to clarify that they only pertain to data on individuals. These changes have been made at 2 MCAR § 1.201 A. 1. and at 2 MCAR § 1.201 of the rules to be adopted.

4. In the proposed rules, the Department had defined the term "designee". At that time, this term was used in the Act, but was not defined by the Act itself. In Chapter 328,

Section 4a, the Legislature defined the term within the Act itself. On account of this change, the Department has determined it is reasonable and necessary only to refer to the statutory definition in the rule definition of the term "designee". The rule to be adopted has been modified accordingly.

5. The proposed rules, at Section 2 MCAR § 1.202 H. defined the term "entity" to encompass all of the various types of governmental agencies which are subject to the Act. In its post-hearing review of the proposed rules, the Department has determined that the portion of the proposed definition relating to state agencies could be more clearly stated and that such a clarification was both reasonable and necessary. To that effect, the rule to be adopted has been modified by replacing the word "impact" with the word "effect" in the definition to be adopted. The term "effect" is more precise and should serve as a less confusing term than that which was originally proposed.

6. In Finding Number 9 the Hearing Examiner suggested that for purposes of clarity, the Department should consider expanding Section 1.201 A. of the proposed rules to state that all persons under contract with an entity are subject to the Act and the rules. The Department considered this change and determined that a 1979 amendment to the Act had accomplished this clarification. (See Minnesota Session Law 1979, Section 8, subdivision 6.) Therefore, the change recommended by the Examiner is not a necessary change.

7. Finding Number 10 recommended that the Department

clarify the issue of whether non-proprietary nursing homes, which contract with the state to provide nursing care services, are subject to the Act. The Department finds that on account of a 1979 amendment to the Act, this issue has been clarified by the Legislature and no further clarification is needed. (See Chapter 328, Minnesota Session Laws 1979, Section 15, subdivision 1.) Essentially this clarification provision of the Act allows welfare agencies to make the determination as to whether proprietary nursing homes will be subject to the Act. Welfare agencies can do so by specifying in provider agreements. Whether such language should be added to provider agreements is left to the discretion of welfare agencies.

8. Finding Number 11 further discussed the issue of the effect of subpoenas which seek or request data classified as not available to the public from entities. The Examiner recommended this issue be resolved. The Department finds that numerous questions concerning the effect of subpoenas have arisen, and that a clarification of this issue is both reasonable and necessary. The Department further finds that specific language suggested by the Department of Public Welfare at the hearing, as incorporated is Finding Number 11, will accomplish the necessary clarification. In light of this finding, the Department has amended the proposed rules by adding to 2 MCAR § 1.201 E. 1. a sentence which reads as follows:

p. 2

> In the event of the issuance of a subpoena duces tecum for any private or confidential data or a subpoena requiring any agent of an entity to testify concerning any private or confidential data, the court's attention shall be called, through proper channels, to those statutory provisions, rules, or regulations which restrict the disclosure of such information.

9. Questions were raised concerning the proposed rule's handling of situations where code numbers are used to represent particular individuals in various types of data. The Department finds that the rule provision as proposed at Section 1.202 C. 4. was confusing and the provision has been amended to read as follows:

> 4. Code numbers, which are used to represent particular individuals, constitute "data on individuals" if a list or index of any type is available by which the code number can be cross-referenced to a name or other unique, personal identifier so that any individual's identity is revealed. Code numbers, lists of code numbers or data associated with code numbers may qualify for treatment as summary data pursuant to 2 MCAR § 1.209.

p.4.

10. The Department finds that the definition of confidential data as proposed could lead to confusion. Therefore, the definition has been amended by adding the words "as confidential" after the word "expressly" in 1.202 D.

11. In Finding Number 21, the Examiner concluded that 2 MCAR 1.202 F., the definition of public data on individuals, could not be reasonably understood by those persons required to understand the rule and to perform acts in compliance with it. The confusion presented by the proposed rule was in part a function of the confusion presented by the lack of definition of public record in Minnesota Statutes Section 15.17. Subsequent to the rule making hearing, the Legislature adopted

substantial amendments to the Act which clarified the definition of public data on individuals. (See Chapter 328 Laws of Minnesota 1979, Sections 7 and 23.) The Department finds that on account of those amendments that the complex definition originally proposed is no longer necessary. Therefore, the proposed rule has been amended to read as follows:

F. Public Data shall mean "data on individuals" which is not classified by state statute, including Section 15.1642, or federal law as private or confidential data.

All of the other language of the definition as originally proposed has been deleted.

12. In Finding Number 22, the Examiner concluded that the proposed rule's definition of "statewide system" was both reasonable and necessary. Based on post-hearing comment, the Department has concluded that the specific reference to the Minnesota Education Computing Consortium (MECC) as a statewide system was incorrect. Those comments revealed that MECC is more like a computer service bureau providing data processing services as opposed to an entity capable of making policy decisions regulating the use, collection, and dissemination of data on individuals. Therefore, the reference to the Minnesota Education Computing Consortium has been deleted from the proposed rule at 2 MCAR § 1.202 4. 3. a.

13. In Finding Number 25, the Hearing Examiner concluded that the Department's proposed definition of the term "summary data" was reasonable as proposed. However, based on the comments elicited at the public hearing regarding this

definition and also regarding 2 MCAR § 1.209, which deals with handling summary data, the Department has concluded that the definition as proposed was unnecessarily confusing. Therefore, the Department has amended the definition, as set out in 2 MCAR § Section 1.202 M. S. as follows:

2. Once it is summarized from private or confidential data, summary data remains ~~Data is~~ summary ~~data~~ if the Responsible Authority maintains any list of numbers or other data which could uniquely identify any individual in the summary data ~~is~~ physically separated from the summary data and the Responsible Authority does ~~is~~ not ~~made~~ make such a list or other data available to persons who gain access to, or possession of the summary data.

The Department finds that this amendment to the proposed rule is necessary if those entities affected by the rule and members of the public are expected to understand and perform the requirements of the summary data provisions of the Act.

14. In Finding Number 26, the Hearing Examiner concluded that the Department did not have statutory authority to adopt rules regulating public access to public data. The Examiner found that access to public data arose from the provisions of Minnesota Statutes § 15.17 which was outside the statutory sections for which the Legislature has specified the Commissioner's rule making authority. Although this may have been the state of the law at the time the Department proposed these rules, this is no longer the case. In 1979, the Legislature

P.12

adopted a number of changes to the Act. (See Session Laws of Minnesta 1979, Chapter 328, Sections 7 and 23.) The effect of this change is to move the requirement for public access to public data from Section 15.17, subdivision 4 to Section 15.1621. Pursuant to the provisions of Section 15.1671, the Commissioner of Administration is given the authority to promulgate rules "to implement the enforcement and administration of sections 15.162 to 15.169." (Emphasis added.) With the statutory change, Section 15.1621 which regulates access to public data now falls within the ambit of the Commissioner's rule making authority under the Act. Therefore, the Department finds that 2 MCAR § 1.203 is within the Commissioner's statutory authority to adopt 2 MCAR § 1.203 of the proposed rules. The Department also finds that the section as originally proposed, with amendments made by the Department as discussed below, is both necessary and reasonable. The Department would also add that after having dealt with the question of statutory authority to promulgate this section, the Hearing Examiner went on to conclude in Findings Number 27, 28, and 29 that "with minor exceptions", the section as proposed was both reasonable and necessary.

15. To deal with the "minor exceptions" identified by the Hearing Examiner, the Department has made a number of minor amendments to the rules proposed in Section 1.203. Specifically, in Section 1.203 A., the word "regardless" has been deleted and replaced with the phrase "without regard to p.12 the nature". It was the Department's intent to clearly communicate to those entities affected by the rule the legislative

judgment that the common law rule, which asked record custodians to weigh the quality of the interest a requester demonstrated in the given record being sought, is no longer the law of this state.

16. In Section 1.202. A. 1., the Department has amended the proposed rule by adding the following language:

> The procedures established shall be in compliance with Section 15.1621 of the Act.

p.12

As Section 15.1621 is now the only effective statutory section regulating access to public data on individuals, this reference is intended to point responsible authorities to the appropriate section to assist them in their efforts at compliance. In addition, Section 15.1621 is more detailed than its predecessor Section 15.17, subdivision 4 and is therefore more instructive to entities as to what is required of them. The Department finds that the addition of the sentence quoted above is both a reasonable and necessary addition to the rules to be adopted.

17. In the process of finalizing these rules, the Department has determined that the language of Section 1.203 A. 1. a., as originally proposed was unnecessarily confusing. To better clarify the intent of the rule, and to make its requirements understandable to those required to comply with its provisions, the Department finds that it is reasonable and necessary to amend the proposed language as follows:

> a. In such procedures, the Responsible Authority may limit the time during which ~~that public~~ access to public data is available to the time during which the normal operations ~~office hours~~ of the agency are conducted.

p.12

18. In Finding Number 31, the Examiner suggested that the Department delete the requirement of a notarized signature in those instances where a data subject desires to authorize an agency to disseminate private data about him or her. The Department has deleted this provision as a requirement, but has retained the signature as an example of a reasonable measure for entity self protection.

deleted p. 14

19. In Finding Number 33, the Examiner concluded that the requirement that entities always charge data subjects for copies of private data was reasonable and required by Minnesota Statutes Section 15.165, subdivision 3. Subsequent to that finding, the Legislature amended this provision of the statute by changing the mandatory "shall" language to the permissive "may". (See Chapter 603, Laws of Minnesota 1980, Section 12.) In light of that change, the Department has made the corresponding change to the rules in Section 1.204 E.

changed p. 15

20. In Finding Number 35, the Examiner recommended that the Department attempt to clarify two issues raised at the public hearing. The first issue dealt with the necessity for procedures to assure that minors are able to effectively exercise the right to deny access to private data to their parents as specified in Minnesota Statutes Section 15.162, subdivision 4. The second issue dealt with the general topic of whether persons adjudged mentally incompetent may continue to effectuate their rights under the Act. The Examiner recommended that the Department develop language to deal with both of these issues.

To deal with the first issue, the Department has amended the proposed rules at Section 1.205 C. 1. by adding a section "a." to read as follows:

> a. The Responsible Authority shall provide minors from whom the entity collects private or confidential data with a notification that the minor individual has the right to request that parental access to private data be denied.

p. 16

As to the issues associated with data on individuals who have been adjudged incompetent, the Department has determined that there is no statutory basis from which to proceed to deal with the issue in the rules to be adopted. Therefore, the Department has chosen not to adopt a rule on this issue but to seek clarification from the Legislature.

21. Based on comments made at the public hearing and on its own review of the language proposed in Section 1.205 C., the Department has concluded that one of the factors to be considered by responsible authorities in determining whether access to private data concerning minors should be denied to parents or guardians was stated in a confusing fashion. To correct that problem, the Department has deleted the paragraph found at Section 1.205 C. 2. a.(5). In place of that language, the Department has added the following subsection at 1.205 C. 3.:

> 3. The Responsible Authority shall not deny access by parents to data that is considered an "education record", as that term is defined in Title 45, Code of Federal Regulations, Pat 99, Section 99.3, unless the minor to whom the data pertains is enrolled as a full time student in a post-secondary educational institution or the student has attained age eighteen.

p. 17 - see CHE 4 Attachment G FofF.

The rule as originally proposed did not make it sufficiently

clear that educational institutions must, if they are to comply with federal law, always make education records of minor students available to the student's parents or guardians. The change to the rules to be adopted will clarify that point and provide the clarity necessary to guide agencies in their compliance with both federal and state law.

22. In Finding Number 41, the Examiner found that the proposed rule's attempt to specify the means of access to arrest information in 2 MCAR § 1.207 A. was outside the Department's authority. This was a reasonable finding at the time it was made, because it was based on the conclusion that the Department could not specify means of access to public data; However, legislative change has now given the Department the authority to specify such methods. On account of this change, the Department rejects this particular finding of the Hearing Examiner and further finds that the rule as proposed is reasonable and necessary for the reasons presented in the statement of need. (See Finding Number 14 above.)

23. There was considerable discussion before, during, and after the public hearing concerning the Department's handling of the term "reasonably contemperaneous" which appears in Section 15.162 and relates to the timing of the availability of arrest information. The Examiner found that the Department's handling of this issue was both necessary and reasonable. (See Hearing Examiner Finding Number 43.) However, based on the numerous comments, the Department has determined that the rule could be made more reasonable (and hopefully more palatable to some of those making comments) if the end point for duration of time during which arrest information must be made available,

could be extended. To effect that change, the Department has deleted the language found at Section 1.207 B. 2. and replaced it with the following:

p. 22

> 2. Is released from the supervision of any component of the criminal justice system.

The practical effect of this change will be to lengthen the time during which arrest information must be made available to the public.

24. As previously discussed, the Legislature, in Chapter 328 Session Laws of Minnesota 1979, made a number of amendments to the Act. Among those changes was the enactment of Section 19 which is coded as Section 15.1694 of the Act. It is the understanding of the Department that the Legislature intended in enacting this section to exclude from the Act any regulation of data, collected, used, and maintained by attorneys acting in their professional capacity for a govermental agency. In light of this intent, the Department has deleted all references to attorneys from 2 MCAR § 1.208, the section concerned with access to investigative data. Given the statutory change, this change to the rules is clearly necessary and reasonable.

deleted p. 24

25. In Finding Number 51, the Examiner recommended that language be added to 2 MCAR § 1.209 which deals with access to summary data. Specifically, the Examiner recommended that access to private or confidential data for purposes of summarization be limited to qualified researchers or similar persons. To accomplish the Examiner's recommendations, it would be necessary for the Department to define the terms "researcher" or "qualified researcher". It appears to the

Department that it is beyond its province or expertise to attempt such definitions. This conclusion is also buttressed by another 1979 amendment to the Act. (See Chapter 328, Minnesota Sessions Law 1979, Section 8.) This amendment gives Responsible Authorities the authority to deny access to private or confidential data where it appears such access would compromise the data. The Department concludes that this change gives entities the ability to better deal with the various types of individuals who may desire to gain access to private or confidential data for purposes of summarization. For these reasons, the Department finds it is not advisable or no longer necessary to accomplish the recommendation set out in Finding Number 51. The Department has not made the change recommended by the Examiner. see p.26,27

26. The 1979 legislative change to the summary data provision has also caused the Department to make other changes to the proposed rules dealing with summary data. Specifically, the Department has deleted the language which stated that Responsible Authorities were required to allow access to private or confidential to anyone requesting such access. (See 2 MCAR § 1.209 B.) In addition, the Department has added another response to the list of possible responses which a Responsible Authority may make to request for access to private or confidential data. The additional response is one by which the Responsible Authority, who denies an access request, must provide the requestor with a statement of reasons as to why the Responsible Authority believes that the requestor's access might compromise the p.27 p.27

data. (See 2 MCAR § 1.209 B. 1. d.) These changes are necessitated by amendments to the Act and are reasonable and necessary to guide Responsible Authorities in the proper implementation and administration of the Act.

27. In Finding Number 53, the Hearing Examiner concluded that 2 MCAR § 1.210 which requires each entity to classify all of its data as private, confidential or public, was reasonable. However, the Examiner went on to state that it would be more reasonable to require entities to only classify private or confidential data if the so-called "gap theory", an interpretation of Minnesota Statutes Section 15.17, was found to be invalid. The Department has concluded that the 1979 amendments to the Act have eliminated the "gap theory" and now it is more reasonable to only require entities to select for classification, that data maintained by them which is private or confidential. Determining which data is private or confidential, coupled with the provisions of Minnesota Statutes Section 15.1621, will mean that by exclusion all other data maintained by the entity is classified as public. This simplified process will reduce the administrative burdens imposed on entities by the classification process and for that reason will be a reasonable and necessary change. (See 2 MCAR § 1.210, B. of the rules to be adopted for the exact wording of this change.)

P. 30

28. In 1979 amendments to the Act, the Legislature specifically dealt with informed consents to the release of data to insurers. (See Chapter 328, Laws of Minnesota 1979, Section 8.) With this amendment, whether informed consent has been given in compliance with Minnesota Statutes § 15.163, subdivision 4 is subject to different standards depending on

whether the consent is for release of data to insurers or whether the consent is for release to anyone else. Under the terms of Minnesota Statutes Section 15.163, subdivision 4 (d), the latter type of consent "shall be determined by the rules of the Commissioner". Requirements for the former type of consent are presented in an express and detailed fashion in Section 15.163, subdivision 4 (d). To acknowledge and to differentiate these two standards, the Department has amended the proposed rules by making reference to the express statutory requirements for informed consent where the intended dissemination is to an insurer. (See 2 MCAR § 1.215 D.) p.39 Given the legislative change and the necessity to differentiate between the two standards, the Department finds that this addition to the rules is both necessary and reasonable.

29. The Department has made minor wording changes to 2 MCAR § 1.216. (See 2 MCAR § 1.216 C. 1. and 2.) These changes were made to improve the readability and comprehension of the rules and are not substantive in nature. Review of the changes will establish that the amendments are both reasonable and necessary. In part, the changes are intended to eliminate the usage of the "such" term, as in "such data", and to replace that confusing terminology with more exact phrasing.

30. In Findings Numbers 66 and 67, the Examiner recommended that changes be made to 2 MCAR § 1.217, a rule relating to duties associated with computerized data. In 1979, the Legislature deleted from the Act, the language which produced this rule. (See Chapter 328, Minnesota Session Laws 1979,

Section 24.) On account of this legislative change, the Department has deleted 2 MCAR § 1.217 in its entirety from the rules to be adopted. The remaining sections of the rules have been renumbered accordingly. remaining sections have not been renumbered.

31. In Finding Number 68, the Examiner recommended that language be added to 2 MCAR § 1.218, dealing with administrative appeals, by which frivolous or unwarranted appeals could be dismissed prior to a full hearing. The Examiner suggested using language adopted from the rules of the Department of Human Rights. Specifically, the Examiner recommended that the Hearing Examiner selected initially to hear such an appeal would be given this authority. The Department agrees that such a provision should be added to the rule but has assigned, in the rules to be adopted, the responsibility for determining whether or not an appeal should be dismissed to the Commissioner. Identification of sham or frivolous appeals when they are first presented to the Commissioner offers the additional advantage of saving those expenditures involved with contracting for the services of a Hearing Examiner. Because the rule provides for all costs to be assessed back to the entity which produced the appeal, this early dismissal can prove to be a cost saver to agencies subject to the Act.

see p. 45

There is also the potential for an appeal to be presented to the Commissioner which is outside his jurisdiction. Under the Act, the Commissioner may only hear appeals which relate to the accuracy or completeness of data. (See Minnesota Statutes

Section 15.165, subdivision 4.) The Department has added language to the rules to deal with jurisdictional problems and to give the Commissioner the ability to reject an appeal that is outside the authority conferred on him by the statute. With these changes, the proposed rule section is both reasonable and necessary for the reasons set forth in the Hearing Examiner's report and as discussed above.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

1-8-81

By: _____
James J. Hiniker, Jr.
Commissioner

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA DEPARTMENT

OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE DEPARTMENT OF ADMINISTRATION GOVERNING ENFORCEMENT AND ADMINISTRATION OF THE "MINNESOTA GOVERNMENT DATA PRACTICES ACT."

ADDENDUM TO FINDINGS OF FACT AND CONCLUSIONS

On January 9, 1981, the Department of Administration submitted a copy of the rules as originally proposed, the Commissioner's Order Adopting Rules, the Commissioner's Findings of Fact and Conclusions and a copy of the rules as proposed for final adoption. On January 16, 1981, Duane R. Harves, Chief Hearing Examiner, issued his report concerning the proposed adoption. The Department of Administration hereby accepts and adopts the Report of the Chief Hearing Examiner, dated January 16, 1981, and incorporates its findings and conclusions herein by reference with the following amendments and exceptions thereto:

In his report, the Chief Hearing Examiner pointed out that a post hearing change to 2 MCAR § 1.205 C. 3. by the Department of Administration hereinafter "Department", raised a problem of incorporation of reference. The change made by the Department referred to the term "education records" as defined in the "Family Educational Right to Privacy Act", Public Law 93-380, and the rules promulgated thereunder. The Department has corrected this problem by reproducing the definition of the term "education records" in its entirety from the Code of Federal Regulations. This change appears at pages 18 and 19 of the rules to be adopted. ok

In his report, the Chief Hearing Examiner pointed out that 2 MCAR § 1.217. A. contained an incorrect reference to his agency as the Office of Hearing Examiners. The name of that agency was changed by the Legislature after these rules were originally proposed. The Department has changed the rules to be adopted, at page 44, to reflect that legislative change. ok

The Chief Hearing Examiner commented that 2 MCAR § 1.217. B. contained a reference to "reasonable time" which he found to be vague and non-specific. He suggested that a specific time be inserted or the phrase defined. The Department has dealt with this comment by defining the phrase in terms of two specific periods of time. These periods of time differ in length depending on whether or not the individual has been made aware of his right of appeal to the Department pursuant to Minnesota Statutes Section 15.165, subdivision 4. The change to the rule which the Department intends to adopt would, in essence, penalize agencies who do not inform individuals of this right to appeal by providing for a longer time period in which the appeal may be brought. This way of dealing with reasonable time seems to be the best way to accommodate the potentially conflicting interests of agency efficiency, individual rights and the timely hearing of such matters and therefore the change is both reasonable and necessary.

See p. 44

The Chief Hearing Examiner commented that 2 MCAR § 1.217 B. 3, which attempted to explicitly give the Commissioner of Administration the ability to ask for more information concerning a given appeal, grants the Commissioner "unfettered discretion." It was the intent of this rule provision to give the Commissioner the ability, in situations where insufficient information had been provided, to request additional information. The comment of the Chief Hearing Examiner reveals that this provision can be interpreted in a way never intended by the Department. Given that possibility, it seems necessary and reasonable to delete this potentially offensive provision. Deletion of the provision then necessitated re-numbering the following paragraph in this rule section.

deleted p. 45

The Chief Hearing Examiner commented negatively on 2 MCAR § 1.217 C. which was added to the rules to be adopted after the public hearing. At the public hearing a number of persons expressed concern that sham, capricious or frivolous appeals might be heard by the Department. In his report, Hearing

Examiner Mihalchick suggested that the Department deal with this potential problem by expressly providing that the Examiner, appointed to hear a contested case, be authorized to dismiss appeals of that nature. In the rules submitted to the Chief Hearing Examiner, the Department generally adopted the dismissal approach to this potential problem but placed the power of dismissal in the hands of the Commissioner.

The Chief Hearing Examiner found the Department's approach to be in conflict with both the Rules of Hearing Examiner's Office and the provisions of the Administrative Procedures Act. However, he also commented that it is inherent in the Commissioner's authority to order a hearing to also refuse to issue the order. In light of those comments, the Department finds that it is necessary and reasonable to change the rule provision and intends to adopt the language originally suggested by Hearing Examiner Mihalchick. This change to the rules to be adopted is found on page 45.

In his report, the Chief Hearing Examiner drew conclusions about the use of the term "federal law" throughout the rules to be adopted. First, he concludes that the use of the term federal law is vague and fails to make specific the law. Second, he suggests that the use of the term federal law may be an incorporation by reference for which no approval has been obtained. Lastly, he suggests that the use of this term is an attempt on the part of the Department to unlawfully delegate its authority to a federal agency. The Department takes exception to and strongly disagrees with these conclusions for the following reasons.

By way of introduction, certain points ought to be established. The rules to be adopted do use the term "federal law" extensively. Most often the term is used in conjunction with providing guidance to agencies as to how they make the determination as to whether certain of their data is public or not public and, if not public, whether it is private or confidential. In doing so, the rules are a mirror image of the underlying statute. There is considerable

discussion in the Statement of Need and Reasonableness as to why the Department proposed, at 2 MCAR § 1.202. I, a definition of the term "federal law."

This definition was subject to considerable comment at and after the public hearing. The majority of these comments were supportive of the Department's position. The Hearing Examiner clearly supported the Department's approach to the use of the term "federal law" throughout the proposed rules. At no time in the rule promulgation process did Hearing Examiner or the public ever conclude or even comment that use of this term was non-specific, an incorporation by reference or an unlawful delegation. Given that introduction, specific comments on each of the three conclusions made by the Chief Hearing Examiner are as follows.

The Chief Hearing Examiner concluded that use of the term "fails to make specific the law administered by the Department ..." The law being administered by the Department in these rules is the "Minnesota Government Data Practices Act" which by its very terms makes extensive use of the term. However, the rules to be adopted go beyond the underlying statute and do what the statute does not which is to define the term. As is discussed in the Statement of Need, the Act's lack of a clear definition of the term "federal law" has generated problems for agencies in their attempts to administer the Act. The rules to be adopted clearly cure that problem.

Implicit in the Chief Hearing Examiner's conclusion is a question as to what is the best method to gauge whether the term "federal law" is sufficiently specific. The Department concludes that the best measure of specificity is to look to the position taken in the comments made by agencies charged with administering this language. The record in this matter clearly reveals that agencies and other groups which commented on this issue all, with one exception, agreed that this term was sufficiently specific. The one negative comment concerning the term "federal law" was not directed to specificity or vagueness and that comment was properly debunked by the Hearing Examiner. See Paragraph

Number 23 of the Report of the Hearing Examiner.

The most obvious way to avoid the specificity issue raised by the Chief Hearing Examiner would be to delete all references to "federal law" in the rules to be adopted. The Department concludes that this would be highly deceptive and tantamount to perpetrating a fraud on agencies and on the public. Once adopted, these rules will serve as a major source of guidance to agencies. If the rules totally ignore and never call attention to a source of guiding authority which is postulated by the underlying statue, there is a high likelihood that agencies will be deceived in their data administration practices. Such deception could lead to a variety of negative results including lawsuits brought under federal statutes and rules which require that data be withheld from the public. It is not inconceivable that agencies could lose federal funds because they have failed to comply with federal reguirements that data be withheld from public inspection.

Many of the above comments also apply to the Chief Hearing Examiner's conclusion that the use of the term "federal law" is an incorporation by reference. What the Department has incorporated in the rule provisions in which the term "federal law" is used is language taken directly from the Act itself. In his report the Chief Hearing Examiner also generally concluded that the rules paraphrase or quotation of the underlying Act was crucial to the ability of persons affected by the rule to understand its meaning and effect.

There is a point of simply practicality which must be noted. The underlying Act makes extensive use of the term "federal law". It seems clear that the Legislature used the general term to avoid having to go through all provisions and cases of federal law which by their terms make data not available to the public or which regulate the use and dissemination of data. By adopting general terminology, the Legislature has placed agencies on

notice of the simple fact that the state Act must be read in compliance with federal authority to the extent that may be necessary. If the state Act referred to federal authority by a method of specific citation then the state Act would have to be amended every time that the cited federal authority was amended or new federal authority enacted. This would conceivably produce a never ending process of amendment to the state Act.

To accept the Chief Hearing Examiner's conclusion on the point of incorporation by reference would be to put the Department in the totally unrealistic position which the Legislature had carefully avoided. For all practical purposes, the Department would never be able to issue these rules thereby failing the clear mandate set forth by the legislature in Minnesota Statutes Section 15.1671. The Department would be placed in the position of having to research federal law in all areas which classify or regulate data, to identify those federal statutory and other provisions which exceed 3000 words in length, to ask the Chief Hearing Examiner's approval to incorporate those provisions which exceed the 3000 word limit and to amend the rules to set forth in their entirety all federal authority which is less than 3000 word maximum. Such a period of time would pass in the Department's efforts to accomplish these tasks that at the end of the task the Department would have to start a new review of federal authority to see what had changed in the intervening period of time.

It seems clear that the Department has by use of the general term federal law only followed the statutory scheme set forth the Act itself. To find that this is an incorporation by reference would, for the reasons set forth above, be tantamount to finding that the Legislature intended an absurd result in its enactment of the statutory scheme and in its requirement that the Department implement that scheme thorough its rules.

Many of the foregoing comments also apply to the Chief Hearing Examiner's conclusion that the Department's use of the term "federal law" is an attempt by the Department to unlawfully delegate its authority to the federal government which, if true, would be violative of the State Constitution. Again, it must be re-emphasized that the Department's use the term "federal law" is the exact same way that term is used by the Act on which the rules are based.

To be consistent, an argument that the use of the term "federal law" is an unlawful attempt at delegation of authority by the Department must also be applied to the use of that term in the underlying statute. Because the rules replicate the statute, it would have to be argued that the Legislature is the party which has actually attempted this unlawful delegation. To reach such a conclusion would be in opposition to the presumptions set forth in Minnesota Statutues Section 645.17. Specifically, it would have to be concluded that the Legislature intended an absurd result or intended a result which violates the constitution of this state.

It is much better and more reasonable to conclude that the use of the term federal law, both in the underlying statute and in the rules to be adopted, manifests a clear intent on the part of both the Legislature and the Department to avoid a self destructive interpretation of the Act. Self destruction of the statute would occur if by its terms the statute did not acknowledge the supremacy of federal law in various areas and therefore would be in violation of the "Supremacy Clause" of the United Constitution.

To the extent that federal law may be supreme in a given area, it is clear that the Legislature could not, for example, enact a statute that says that data made clearly not public by federal statute is public. In a similar vein where there is federal legal authority that certain data on individuals cannot be disseminated to certain parties, an attempt by

the state Legislature to enact a statute to the contrary would also violate federal law and would be struck down in court.

The Act's use of the term "federal law" is primarily intended to avoid the problem of the Act being in conflict with supreme federal authority. Therefore, the Department concludes that in its use of the term "federal law" the Department has merely adopted the same position as that taken by the Legislature on the question of federal supremacy. To agree with the Chief Hearing Examiner on any of the three conclusions he has reached concerning use of the term "federal law" would set up an inevitable conflict with pre-eminent federal authority. The Attorney General's Office is strongly urged to sustain the Department's position in the rules to be adopted.

The Department finds that, with the exceptions noted above, the changes made to the rules to be adopted as suggested by the Chief Hearing Examiner have been made, that those changes are reasonable and necessary for the reasons noted in the report of the Chief Hearing Examiner and as discussed above and concludes that for all of the reasons discussed in the record pertaining to these rules that the rules to be adopted ought to be approved as to form and legality.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BY: _____

James J. Hiniker, Jr.
Commissioner

DATED: 3/18/81

In the Matter of the Proposed Adoption of Rules of the State Department of Administration Governing Enforcement and Administration of the "Minnesota Government Data Practices Act."

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Nancy C. Barsness, being first duly sworn, deposes and says:

That on the 17 day of April, 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for first class and interoffice mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General. A copy of the mailing labels used for this purpose is attached. The Hearing Examiner's register from which these names were taken is also attached.

Nancy C. Barsness

Nancy C. Barsness

Subscribed and sworn to before me this 17 day of April, 1981.

Colleen T. Kisch

COLLEEN T. KISCH
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Commission Expires April 24, 1985.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption of Rules of the State Department of Administration Governing the Enforcement and Administration of the "Minnesota Government Data Practices Act"

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, April 17, 1981, for review as to form and legality. Pursuant to 1 MCAR § 1.206 B., the Attorney General will not approve the rules for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General, you may contact Donald A. Gemberling, Director of the Data Privacy Division, Room 200, State Administration Building, St. Paul, Minnesota 55155, telephone (612) 296-6733.

Dated: 4-17-81

James J. Hiniker, Jr.
Commissioner

RECEIVED
OCT 5 1978
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DATA PRIVACY UNIT GOVERNING THE ENFORCEMENT AND ADMINISTRATION OF THE "MINNESOTA DATA PRIVACY ACT"

AFFIDAVIT CONCERNING REVIEW OF THE PROPOSED RULES BY THE INTERGOVERNMENTAL INFORMATION SYSTEMS ADVISORY COUNCIL

Donald A. Gemberling, being duly sworn on oath deposes and says:

That he is the manager of the data Privacy Unit of the Department of Administration, State of Minnesota.

That commencing on October 6, 1977 a series of meetings were held with members of the Intergovernmental Information Systems Advisory Council.

That those meetings were held for the purpose of receiving the advice concerning the draft rules as required by Minnesota Statutes Section 15.1671.

That on November 23, 1977, I received from Mr. Jerome J. Segal, Chairman of the Council's Records Management Committee, a letter, a copy of which is attached hereto and incorporated by reference, which states that the Council had provided the advice as required by Minnesota Statutes Section 15.1671.

Donald A. Gemberling
Donald A. Gemberling
Manager, Data Privacy Unit
Department of Administration

Dept's Exhibit No. 6
File No.
Date

Subscribed and sworn to before me this 3rd day of October, 1978.

Colleen T. Kisch
Dakota County, Minnesota
My Commission expires 4/24/85.

COLLEEN T. KISCH
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Commission Expires April 24, 1985

November 21, 1977

RECEIVED
NOV 2 5 1977
DATA PRIVACY

Mr. Donald Gemberling
Manager
Data Privacy Unit
Department of Administration
Room 110
Nalpak Building
Saint Paul, Minnesota 55101

Dear Mr. Gemberling:

On behalf of the State Department of Administration your office has prepared a draft of regulations applicable to Minnesota Statutes, §15.62 through §15.169. Intergovernmental Information Services Advisory Council (IISAC) was requested to review the draft regulations and advise the Commissioner of Administration pursuant to the legislative mandate contained in M. S. §15.1671. IISAC referred the request to its committee on records management, of which I am the chairman. Starting in October the committee met three times to discuss the draft. Copies of the draft were referred to all members of IISAC and comments were invited. Our committee originally estimated a need for at least 90 days for review, and possibly 180 days. Our plan was to submit our recommendations to the full IISAC within this time frame, but only after each of our members had had an opportunity to discuss the regulations with departmental personnel of their unit of government familiar with the compliance with the legal requirements contained in the law.

We were informed that we would not be given the 90 days minimum required, but that the regulations were to be in final form by the 1st of December. Therefore our original plans were discontinued a few weeks ago, and our committee has attempted to provide you with our verbal comments and suggestions prior to December 1st. You, of course, have attended all of our committee meetings and have received our comments. I am enclosing for your perusal the comments given to me by a member of the Mayor's staff, Dana Young, as well as a copy of the comments provided by Anne Collopy of the Hennepin County Department of Management Services, all of which I hope will be useful. Other members of IISAC may submit additional comments to me, and I will forward these to you as soon as they arrive.

If you desire, our committee will continue to provide advice to you on draft regulations, but I know that you understand that it is impossible for IISAC to provide you with the type of comprehensive review we would both like to have within the short time span provided.

Very truly yours,

JEROME J. SEGAL
Chairman, Records Management Committee
IISAC

cc: Thomas Anding, Chairman
IISAC

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

RECEIVED
OCT 5 1978
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DATA PRIVACY UNIT GOVERNING THE ENFORCEMENT AND ADMINISTRATION OF THE "MINNESOTA DATA PRIVACY ACT"

STATEMENT OF NEED AND REASONABLENESS

Introduction

Pursuant to Minnesota Statutes 1976, Section 15.1671, as amended, the Commissioner of Administration is required to promulgate rules that will "implement and enforce" the provisions of the Data Privacy Act, Minnesota Statutes Section 15.162 through 15.1671, hereinafter referred to as the Act.

The Act, which was originally enacted into law by the 1974 session of the Legislature has been amended every legislative session since then. These amendments have been the product of a number of factors. These factors include: great public attention to and debate over governmental data handling practices; emphasis placed on resolving data privacy problems by members of the legislature; and research into and public reporting of the effects of privacy legislation by the Department of Administration. (See the Department of Administration's reports to the Legislature concerning the "data privacy act", dated January 6, 1975 and January 12, 1976. Copies of these reports are on file in the Legislative Reference Library.)

Since the effective date of the original Act on August 1, 1974, the Department of Administration has acted as a public resource in the "data privacy" area. This resource activity includes answering questions concerning the Act from both governmental agencies and private citizens. The proposed rules reflect this experience. The need for certain rules, especially in particular areas where the greatest number of questions arose, was clear.

The following describes the need for and reasonableness of each rule or section thereof that is being proposed:

2 MCAR § 1.201. SCOPE AND PURPOSE

Section A: The limits to the application of the Act should be

Dept's Exhibit No. I
File No.
Date

viewed from two perspectives. The first perspective is concerned with identifying what agencies are subject to the Act. There has been considerable questioning as to whether the Act applies to the private sector's data collection and use practices. Although it is possible to be lead into the false apprehension that the Act does apply to private sector, a careful reading of the Act makes it clear that its application is limited only to governmental agencies of the State. Section A. of this rule makes it clear that the application of the Act is limited to those governmental agencies described in the definitional section of the Act, Section 15.162.

Section B:

There is one exception to the Act solely being applied to agencies that are totally governmental in character. Section 15.162, Subdivision 5 of the Act, the definition of political subdivision, extends application of the Act to "non-profit social service agencies." The language of this extension has created several problems. Section B. of this rule addresses those problems.

The first problem presented is the failure of the Act to define "non-profit social service agency." Section B. provides a workable definition. Without such a definition, it could be argued that all companies and agencies who do any contract work with government are subject to the provisions of the Act. The Act, by additional wording found in Section 15.162, Subdivision 5, is further limited in its application to social service agencies that do their work on account of a contract with a governmental agency. There is an additional need to explain this difficult "contract" language. Parts 1, 2, and 3 of Section B. address the problems discussed above. They are intended to clarify what the language, starting with "to the extent" and running to the end of Subdivision 5, actually means in the context of administrative reality.

The definitions and limits proposed by Section B. emanate from the problems described above. The rule section is necessary so that "non-profit" agencies who do contract with the government can understand what parts of their operation are subject to the provisions of the Act and what parts are not. As an example, one major social service agency carries on over 1500 distinct programs, only twenty of which arise out of contracts with government.

An additional question produced from the application of the Act to only a part of non-profit agency activity is the question of what is the effect of the Act on personnel data maintained by such agencies. It is necessary to draw a line to deal with the personnel question. Subsection 3 of Section B. deals with that question.

The line drawn by the rules would exempt personnel data. This exemption is reasonable in that the method used to bring social service agencies under the coverage of the Act is to connect the agencies to government through the contract mechanism. As the personnel activities of social service agencies would, in most instances, have little or nothing to do with such contracts, drawing a line to exempt personnel records is a reasonable approach.

Section C: The second perspective from which to view the application of the Act is from the perspective of the data in question. For purposes of the Act, governmental agencies maintain two types of data. They are data on individuals and data not on individuals. There have been numerous attempts to apply the workings of the Act, particularly the classification system, to data not on individuals. There is clearly a necessity for the rules to address this question.

Section C. of this Rule makes it clear that the Act is only applied to data on individuals maintained by the governmental agencies. Without such a rule, there would be continuing attempts to apply the Act, which is geared to data on individuals, to data not on individuals. Such attempts will only add to confusion and to the difficulties associated with correctly administering the Act.

Section D. There have been recurring questions concerning the relationship of the Act with other bodies of law, particularly the Rules of Civil and Criminal Procedure. Some individuals have questioned whether the passage of the Act in some ways affects those rules. Because of such problems and questions, it is necessary to clarify the relationship between the Act and the rules. This section of the rule makes it clear that the Act was not intended to affect the operation of either the Civil or Criminal rules.

This problem can be particularly acute when a discovery question arises under either of the rules. Therefore, Section D. is particularly directed to the discovery question. To maintain that the classification system used by the Act can be used to thwart the discovery rights under the court rules requires an attenuated interpretation of the Act. By contrast, the discovery rules are clear and are a fundamentally important provision essential to the workings of the judicial system. Comparing the interests represented by the discovery right under the rules with an attenuated interpretation of the Act used to thwart that right makes it clear that the latter interpretation cannot stand. Section D. is necessary to clarify which interest should be preeminent. There is at

least one Minnesota District court case that supports the position taken by the rule on this question. (See decision of Judge P. Fitzgerald, in Smith v. County of Hennepin, Fourth Judicial District, File Number 739819, May 5, 1978.)

Section E. Another question that occurs with some frequency is concerned with the relationship of the Act to various judicial orders, including such things as orders to produce data or orders to seal data. There have been questions regarding whether such orders produce conflicts with the Act. It is necessary for the rules to clarify, for those charged with administering the Act, which authority should be preeminent in a given situation. The rule makes it clear that judicial orders will enjoy preeminence when any supposed conflict occurs. This is another point at which some line must be drawn. The consequence of not drawing such a line may make it impossible for either the Act or the judicial system to operate. Because such judicial orders will arise from an understanding of all of the facts and circumstances of a given case, and not from the very generalized non-specific operation of the Act, it is more reasonable to give judicial orders preeminence.

Section F. Section 15.1671 clearly states that no rules can be written that will affect the provisions of Section 15.165, the Rights of Subjects of Data. However, within the Act, there is a semantic and logical connection between Section 15.165 and other provisions of the Act on which rules can and should be written. However, the requirement of 15.1671 must be met. Therefore, Section F. is presented to assure that while a given rule may touch on some point connected to, or even a part of, Section 15.165, such a rule is not intended to and shall not diminish the rights that are expressed in Section 15.165.

Section G. This section of the rules is necessary to emphasize the overall interests that are balanced by the Act, the rules and also by those charged with administering the Act in an operational context. It is reasonable to provide such a statement of the interests to be balanced because recognition and awareness of the interest balancing can be helpful to making the day-to-day decisions concerning the administration of the Act. This emphasis on balancing competing interests follows the approach taken by the Minnesota Legislature in its evolution of privacy legislation since 1973.

2 MCAR § 1.202. DEFINITIONS The definitions contained in this section are of two types. Some terms which are not found in the Act are defined because they are necessary to the operation of the rules. The second type of definition deals with terms that are found in the Act, but which require further clarification by the rules.

A statement of the necessity for and reasonableness of each definition follows:

A. ACT: This definition is necessary for the purposes of the rules. The term is defined so that the "shorthand" term Act can be used throughout the body of the rules without having to resort to the complete legal citation of the various statutory sections.

B. ARREST INFORMATION: This term was first placed in the Act in 1976 to deal with a problem that arose out of disagreements between representatives of the news media and law enforcement officers after the 1975 amendments were made to the Act. (See "Police Interpretation of Privacy Law Brings Changes of Withholding Data", Jack Coffman, Minneapolis Tribune, January 11, 1976. and "Panel to Attempt Privacy Law Changes", David Kuhn, Minneapolis Tribune, January 13, 1976. Copies of these articles are attached and labeled Attachment #1.) The term has a specialized meaning within the operation of the Act. Unfortunately, for classification purposes, the language of the Act uses a technique of defining what "arrest information" is not. This rule is necessary to establish the specialized meaning of the term and also to define what "arrest information" is.

There are a number of governmental entities that collect something that could be called arrest data. Such data is often collected on employment application forms. It is not clear on the face of the Act whether it was intended for the term "arrest information" to extend to employment related arrest data. The rule makes it clear, given the legislative context that produced the "arrest information" definition in the Act, that such information is limited to that collected by law enforcement agencies.

The reasons for which this particular language was added to the Act makes it reasonable to limit arrest information in such a way. Generally, those reasons can be summarized in the statements, expounded by a legislative author in open hearings, that there should be "no secret arrests" made in this state by law enforcement agencies. (See "Privacy and the Right to Know", State Senator Robert J. Tennessen, Minneapolis Star, February 16, 1976, a copy of which is attached and labeled Attachment # 2.

C. DATA: This definition has two purposes. First, it is a way of introducing a shorthand method of referring to the term actually used by the Act, which is "data on individuals." Second, there has been considerable confusion and numerous questions as to how all-encompassing is the definition of data on individuals. Much of this confusion stems from the fact that the Act's definition uses the terminology "is or can be identified." Sections 1 through 5 of this section deal with the most common situations and questions that have been raised as to the extent of the coverage of the defined term. It is necessary to define this term as clearly as possible. Without such clarity, administrators would not be able to deal with the basic subject matter of the Act, which is data on individuals and how to administer it. Because of the language of the Act's definition, it would not be reasonable to deal with this definition in any fashion other than that adopted by the rule. It is clear from the "is or can be identified" language of the Act, that it was intended that this definition should be all-encompassing.

D. CONFIDENTIAL DATA: This term, as defined in the Act, is actually stated in terms of who can gain, and who is denied access to a certain type of data. Because of that form of the statement, it is necessary to make more clear how it is determined that certain data is confidential, as opposed to private or public. Determining the proper classification of all agency data is absolutely necessary to proper administration of the Act. That determination depends for its first step on a correct reading of the definitions of the three classifications. This definition is intended to assist governmental personnel in determining, according to the requirements of the Act, what data is confidential in their agency.

The term "confidential" has the specialized meaning given to it by the Act. That meaning is not the same as the common generic everyday usage of the term confidential. The rule is intended to clarify what the term confidential means in the context of the Act. To assist in that clarification process, Sections 1 and 2 of this definition provide some common usages of the term confidential. The rule then points out whether or not the usage gives to the term confidential the usage that is intended by the Act.

E. PRIVATE DATA: The term private was incorporated into the Act in 1975, thereby providing a means of differentiating between data that is not available to the public or to the data subject (confidential data), and data that is not available to the general public but is available to the data subject (private data). The private term has the same basic limits placed on it by the Act, in terms of how something becomes private, as does confidential. The classification of certain data as private requires that there be clear legal authority for that classification. The term private is also stated in terms of who can gain and who is denied access to data that is actually private.

Because the term private, as an access term, is unique to Minnesota, it is vital for the administration of the Act that personnel administering the Act be provided with the greatest possible clarity. The rule fulfills this need by making it very clear what requirements must be met before certain data can be determined to be private data. As with confidential data, the rule uses the technique of presenting common ways that the term might be used in the context of legal authority and whether that particular usage means that data <u>is</u> or <u>is not</u> private for the purposes of the Act.

This rule also deals with the problem of statutes that were passed prior to the initiation of privacy legislation in 1974. In some instances, those statutes, which use the term confidential, are intended to deny access to the public but to extend access to the data subject. In most instances, the term confidential is used,

followed by language that modifies the term. It is vital for personnel administering the Act to be made aware that when the legal authority they are using to classify uses that kind of approach, that the data in question should properly be classified as private and not confidential. The generic term confidential does not control in such situations. A full reading of the appropriate authority is what controls. The rule provides clarity on this confusing point.

F. "PUBLIC DATA ON INDIVIDUALS". There has been and continues to be considerable confusion and controversy surrounding this particular definition. An understanding of this term is necessary so that personnel administering the Act will be able to administer the three part classification system. Continued confusion concerning this term is a major obstacle to successful implementation and administration of the Act. For those reasons it is vital that the definition of this term be as clear as possible.

The confusion primarily stems from the fact that the Act attempts to define public data by incorporating, by reference, the definition of public record from Minnesota Statutes, Section 15.17. Unfortunately, nowhere in Section 15.17 is the term public record clearly defined. The rule attempts to provide a clear definition by adopting the definition postulated by the Minnesota Supreme Court in the case of Kottschade v. Lundberg, 280 Minn. 501, 160 N.W. 2d 135 (1968). In addition, the rule expands on the Court's definition by further defining various types of data that should be public because they bear a close relationship to official acts taken and functions carried on by governmental agencies. As with the adoption of the Court's definition, the necessity for the expansion is found in the vital need for clarity of direction to governmental personnel as they administer the three-part classification system.

The definition, as proposed by the rule, is reasonable in three respects. First, the definition tries to parallel the view of the data held by those who maintain the data. If governmental personnel feel that certain data is necessary to their operation of governmental agencies and programs, it seems clear that access to that information is equally necessary to anyone trying to understand a particular governmental agency or program. Second, failure to set forth a clear definition of public data makes the question of what is public a subject of continuous litigation. Without a clear definition, agencies are forced to adopt a cautious approach which results in denial of access by the public. This denial then results in litigation by the public. This cautious approach is dictated by the varying remedies provided by the Act and implicit in Minnesota Statutes § 15.17. The remedy for denial of access to a record declared public is production of the record. The remedy for improper disclosure of private or confidential data may be money damages or even criminal penalties under Sections 15.166 and 15.167 of the Act. Third, continued confusion in this area leaves agencies open to potential liability. Without a workable and realistic definition of public data, agencies will continue to

be unable to properly implement the Act. Failure to implement presents possible liability under the penalty provisions of the Act.

G. DESIGNEE: The Act provides the responsible authority with the authority to appoint individuals to assist him or her in the administration and implementation of the Act. Designee is merely the shorthand term adopted by the rules to provide a title for individuals so appointed.

H. ENTITY: This definition is necessary to provide both a shorthand term to refer to agencies of government that are subject to the Act, and to provide more clarification than that offered by the Act as to the agencies that are regulated by the Act. In referring to regulated agencies, the Act uses the terms state agency, political subdivision, and state-wide system. Although the first two terms have a generally accepted meaning, that meaning is subject to misunderstanding. This definition is necessary to eliminate any confusion and misunderstanding, and to assure that each agency of the state is aware of the fact that it is either subject to, or not subject to the Act. Although the term state-wide system is defined by the Act, a clearer statement of the definition is necessary to assure that all state-wide systems are indeed regulated.

I. FEDERAL LAW: Although this term is used at several critical points in the Act, and a clear understanding of the term is necessary for implementation of the Act, it is not defined by the Act. A further complication is that there appears to be no generally accepted legal meaning of that term. This rule is necessary to provide a clear and guiding definition. The definition as proposed would include all possible types of legal pronouncements emanating from federal law.

The overwhelming majority of personnel charged with the administration of the Act are laypersons, not attorneys. A simple and easy to understand definition of the concept of federal law, as it relates to the workings of the Act, is necessary for reference by such persons.

J. INDIVIDUAL: This term is defined in the Act. However, there are persistent questions concerning the Act's application in two areas relating to the definition of "individual." The first question can be summarized as: Are records maintained on persons who are no longer living subject to the Act? The proposed definition fills the need of answering that question. The proposed rule gives a negative answer. Such an answer stems from a widely accepted legal principle, stemming from both the defamation and privacy torts. In defamation, this principle generally holds that relatives of dead persons have no rights to recover for damages to the reputation of the deceased. (See Corpus Juris Secundum, Volume 53, "Libel and Slander" § 145, p. 230.) In privacy, the principle is one that it is conceptually impossible to invade the zone of privacy of one who is not living. (See Corpus Juris Secundum, Volume 77, "Right of Privacy", § 1 c., p. 398. See also, Smith v. County of Hennepin, supra.)

The second question often asked about the Act as it relates to the definition of individual is: Does the Act apply to records concerning business, a business entity when the name of that entity is the same as a natural person? The rule proposes a negative answer to this question. The rule definition is drawn from the terminology used in the Act. The Act uses the term "natural" which modifies individual in Subdivision 4 of Section 15.165 "individual". In legal usage, the term individual, particularly when it is modified by "natural" refers only to living human beings, not to entities which are licensed into existence by the State. (See the definition of "person" in Black's Law Dictionary, Henry C. Black, Revised Fourth Edition, West Publishing Co., 1968, p. 1299.) However, this legal usage is not generally known to laypersons. Therefore, clarification on this point is necessary to proper administration of the Act.

K. RECORDS MANAGEMENT ACT: This is a shorthand term used to refer to a section of Minnesota Statutes that bears a close relationship to the Act. The use of a descriptive title for this Act, instead of the legal citation, calls attention to the fact that there is a statute that bears directly on the question of proper disposition of records.

L. RESPONSIBLE AUTHORITY: No actor in the administration of the Act is more important than the responsible authority. Although the Act clearly requires that there be one individual carrying on the responsible authority function in each agency covered by the Act, the Act's definition of the term is not clear. The Act's definition has produced a number of questions. The most common of those questions are: 1) Can there be multiple responsible authorities in a single agency? 2) When the agency in question is a state agency which has no commissioner, who should the responsible authority be? 3) In reference to state agencies, what does the phrase "designated by law or by the Commissioner" mean in the first sentence of Subdivision 6 of Section 15.162? 4) In reference to political subdivisions, what does the phrase "unless otherwise provided by law" mean in the last sentence of Subdivision 6 of Section 15.162? Because of the pivotal role played by the responsible authority in the Act, this definition is necessary to state exactly who the responsible authority ought to be in each governmental agency. This definition, plus rule 2 MCAR § 1.212 should answer virtually all current questions asked about the identity and appointment of the responsible authority.

M. SUMMARY DATA: Although this term is defined in the Act, personnel charged with the administration of the Act have raised many questions concerning the definition. Among those questions are: 1) Can summary data be extracted from public data? 2) Is summary data the same thing as statistical data, or is it something more? 3) What kinds of things are summary data?

The concept of summary data plays a very important role in the Act. It presents a method by which individuals and other persons

can, for research and other purposes, have access to private and confidential data concerning subjects of government data. Because of the summary data concept, this can be done without revealing the identities of the subject of data. The summary data concept is particularly important to the interests of researchers, academicians and the news media. Without a clear understanding of the term "summary data", those interests will not be served and individuals charged with the administration of the Act will not be able to correctly administer the Act. The expanded definition of summary data which is proposed by the rule, particularly the examples of what is summary data set out in points 1. and 2. of the definition, coupled with 2 MCAR § 1.209. Access to Summary D Data, are intended to provide the information and guidance necessary for such personnel to properly administer the Act.

INTRODUCTION TO RULES 2 MCAR § 1.203, 204, 205, 206, 207, 208, and 209:

There is no concept contained in the Act that has generated more questions and confusion than the general subject of access to various types of data. It is very common for governmental agencies to maintain that certain data cannot be accessed by the public or by an individual data subject "because of the privacy law." Such a statement is an absolute misnomer when it is used in reference to the Act's handling of private and confidential data. With limited exceptions the Act itself does not classify any data as private or confidential. The Act does prescribe certain uniform treatment concerning access to data classified as private or confidential only when other law, state statutory or federal, determines the actual data classification.

The exceptions referred to by the previous paragraph deal with certain types of data for which the Act does prescribe a classification or a certain access treatment. Those types of data are: private data concerning data subjects who are minors, active investigation data, summary data, and arrest information.

The general thrust of the rules enumerated above is to deal in a uniform fashion with the most common questions raised about access to each type of data covered by the provisions of the Act. There are a number of common problems with dealing with access as it relates to each type of data. These problems are dealt with in the proposed rules by adoption of parallel treatment in the early sections of each rule. Following that parallel treatment, each rule deals with the unique problems or questions presented by the Act's handling of a certain type of data.

The necessity for each of these rules stems from the Act's implicit requirement that data of the same type receive uniform treatment throughout the state. This need for uniformity also stems from an understanding of the current experience with the Act. Individual citizens should not have to learn and to follow an entirely different set of access procedures each time they go

to a different governmental agency and make a request to gain access to data.

While acknowledging the necessity for the general uniformity of treatment of access to data, the aforementioned rules also acknowledge that in certain areas, the methods of disseminating data may vary from agency to agency. This variance in exact treatment will be reflective of internal factors present in the agency. These factors will include size of the agency, number of records maintained by the agency, and numbers and types of personnel assigned to administer the requirements of the Act. Obviously, access to data will not be treated, in the particulars of public administration, in the same fashion in Funkley, Minnesota as it is in Hennepin County. The rule acknowledges that agency variance by delegating the preparation of the exact procedures determining access, within the requirement of the rules, to the Responsible Authority in each agency.

A discussion of specialized problems associated with each of the rules dealing with access follows.

2 MCAR § 1.203. ACCESS TO PUBLIC DATA

Section A: This rule is needed to describe exactly, in general terms, who is given access to public data. The rule attempts to deal with the modern principles of access to government records by rejecting the common law rule that the person seeking access to public records needs to demonstrate an interest in that particular record.

Because of the multiplicity of governmental functions and the varying ways of maintaining public records, the rule directs the responsible authority to establish the detailed procedures necessary to provide access to the public data of his agency.

In Section A, Subsection 1.c., the rule acknowledges that there are costs incurred in providing public access that should be recovered by the governmental agency. The public data definition of the Act incorporates the provisions of Minnesota Statutes, Section 15.17 by reference. Subdivision 4 of Section 15.17 has some language dealing with payment of fees for receipt of copies of public records. However, that language is not clear because Subdivision 4 uses the phrase, fees "prescribed by law." In many agencies, this phrase has no meaning. Subsection d. of this section, which deals with recovery of agency costs, is intended to fulfill the need of informing agencies of the cost factors that can be used in determing what the public should be charged for receipt of copies of public data.

By providing for recovery of costs, the rule is a reasonable attempt to require that those who receive some type of benefit from access to and use of public records should be those who bear the costs of providing those records. The mass of taxpayers do not make large scale utilization of public records. If agencies

merely bore the costs of providing copies without charging the cost back to the actual users of public records, taxpayers of the state would be paying, through increased taxes, for benefits enjoyed by a very few.

2 MCAR § 1.204. ACCESS TO PRIVATE DATA

Section A: This rule is needed to describe exactly who is given access to private data. By specifying types of individuals and agencies given access to private data, the rule answers many of the most commonly asked questions concerning access to private data. In particular, the rule in Subsection 4 makes it clear that any individual, who is the subject of private data, can direct the government agency holding that data to make it available to other persons. This part of the rule reinforces an underlying rationale of the Act which is that data subjects retain some control over the data they provide to the government.

Section B: Because of the variations in the ways that private data may be retained, the rule directs the responsible authority to develop the detailed procedures to provide access that he or she feels are necessary in his/her particular government function. The Act places a high value on the right of individuals to gain access to governmental data maintained about them. To assist them in gaining that access, the rule requires that the procedures be in writing so that individual data subjects are provided with information as to how exactly they may gain access to data recorded about them.

Subsections 1 and 2 of this section deal with a logical problem presented by the language of the Act. The problem presented is not covered by the Act itself. It is necessary to the proper administration of the Act to assure that any person who requests access to private data is actually the subject of that data. Subsection 2 fills the need of prescribing guidance to the responsible authority for the handling of this problem in agency procedures.

Section C: This section deals with another problem presented by, but not dealt with by the language of the Act. This is a timing question concerning when a subject may gain access to data concerning himself or herself. The section fills the need of prescribing the time when access may be gained. Normal working hours is the most reasonable time to make, and to be able to expect, to gain access to governmental records.

Sections D and E: The question of whether a data subject may be charged a fee for viewing and copying data concerning that subject is a recurring one. The Act, while providing for free access by the data subject to that subject's data, requires the responsible authority to charge data subjects for any copies of private data

they receive. This seeming anomaly makes it necessary for the rule to provide guidance in two areas. First, the rule makes it clear that when the data subject only desires to view private data concerning himself or herself, there shall be no charge made either for the opportunity to do that viewing or for the viewing itself. Second, the Act's requirement that the responsibile authority charge for providing copies of private data must be subject to some reasonable limits. The rule proposes charging limits for receipt of copies of private data to be the same as those provided for public data. If no reasonable limits were placed on the assessment of costs for providing copies, agencies might, by charging exorbitant fees, be able to effectively deny the individual's right to receive copies.

2 MCAR § 1.205. ACCESS TO PRIVATE DATA CONCERNING DATA SUBJECTS WHO ARE MINORS

The Act provides for dual access concerning private data maintained on individuals who are minors. Several questions have been raised in regard to this requirement. This proposed rule attempts to deal with the most common questions.

Sections A and B: These sections of the rule follow the parallel construction adopted for all of the rule sections dealing with access. These sections make it clear that private data on minor subjects is still private data, which makes such data subject to all of the basic requirements concerning private data which occur throughout the rules.

Section C: Although the Act does provide for parental access to private data concerning that parent's minor data subject, access is subject to a significant exception. The exception is set out in the definition of "Individual" in Subdivision 4 of Section 15.162 of the Act. Proper implementation of the Act requires that the limits represented by this exception be clearly expressed. This exception has produced an abundance of questions, particularly from educators and social service agencies. The proposed section attempts to answer those questions.

The right of parental access is tempered by authority, given to the responsible authority by the Act, to deny such access when it is in "the best interest of the minor" to do so. Although this consideration of best interest is required by the Act, the Act does not provide guidelines by which the responsible authority can test "best interest." To fill this need, the rule provides five individual standards which the responsible authority must use in assessing "best interest." These five were chosen as the most reasonable to bring to the attention of the responsible authority because they appear to be the most critical.

2 MCAR § 1.206. ACCESS TO CONFIDENTIAL DATA

Sections A and B: Generally, these sections of the rule follow the parallel construction adopted for all of the rule sections dealing with access. Section A. fulfills the need of describing exactly who can gain access to confidential data. Section B. fulfills the need of assuring that data access is limited to those persons identified in Section A. by requiring the responsible authority to develop procedures to control access. The section also fulfills the need of providing guidance to the responsible authority concerning detailed requirements that should be made a part of such procedures.

Section B. Subsection 1,a: This section of the rule makes it clear that the responsible authority has the authority to deny access to data that is properly classified as confidential to any subject of such data and to the public. However, the rule also makes it equally clear that any subject of confidential data has an absolute right to know that he or she is the subject of confidential data. The statutory language is somewhat confusing on this point. In Section 15.165, Subdivision 3, the Act refers to individuals being informed if they are the subject of any data. The next sentence then speaks of individuals gaining access to private or public data. The rule is necessary to eliminate the confusion that results from the interplay of those two sentences. This clarity is necessary to assure proper administration of the Act. This particular provision is based on a concept, implicit in the Act, that there shall be no secret files maintained on individuals in this state.

Section B. 1., Subsections b and c: Because of the sensitive nature of confidential data, even the mere fact that an individual is the subject of certain types of confidential data should not be known to the general public. To fulfill this need, while balancing the individual's right to know he is a data subject, these parts of the rule provide certain guidelines to be followed by the responsible authority to assure that only the person who is the actual subject of the data learns that he is such a subject. This part of the rule is necessary to handle a logical problem which is implicit in the requirements of the Act, but which is not the subject of explicit language of the Act.

2 MCAR § 1.207. ACCESS TO ARREST INFORMATION

Because of the wording of the Act, the question of who is given access to arrest information and how long that access is available is subject to considerable confusion. The Act makes it clear, in Subdivisions 2a and 5a of Section 15.162, that arrest information is neither confidential nor private data. It is left to the reader to interpret by a process of exclusion that arrest information must be public. However, the Act also modifies the definition of arrest information in these private and confidential data definition sections, by referring to arrest information as

being reasonable contemporaneous with the arrest or incarceration.

It is clear that the words "reasonably contemporaneous" were intended to place a limit on general public access to the elements of data that comprise arrest information. The term "reasonably contemporaneous" was originally drawn from the federal Department of Justice rules concerning access to criminal history information. (See Subpart B, Rule 20.20 (c) in the proposed rules of the Department of Justice governing Criminal Justice Information Systems printed in Volume 40, number 98 of the Federal Register, May 20, 1975.) It was intended that the state statutory provisions be harmonious with the federal rules. Unfortunately, the phrase "reasonably contemporaneous" was subsequently deleted from the federal rules.

Section A: This section acknowledges and deals with the classification problems by making it clear that arrest information is public, but limiting the public classification only to a duration of time that begins with the actual arrest.

Section B: To explain the term "reasonably contemporaneous", this section proposes and defines a definite period of time during which arrest information must be made available to the public. The classification of arrest information after that period of time is subject to applicable provisions of statute or federal law.

Section C: There are clearly situations in which there is a high level of public interest in a given crime and the individual(s) arrested for that crime. Given the Act's definitions of "arrest information" and the administrative discretion that is implicit in the definition of "investigative data" it is clear that the responsible authority has some discretion to release additional data. However, the responsible authority needs guidance to balance the competing interests that come into play in such situations. This section provides that guidance.

The rule proposes that certain elements of data, concerning the arrested individual and the alleged crime, beyond those listed in the definition of arrest information may, in the public interest, be released. Such data elements would normally be drawn from the type of data referred to as investigative data, which is assigned the confidential classification by the Act. However, while assigning the confidential classification, the Act also makes it clear, subject to the limitations of 15.162, Subdivision 2a, (b), that the responsible authority has discretion to designate certain data as investigatory data. The proposed rule works within that discretionary authority to allow certain data associated with the arrest to be moved from the investigatory type of data into public data.

The rule's provision for this exercise of discretion was deemed necessary and reasonable because of high public interest in and concern with crime events. The responsible authority's exercise of this discretion is subject to certain factors that must be

taken into account before the discretion can be exercised.

Section D: In Section 15.162, Subdivision 1a, the Act determines whether "arrest information" concerning juveniles is public by referencing the statutory section which controls juvenile records, Section 260.161. The Act further excludes data created pursuant to Section 260.161 from the definition of "arrest information." This handling of juvenile "arrest" data has produced a number of questions. This section of the rules fulfills the need of providing answers to those questions. The section also provides the clear guidance to the responsible authority which is necessary to acheive the desired compliance with the requirements of the Act.

2 MCAR § 1.208. ACCESS TO INVESTIGATIVE DATA

The language of the Act, Section 15.162, Subdivision 2a, (b) makes it necessary for the rules to provide guidance to responsible authorities in their exercise of discretion in designating certain data as investigative data. Because investigative data is classified as confidential, it is necessary for the rules to clearly describe and tightly limit the exercise of that discretion. The Act does give the responsible authority certain discretion, subject to three criteria that will be discussed below, to designate certain data as investigative. However, nowhere in the Act is the term investigative data defined. The balance of this rule is devoted to defining that term and to providing limits on the responsible authority's discretion to designate certain data as investigative.

Section A: Because of the sentence structure and the punctuation of the statutory section, it is necessary for the rule to clarify that investigatory data is confidential data. As confidential data, investigative data is subject to the same basic rules concerning use of and access to any confidential data.

Section B: To provide guidance to the responsible authority in determining what investigatory data consists of, this section of the rule sets forth three criteria that must be met before any data can be determined to be investigatory data. The confidential classification, as applied to investigatory data, presents a potentially serious problem. As confidential data, investigatory data can be withheld from both data subjects and the general public. This condition prevents the operation of checks on agency abuse represented by either the subject's demand for correction or the possibility of public exposure through public access. Therefore, it is necessary that this exercise in discretion operate within the tightest possible guidelines. The rule presents those guidelines as criteria that must be met before any data can be designated as investigatory data. The criteria are drawn from the implied definition of investigative data found in 15.162, Subdivision 2a.

The three criteria that must be met are referred to in the rule as: 1) the collecting agency criteria; 2) the purpose of collection criteria; and 3) the active data criteria. Requiring the responsible authority to determine that the data in question can meet all of the criteria is the method adopted by the rule to assure that this exercise in administrative discretion operates within the requirements of the Act, and with the minimum possible abuse of discretion.

Section B: In Section 15.162, Subdivision 2a, (b), the Act refers to data "collected by a civil or criminal investigative agency." The term "civil or criminal investigative agency" is not defined by the Act and there does not seem to be a generally accepted definition for the term. This part of the rule fulfills the need of providing a definition for the quoted term. Without such a definition, it is conceivable that any governmental agency could maintain that it is a "civil or criminal investigative agency" and thereby attempt to withhold certain data from public access. The definition of the term is necessary to provide agencies with guidance so that they can properly determine whether they are or are not such an agency.

Section B. 2: In Section 15.162, Subdivision 2a (b), the Act refers to data collected "for the purpose of the commencement of a legal action." It is obvious that civil and criminal investigative agencies do collect substantial data that is not for the purpose of commencing a "legal action." The term quoted from the Act is present to provide another limit on the types of data that can be moved into the investigative rubric. "Legal action" may, and there appears to be some question about this, have a generally accepted meaning among attorneys. However, the term "legal action" does not seem to have a generally accepted definition among lay persons. This section of the rule is necessary to provide an understandable definition. Without such a definition, investigative data might be expanded to cover types of data that were not intended to be covered by this section of the Act. The section is also necessary to provide guidance to the responsible authorities in their determination of whether certain data is investigatory.

Section B. 3: In Section 15.162, Subdivision 2a (b), the Act refers to data collected "as part of an active investigation." However, the Act does not provide guidance as to what constitutes an "active investigation." The rule is necessary to provide guidance. Without such guidance, an agency could maintain, merely by saying so, that all or a substantial part of its data is "active." This part of the rule is intended to provide the necessary limits on the responsible authority's discretion to label data as "active." The rule must do so because no limits are provided by the Act. Because "active" is only understandable as a reference to time, the rule section provides time references within which certain data are and will continue to be active until a

designated point in time. This is a reasonable approach to the "active" data problem because agencies will be able to specifically place their data within a specific time frame. By doing so, they will then be guided as to whether the data is in fact "active" for the purpose of determining whether it is investigative.

2 MCAR § 1.209. ACCESS TO SUMMARY DATA

In its handling of summary data the Act acknowledges that "privacy" legislation may have a negative impact on the public interest in research concerning the operation of government and its programs. The technique developed in the statute to avoid this negative impact involves the summary data definition and the specific provisions of the Act governing summary data. The rule is written to provide responsible authorities with the guidance they need to properly administer the summary data provisions of the Act.

Section A: Because of the wording of the Act, there has been considerable confusion as to whether summary data must be legally classified as public before it can be accessed by the public. In Section 15.1641 (d), the first sentence refers to the ability to use summary data "provided that summary data is public pursuant to section 15.17." However, the very next sentence mandates that the responsible authority prepare summary data "upon the request of any person." This section of the rule is necessary to eliminate this seeming contradiction.

Section B: The Act presents a flexible approach to the subject of preparation of and access to summary data. The rule establishes certain necessary limits drawn from the Act to guide this flexibility. These limits are designed to handle the detailed requirements that are not established by the Act itself. The rule makes it clear that the Act proposes a process by which summary data can be prepared from private of confidential data. The rule further clarifies that any person can request or can actually summarize data from private or confidential data.

Because there may be costs associated with providing summary data, there is a need to provide the responsible authority with guidance concerning the assessment of such costs. Without such guidance, agencies could actively discourage usage of summary data by making costs prohibitive. Subsection 2 of this section provides the responsible authority with the necessary guidance concerning reimbursement of costs associated with providing summary data.

Although the Act clearly requires the preparation of summary data upon request by any person, the provisions of the Act produce some confusion as to what that preparation requires in the administrative context. The rule attempts to eliminate this confusion by providing definitions and by setting out in Subsection 5 some of the more common methods to be used in preparing summary data.

The rule also uses Subsection 5 of this section to deal with a common problem that has arisen, particularly between representatives of the media and plice agencies. This problem is concerned with providing public access to private or confidential data when the interest represented by such access could be served by providing data that does not identify specific individuals. There is sufficient flexibility in the summary data provisions to categorize certain reports, such as police incident reports with all personal identifiers stripped from them, as summary data. By doing so, the media is provided with sufficient data to to report crime and other incidents to the public. However, by use of the summary data provisions, protection is afforded to the integrity of police investigations and identies of victims, informants, and so forth.

The Act clearly permits a person outside the agency to summarize data from private or confidential data. However, the Act does not provide the responsible authority with detailed guidance to admister that requirement. This section provides those guidelines. To protect the actual private or confidential data being manipulated by a person from outside the agency, the Act provides for a non-disclosure agreement. However, the Act does not specify the contents of such an agreement. Subsection 4 of this section provides the necessary guidance to the responsible authority by setting out minimum contents of such an agreement.

2 MCAR § 1.210. CLASSIFICATION OF DATA

The Act imposes a number of administrative duties and requirements on the responsible authority. The exact nature of the responsible authority. The exact nature of the duties to be performed varies according to the classification of the data maintained and used by the governmental agency. Because of this variance in requirements, the responsible authority must, as a first step toward proper implementation of the Act, determine the proper classification for all data maintained by the particular agency. This rule makes it clear that classification of data is a positive duty that must be performed, by the responsible authority. Without this duty being performed, the Act cannot be properly implemented in the entity.

Sections A through D of this rule set forth the reasonable steps that should be taken to comply with the classification requirement. The steps to be taken are a logical progression beginning with identification of all the data being maintained by the agency. If these steps are not followed, and the appropriate actions taken by the responsible authority, it will be impossible for the agency to comply with the detailed requirements of the Act.

2 MCAR § 1.211. AUTHORITY OF THE RESPONSIBLE AUTHORITY

The necessity for this rule arises from two problems in the Act. First, the duties assigned to the responsible authority by the Act are voluminous. Notwithstanding this long list of duties, there is no explicit statement of the authority of the responsible authority to carry out all the requirements assigned to that position. Authority must be read as being implicit in the many duties. This rule takes that implicit but unstated authority and expressly states that the responsible authority has the authority to do these things required of him/her by the Act.

Second, the one place in the Act where it may be said that there is an express assignment of authority to the responsible authority is in Section 15.1641 (a). Unfortunately, the Act uses the term jurisdiction to describe the authority. Jurisdication is a legal term of art which has little or no meaning to those laypersons who are responsible authorities. Furthermore, jurisdiction in its proper legal usage is a term that has no relevance to purely administrative functions. This rule is intended to make it clear that the term jurisdiction, as used in the Act, is a term conferring authority on the responsible authority. Sections A. through B. of this rule go on to expressly state the limits on and the detail of that authority.

2 MCAR § 1.212. APPOINTMENT OF THE RESPONSIBLE AUTHORITY

Section A: The requirement of the appointment of a responsible authority in certain political subdivisions is the express subject of one provision of the Act, Subdivision 6 of Section 15.162. However, the necessity for such an appointment is not made clear for certain other types of governmental agencies. Practical experience with the implementation of the Act makes it clear

that appointment of responsible authorities has often not been accomplished as required by the Act. This section fulfills the need of clearly directing certain governing bodies to accomplish that appointment.

Section A. 2: Given the lack of clear authority conferred on the responsible authority by the Act, there is a further need for the responsible authority to receive the requisite authority from his or her employer, the appointing governing body. Without such a clear conferral of authority, it may be impossible for the responsible authority to perform the duties assigned by the Act. This rule deals with these two needs by making it clear that a responsible authority must be appointed, and furthermore, that the responsible authority so appointed must be given sufficient administrative authority by the governing body to take the actions necessary to comply with the Act.

Section A. 3: To assist governing bodies in making the formal appointments, forms have been created and placed in the Appendix to these rules. These advisory forms have been drawn from actual forms previously used to appoint responsible authorities in various agencies.

2 MCAR § 1.213. APPOINTMENT POWER OF THE RESPONSIBLE AUTHORITY

In Section 15.164 (a), the Act does provide authority to the responsible authority to appoint individuals to assist in the implementation and administration of the Act. The grant of appointment authority in the Act is simply a grant with no detailed explanation of the form of the appointment or limits placed on the appointment authority. This rule is necessary to provide for formalities of the appointment and to set out limits on the authority.

Section A: Because designees may be the personnel who deal with the public and with data subjects, it is necessary that there be a written record of any appointments. To satisfy this need, the rule requires that the actual appointment of a designee be accomplished in writing.

Section B: The primary purpose of the designee appointment power under the statute is to provide the means for the responsible authority to share the administrative duties associated with the implementation and administration of the Act in the agency. For designees to be able to perform such functions, the responsible authority must provide them with sufficient guidance as to the Act's requirements. To fulfill this need, the rule proposes certain activities that must be carried on by the responsible authority if the appointment authority is exercised. The objective of these activities is to assure that designees will be properly instructed and directed in performing the duties of the responsible authority under the Act.

2 MCAR § 1.214. DUTIES OF THE RESPONSIBLE AUTHORITY AS THEY RELATE TO PUBLIC ACCOUNTABILITY

This section is needed to provide guidance to responsible authorities in complying with the Act's requirement that a document be created that describes certain aspects of the agency's data administration program to the public.

Section A: The Act requires the general public and individual data subjects to direct their requests to access data and to make other inquiries to the responsible authority. In order to comply with this requirement, it is vital that the identity of the responsible authority be made known to the public. This requirement is intended to be satisfied by the public document required by Section 15.163. This section of the rule provides a temporary method by which at least the identity of the responsible authority shall be made available to the public until such time as the complete document required by the Act is prepared. Given the authority of the responsible authority to appoint designees, there is a further need for the identity of such designees to be made available to the public. The rule prescribes the method by which this identification will be accomplished.

Section B: The proposed rule would add certain items to the contents of the public document in addition to those items required by Section 15.163. The need for the additions proposed by the rule are as follows:

The responsible authority is required by the statute to identify, in the public document, all records, files, and processes maintained by the agency which contain private or confidential data. To be able to label certain data as private or confidential, the responsible authority must base his/her determination of data classification on a statute or federal law. The rule requires the responsible authority to identify those statutes or applicable provisions of federal law. By requiring the responsible authority to cite the authority for the determination, the rule fulfills two needs. First, this requirement provides a check on the responsible authority's use of discretion to classify data. If the responsible authority is properly determining data classification, he or she should be able to cite the authority for that determination in the public document.

Second, by requiring the responsible authority to cite the authority to classify specific data, the rule provides an additional check on administrative discretion. The general public and any individual data subject are provided with information by which they can, by examining the cited authority, decide for themselves whether the responsible authority has determined the proper classification for the data in question. This ability to independently evaluate the cited authority is particularly needed when the responsible authority has determined that the data in question is classified as confidential.

Section B. 2 and 3: Other than to identify the general contents of the public document, the Act provides few detailed specifications by which the responsible authority can be sure he or she has complied with the Act. The rule provides guidelines to the responsible authority against which compliance can be evaluated. The guidelines proposed by the rule will require the responsible authority to prepare a document that is understandable by the general public. This is necessary to assure that the public document does not become an exercise in "bureaucratese." To afford the opportunity for the greatest possible compliance, the rule also provides assistance to the responsible authority in the form of a sample public document set forth in an appendix to the rules.

2 MCAR § 1.215.DUTIES OF THE RESPONSIBLE AUTHORITY AS THEY RELATE TO THE ADMINISTRATION OF PRIVATE AND CONFIDENTIAL DATA

This rule deals with problems presented by the statutory requirement, particularly as set out in Section 15.1641, that different tasks be performed by the responsible authority depending on the classification of the data being administered. This rule elaborates on and clarifies the special tasks assigned to the responsible authority when the particular data is classified as either private or confidential.

Section A: To administer private or confidential data consistent with the provisions of Section 15.1641, it is an implicit requirement of the Act that the responsible authority first determine the lawfully authorized purposes for the collection, use, and dissemination of such data. The Act requires the responsible authority to make this determination in reference to two different time frames. The time frames for determining purposes are 1) prior to August 1, 1975, and 2) subsequent to August 1, 1975. Section A fulfills the need of explaining to the responsible authority how that determination is to be made and the consequences of the determination. The rule clarifies the varying requirements attached to data collected either before 1975 or after 1975.

Section B: This section fulfills the need of explaining to the responsible authority how the determination of purposes is made for post-1975 data. The current wording of the Act contemplates that since August 1, 1975, purposes for data collection have been communicated to data subjects as required by Section 15.165 of the Act. Experience with the Act makes it obvious that this communication has not been done by all agencies. This section deals with that additional problem by adopting a "should have" type of standard.

Section C: Having performed the preliminary task of determining purposes and uses, the responsible authority is prepared to comply with the detailed requirements of the Act. There has been much confusion concerning these particular requirements. This section

of the rule is proposed to eliminate that confusion. The rule does so by providing answers to the questions most asked about Section 15.1641 (c) of the Act. The section accomplishes this purpose in a reasonable fashion by translating the legal requirements of the Act into a proposed administrative method for compliance. This method revolves around preparation of a list identifying purposes and uses and utilization of that list in complying with the Act by performing various tasks required by the Act.

Section D: Section C is basically concerned with tasks to be performed by the responsible authority that related to persons outside the agency. Performance of these tasks will also have logical implications for the internal operation of the agency. Section D is concerned with detailing those internal tasks for the responsible authority. The general objectives of this section are to provide guidance so that personnel of the agency will be able to comply with the requirements of the Act.

Section E: Section 15.1641 (c) of the Act requires the responsible authority to comply with a requirement that private or confidential data only be administered for lawful purposes. However, the Act also provides certain discretion within which the responsible authority may change or establish new purposes, subject to certain requirements. This discretion is the subject of the latter part of Section 15.1641, Subdivision (c). Section E of this rule is necessary to provide the limits on the responsible authority's exercise of this discretion. The section also provides certain definitions that are necessary to the responsible authority's understanding of and administration of the Act. This is necessary because certain terms are not defined by the Act itself.

2 MCAR § 1.216. DUTIES OF THE RESPONSIBLE AUTHORITY AS THEY RELATE TO THE ADMINISTRATION OF ALL ENTITY DATA

The special limitations placed on the collection, use, and dissemination of private and confidential data are the subject of Rule § 1.215. The Act also places certain limitations on the collection and storage of all agency data. These limitations are the subject of Section 15.1641 (c) of the Act. The Act establishes a basic limitation that collection and storage of all agency data and the use and dissemination of the agency's private and confidential data is "...limited to that necessary to the administration and management of programs specifically authorized by the legislature, local governing body or mandated by the federal government. Rule § 1.216 is necessary to clarify the meaning of the quoted phrase and to provide direction to responsible authorities.

Clear direction is necessary because the statute is imposed on an administrative reality that for years has featured relatively

unrestrained data collection. Although the statutory direction is clear, the administrative implications of the plain words of the statute are not clear. Typical questions that are asked in this area are: 1) What is necessary data? 2) How do we determine if something is necessary? 3) What do we do if we determine something is not necessary? This rule has been written to provide answers to those questions among others and to give clear direction to responsible authorities concerning the administrative implications of the statutory section.

Section A: It is clear that the statute imposes a limitation on data practices relating to a "necessary" requirement. What is not clear is how the responsible authority determines whether the data maintained by his or her agency is "necessary to the administration and management..." of the agency's functions and programs. To provide a method of determination, the rule proposes that responsible authorities first determine what data is in use by their agencies. Following that determination, the rule requires responsible authorities to relate actual data usage to the usage specifically contemplated by either local, state, or federal enabling enactments.

To accomplish that requirement, and to assure compliance with the requirements contemplated by the Act, the rule proposes that a plan be developed by the responsible authority. Previous versions of this section, which explicitly laid out the detailed steps to be followed by the responsible authority in the determination of what is "necessary", were criticized during the IISAC review of the draft rules. (This was the review required by Section 15.1671.) The basis of the IISAC criticism was that this task was gigantic and probably beyond the resources of any responsible authority. In response to that criticism, the rule was redrafted in its present form which requires the responsible authority to develop a plan. Because the plan is developed by personnel of the agency itself, it should be uniquely adapted to the capabilities and problems present in each particular agency. This approach is more reasonable than to establish a rigid and detailed rule which may not be workable in the particular environment of each specific agency. By providing for a plan, the rule attempts to maximize the discretion afforded to the responsible authority in his/her attempts to comply with the general statutory requirements. However, the rule does provide certain guidelines within which the plan must be developed. These guidelines are necessary to assure that the general statutory requirements are met.

Section B: It has become a somewhat common practice for public administrators to assert that all that is required to comply with the statutory requirement it to assert, solely as an exercise in administrative discretion, that certain data is necessary. This is exactly the kind of discretion that this provision of the statute was intended to limit. In its formulation of the "necessary" requirement, the Act attempts to limit such unbridled discretion.

This section is necessary to clarify for the responsible authority the scope and nature of the limits on his or her discretion. Details of such limits must be set forth in the rule because such details are not found in the Act itself.

To work within the statutory limitations on what is "necessary" the responsible authority must determine what actually constitutes necessary data. The definition of the term "necessary" is not provided by the statute. Section B, in its entirely, is devoted to defining that term as it relates to the administration of governmental data.

Section C: It is implicit in the statute's "necessary" limitations that unnecessary data cannot be collected, stored, used, or disseminated. By requiring the responsible authority to determine what data is necessary, it is logical that the responsible authority will also determine that certain data is not necessary. This section is concerned with the actions that the responsible authority must take to properly dispose of any data determined to be not necessary. The rule is necessary to provide language and guidance to fill in the logical omission presented by the current words of the statute.

Section D: This section is concerned with the duties assigned to the responsible authority by subsection (e) of Section 15.1641 of the Act. The intent of the Act's section is clear in that it requires the responsible authority to assure that all data collected, used, and disseminated by the agency is (quoting the Act) "accurate, complete and current." What is not clear about the statutory section is the meaning of the quoted terms in the context of the overall objectives of the Act.

Section D fulfills the need of prescribing a set definition of those terms. Providing a standard definition for these terms will also fulfill the need of assuring that administrative practices concerning data are made more uniform across all agencies of the state. This imposition of uniformity is one of the rationales underlying the whole thrust of the Act.

2 MCAR § 1.217. DUTIES OF THE RESPONSIBLE AUTHORITY AS THEY RELATE TO COMPUTERIZED DATA

Section 15.1641 (e) of the Act makes it clear the security problems presented by computerized data should be of special concern to responsible authorities as they implement and administer the Act. Beyond expressing concern, the statute says nothing about how that concern is to be translated into positive administrative action by responsible authorities. The proposed rule fulfills this need by providing specific direction as to the steps that must be taken by the responsible authority to assure that computer data is maintained by the agency according to certain security requirements.

Section A: Tha Act limits the special emphasis on security arrangements to data maintained in "directly accessible files." To understand the duties under the Act, the responsible authority must understand the meaning of the quoted term. However, the Act does not define that term. The section fills this need by clearly defining the term "directly accessible files."

Sections B and C: Because there has been a general emphasis on data security requirements in recent years, most governmental data centers have security measures of varying quality in place. Because security measures are in place in computer facilities, it would be unreasonable to require agencies to start from scratch in establishing security measures. Section B. acknowledges this condition by proposing an audit of an entity's security as the starting point for compliance with the statute. The audit is proposed to consist of a review and evaluation of the agency's current security measures. Because of the variance in computerized systems and facilities, Section C. allows the extent and nature of the audit to be at the discretion of the responsible authority. However, the section does present certain requirements that must be a part of the audit. These requirements are proposed so that the responsible authority's discretion to conduct this audit is bound by some requirements.

Sections D and E: Depending on the responsible authority's assessment of the adequacy of the security measures currently in place in the agency, Section D. prescribes certain measures that must be taken if the responsible authority deems it necessary. Included in those measures are many of the commonly used data security techniques, whose objective is to minimize the risk of unauthorized access to data and data tampering. Becuase of the dynamic nature of computerized systems, including software and hardware developments, Section E. further requires auditing of security measures be a part of any agency's ongoing management of computerized data.

2 MCAR § 1.218. ADMINISTRATIVE APPEAL

Section A: The process of bringing an appeal from a determination of a responsible authority, a right conferred by Section 15.165, Subdivision 4, is generally regulated by the provisions of Chapter 15. of Minnesota Statutes and by rules promulgated by the Office of Hearing Examiners. This section of the rule acknowledges those requirements by referencing the other authority that guides the administrative appeal process.

Section B: The Act's handling of administrative appeals presents the need to describe the detailed administrative information necessary to bring the appeal. This section fills this need by providing addresses and certain other information for the content of the actual appeal documents.

Because the data in dispute may be classified as private, this section also provides for the ability to process the appeal under a pseudonym, instead of the real name of the data subject.

Section C: In initiating and maintaining any contested case to resolve a dispute brought to the Department pursuant to Section 15.165 of the Act, the Department will be acting as a neutral party in a quasi-judicial capacity. Compliance with the Administrative Procedures Act and the Rules of the Hearing Examiner will require the Dapartment to incur costs. The proposed rule Section is necessary to provide a means to bill those costs to the responsible authority whose data is in dispute. The proposed section is reasonable in that it assigns costs to the party who is in the best position to resolve the dispute at the earliest opportunity without resort to a contested case proceeding which may prove costly to all parties involved.

2 MCAR § 1.219. GENERAL POWERS OF THE COMMISSIONER

Section A: The enforcement powers of the Commissioner concerning the Act have been the subject of considerable discussion since the initial passage of the Act. This rule is necessary to define the Commissioner's power and authority. This section of the rule takes the position that a careful reading of the Act clearly establishes that the Commissioner's authority is limited. This section is necessary to describe the exact limits of the Commissioner's authority.

Sections B and C: There is no express authority for the establishment of a "Data Privacy Unit" expressed in the Act. Such a unit currently operates in the Department of Administration. The large volume of questions generated by the Act caused the Commissioner of Administration to create such a "unit" in 1974. Since that time the unit has functioned to provide a central place from which information concerning the Act can be provided to citizens and to administrative agencies. As the rules, once they are promulgated, will become a primary reference for responsible authorities and citizens, information concerning this information center's function should be made a part of the rules. For the rules not to acknowledge the existence of the Data Privacy Unit would be to ignore reality. It would also deprive agencies and citizens of a valuable source of information and assistance concerning the Act. These sections of this rule fulfill the need of providing information concerning the existence and location of the unit.

2 MCAR § 1.120. DUTIES OF THE COMMISSIONER RELATING TO THE EMERGENCY CLASSIFICATION OF DATA

This rule is necessary to provide some needed procedures and definitions that are not stated as a part of the emergency classification section of the Act, Section 15.1642.

Section A: Although the statutory section does provide general specifications of what must be contained in an application, the Act's provisions do not structure or format these specifications. This section of the rules addresses that problem by requiring responsible authorities to use a form provided by the Commissioner. That form, which has been prepared according to the requirements of Section 15.1642, is made a part of the Appendix to the rules.

Section B: There are a number of terms used in Section 15.1642 that are critical to an understanding of the section and of the process associated with the emergency classification of data. Several of the terms are not defined by the Act itself. This section of the rule fulfills the need of providing necessary definitions.

Section C: The Commissioner of Administration has delegated the preliminary work of screening and evaluating applications for emergency classification of data to the Data Privacy Unit. This section of the rule is necessary to provide time savings and to reduce administrative complications by guiding responsible authorities directly to the proper place for submitting applications.

Section D: The Act establishes what appear to be rigid time frames within which certain activities must be accomplished by the applicant and by the Department. In the experience of processing applications, it often occurs that an applicant has forgotten or omitted part of the information necessary to the processing of the application. To penalize the applicant by letting the time frames run while paperwork is being mailed back and forth would not be reasonable. This section of the rule is being proposed to take care of that problem by providing for the eventuality that a responsible authority must supplement an application with additional information.

Section E: Each legislative session it appears that the legislature may repeal the emergency classification authority given to the Commissioner. In the last three sessions, the legislature has chosen to extend that authority for one year only. Rule § 1.120. will have no meaning if the legislature repeals the emergency classification authority. This section is proposed to handle that situation by providing for a "repeal" of the rule in the event the underlying legislation is repealed.

2 MCAR § 1.221 SEVERABLE PROVISIONS

This section is a standard section for almost all rules proposed by administrative agencies. Its rationale is to provide for the severing off of any proposed rule found to be invalid during the hearing process.

Date: 10/5/78

Richard L. Brubacher
Commissioner

ATTACHMENT # 1

# Police interpretation of privacy law brings charges of withholding data

Minneapolis Tribune-
Sun., Jan. 11, 1976

By Jack Coffman
Staff Writer

Confusion over Minnesota's privacy laws has been growing in recent months, leading to accusations that officials are using the laws to withhold information.

The situation — subject of a legislative hearing Monday — has resulted, among other things, in:

- The withholding for two days of the name of a suspect arrested in a college bomb threat.
- The refusal of a city council to indentify candidates for a top municipal job. When the council mentioned the candidates in public meetings, they were referred to only by number.
- The policies of some counties of keeping the names of people arrested confidential until formal charges have been filed, sometimes days after the arrest.

Officials say the privacy laws prevent them from divulging such information, for, if they did, they might be sued by the people identified. Critics of such policies, primarily in the news media, say the situation results in a system of "secret arrests."

State Sen. Robert Tennessen, chairman of the Senate Judiciary Subcommittee on Privacy, said he is concerned about confusion over the

Privacy continued on page 8A



## Privacy

Continued from page 1A

law.

"There is no basis for having secret arrests in Minnesota," the Minneapolis DFLer said.

The law was intended to prevent large-scale collection of secret data on individuals by government agencies. It was amended this year in an effort to protect the confidentiality of investigations in the attorney general's office. The wording of the change, however, has been interpreted by some law-enforcement officers as a prohibition against releasing information to the press.

The legislative hearings are expected to produce an airing of the positions on both sides of the issue. Law-enforcement officers and news-media officials are scheduled to testify in the hearings, which will begin at 10 a.m. in Room 118 at the Capitol.

Tennessen said there have been several reports from the Twin Cities and outstate areas that law officers are treating the identities of arrested people as confidential because of the state law. Critics say that this could result in someone being held in jail for 36 hours (after which a charge must be made) and that, during that period, it would be impossible to determine the identity of the person being held.

Last week a woman was arrested in Marshall on a complaint stemming from an alleged bomb threat against Southwest State University. Police refused to release her name to the Marshall Independent, contending that the privacy law prevented such disclosure. Although the woman was arrested on Monday and released on bond, the newspaper was not given her name until Wednesday, when she was arraigned in court.

The privacy law also was used in Marshall recently to conceal the identities of candidates for the job of city administrator. During discussion of the merits of the candidates in public the council only referred to them by a number, not by name.

City Attorney Joseph Bot said the privacy law was used to shield the three final candidates' identities because they requested that confidentiality and because naming them might hurt their present job status. In contrast, the names of candidates for superintendent of Minneapolis schools were made public.

"Just because they are applying for a public job, does that mean they open themselves up?" Bot asked.

Other officials say the changes in the privacy laws have changed the way they treat information. Donald Eustice, Waseca County sheriff, said the law prevents him from releasing the names of people arrested until they are actually charged. He acknowledged that under this system someone could be held in jail and no one outside the legal system would be able to find out. However, he said, someone might be arrested and later it would be determined there was no case against the person. Then, he said, "we might be in real trouble."

Until the change in the law, the St. Paul Police Department revealed the names of those arrested. It has since reversed that policy because of an interpretation of the privacy laws by the city attorney's office.

In addition, news media were denied access to investigation reports that had been available before. The St. Paul Dispatch and Pioneer Press sought to overturn this policy change in court. Judge Joseph Summers, in a move that did not rule on the newspaper petition, urged his fellow judges to approve a court rule that investigation reports on misdemeanor and petty-misdemeanor charges be made available to reporters. Most judges agreed.

In Hennepin County the daily roster of inmates at the county jail is kept confidential by Sheriff Donald Omodt.

His position is that law officers did not ask for the law in the first place, but that now that they are faced with it, they must abide by it strictly.

"If they (legislators) want to change it, it's fine with us," Omodt said.

Privacy continued on page 9A

# Privacy

Continued from page 8A

Chief Deputy W. R. Hoagland said one out of four people brought to the jail is subsequently released with no immediate charge filed. He feels keeping these names confidential is consistent with the spirit of the privacy laws.

"If a law enforcement officer bends over backwards to see that the name of a person arrested but later not charged isn't plastered all over the newspaper, it seems to me we are following the intent of the law," he said.

Paul Tschida, superintendent of the Bureau of Criminal Apprehension (BCA), said he feels that some law officers are now concerned about what could happen to them if they reveal information considered confidential under the privacy law.

"What they are scared about is that if they do release it, someone will sue them," said Tschida. "So if you do nothing, at least you are safe."

John Meyer, Detroit Lakes publisher and president of the Minnesota Newspaper Association, has said that in some counties "we now have secret arrest and incarceration until the time of arraignment. We do not believe the Legislature or the people of this state will allow for such a situation to continue, and we call for action as quickly as possible to end this trend."

Robert Shaw, lobbyist for the association, said, "The law is being misinterpreted all over the place."

Early last week a slightly different situation arose involving the refusal to divulge the name of an accused, this time a person who had been arraigned on kidnap charges in Benton County.

Judge Paul Doerner, at the request of Benton County Attorney Richard Jessen, ordered all officials under his jurisdiction not to make the name available to reporters. The ban was also directed at representatives of the news media in the courtroom; since there were none there, the impact of the ban was questionable.

However, the suspect was also charged in Sherburne County, where there was no embargo on his identity.

The name of the suspect was printed in many papers that day, leaving Jessen, who had wanted to avoid pretrial publicity, wondering, "It turns out to be a mess, and at this point, I'm not sure it was worth it."

And, in discussing the situation by telephone last week, Judge Doerner requested that he not be identified in the story about the order.

ATTACHMENT # 1

ATTACHMENT # 1

# Panel to attempt privacy-law change

By David Kuhn
Staff Writer

Members of a state Senate subcommittee agreed Monday to attempt to draft legislation to resolve a dispute between some law-enforcement agencies and news organizations over the disclosure of certain arrest data.

Testimony before the subcommittee yesterday underscored, however, the difficulties of satisfying both law enforcement and news media officials, who have basic differences on the issue.

The conflict focuses on whether the identities of people arrested but not yet charged should be available as public information, and whether the state's public-records law does or does not permit release of that information now.

Until late last year, when the state's privacy act was revised, disclosure of arrest data was governed only by the broadly worded Public Records Act and by varying interpretations given to it by law-enforcement agencies.

The 1975 amendments removed an exemption covering criminal-investigation data and made law-enforcement officials subject to penalties contained in the privacy act for violation of that law. The penalties can include suspension without pay or loss of job.

Sen. Robert Tennessen, DFL-Minneapolis, the subcommittee chairman, said yesterday that the privacy-law revision was not intended to have any effect on the Public Records Act. Any information previously made available should still be available, he said.



State Sen. Robert Tennessen

But the issue arose when police officials and city or county attorneys in some jurisdictions, including St. Paul, interpreted the privacy act to mean that identities of people arrested "for probable cause" but not charged must be withheld or the officials involved would be liable to the penalties.

Spokesmen for the Minnesota Joint Media Committee, an umbrella group of the state's news media, submitted proposed changes in the laws.

John Finnegan, executive editor of the St. Paul Dispatch and Pioneer Press, said withholding of the identities of arrested people makes it possible for police to make secret arrests and hold citizens for up to 36 hours before releasing them or charging them.

"It is essential in our democratic society that the public, through its representatives in the media, be able to monitor the activities of the police," Finnegan said.

Several news spokesmen said police, who have the power to invade a person's privacy by arresting him, should not have the power to decide whether to disclose that information.

Law-enforcement officials disagreed totally. They said it would be an unwarranted invasion of individual privacy to disclose the names of people arrested but not charged. They also discounted the likelihood of secret arrests if identities were not made known before charges were filed. Nevertheless, they agreed that the laws should be clarified.

Minneapolis Tribune
Tues., Jan. 13, 1976 7B

ATTACHMENT # 2

DFL-Minneapolis

# A Guest Column

Editor's note: The Star, with the help of Sen. Tennessen, asked a number of experts on the privacy issue to write guest columns. Their contributions will follow this first column by Tennessen. Minn Star 2/15/77

Privacy is a fundamental right necessary to maintain human dignity and to preserve a free and democratic society. No one whose beliefs, thoughts, ideas and lawful deeds have been exposed for the whole world to see without his consent can be free. Yet the unabated collection and disclosure of personal data by government has interfered with this fundamental right of many.

Alexander Solzhenitsyn eloquently illustrated in "Cancer Ward" the severe limitations on actual freedom as well as on a person's sense of freedom which necessarily and inevitably result from unrestrained governmental intrusion into one's personal life. The tyranny thus exercised over individuals is no less real when the invasion of privacy is by private individuals or by the press.

The need for privacy has recently attained a new urgency because of governmental intrusion into the private lives of citizens. Watergate, U.S. Army surveillance of civilians lawfully exercising their political rights, and illegal FBI surveillance have illustrated the need for specific legislative guarantees to protect a person's privacy. The protection must prevent excessive intrusion into a person's beliefs, thoughts, ideas and lawful activities which the person has not chosen to share with others. Protection must also be afforded to personal information we voluntarily share with others for a specific purpose to prevent unauthorized use for other purposes or by third persons.

Invasion of man's privacy and subsequent exposure or mere threat of exposure is a means of control designed to stifle dissent, unconventional thoughts, beliefs and ideas as well as lawful actions. Some protection against governmental interference is found in the Fourth and Fifth Amendments to the U.S. Constitution. The Fourth protects "the right of people to be secure, in their persons, houses, papers and effects, against unreasonable search and seizure" while the Fifth protects us in criminal cases from having to be witnesses against ourselves. Certainly privacy is a right as equally important to a free democratic society as is a free press.

Both privacy and freedom of press are fundamental rights. At times they may conflict. A free press is necessary to guard against incompetency and corruption in government by informing the public. In a free democratic society, government is possible only with the informed consent of the governed. However, not all personal information the government collects is or should be public. We have protected the confidentiality of tax returns and adoption records. Classification of data involves the balancing of the rights of privacy and a free press. If public, the information must be available to the most humble citizen on the same basis as to the most powerful newspaper. No greater right to know exists in the latter.

Minnesota has long had a public records law requiring public officials to keep all records necessary to the exercise of their duties and to make the records available for public inspection at reasonable times, subject to some statutory exceptions. The law has not been recently changed.

Government has long collected more personal data than is necessary to carry out its statutory and constitutional duties. Although the information garhered has often been inaccurate, nevertheless it has been the basis for denying citizens certain benefits. Also, even though collected for one purpose, the personal data has a potential to be used for other purposes without that person's consent. First in the nation, Minnesota in 1974 adopted a privacy act to protect citizens' right to privacy. The act was amended in 1975.

The Privacy Act restricts collection of personal data to that necessary to carry out duties mandated by legislation, ordinances and executive orders. It greatly restricts use of information for purposes other than that for which collected; it gives citizens the right to examine records about themselves and the means to correct inaccuracies; and it ensures that no data banks whose existence is secret will exist.

The definition of a public record was not altered by the Privacy Act. Rather, it incorporated the definition by specific reference. Recently various police departments have refused to disclose the names of persons arrested or held, ostensibly on the basis of the Privacy Act. However, when pressed on the point in a public hearing, the St. Paul city attorney claimed his opinion was based upon his interpretation of the public records law and in no way upon the Privacy Act itself.

I do not believe secret arrests or jailings can be based upon either statute. Any police department withholding the names of those arrested is violating the public records law. St. Paul's claim is only a new wrinkle in an old issue. Prior to the 1974 act, the Minneapolis Police Department at one time refused to disclose the names of those arrested, claiming that it was protecting their privacy.

I think the issues of secret arrests are clear. Secret arrests are the hallmark of a totalitarian society. The potential for corruption and illegal police activity must be prevented by continuing to treat the names of persons arrested as public. In balancing the rights of privacy and the right of a free press, the protection of a free and democratic society is better maintained by public disclosure of names of persons arrested.

Clearly, a right to privacy is an essential component of a free society. Clearly, a vigorous free press is no less essential. What happens when these fundamental essentials come into conflict is not so clear. Minnesota's Privacy Act is an attempt to guard privacy and to provide some guid-

2 MCAR § 1.201. Scope and purpose. These rules relate to and shall apply to the provisions of Minn. Stat. §§ 15.162 through 15.1671.

A. These rules shall apply to those governmental entities as defined by Minn. Stat. § 15.1671, subd. 5, 7, and 8, which collect, create, use, store,and disseminate data on individuals as defined in Minn. Stat. § 15.162, subd. 3.

B. Non-profit social service agencies meeting the requirements of Minn. Stat. § 15.162, subd. 5 shall include, but are not limited to, agencies providing mental health, physical health, counseling and day-activities services.

1. These rules shall only apply in the instance where such an agency is required, by the terms of a written contract with a state agency, political subdivision, or statewide system to collect, create, store, use, or disseminate data on individuals.

2. In the event of such a contract, these rules shall only apply to the data on individuals that is actually generated by the social service agency because of the contract.

3. Any data generated by activities of the social service agency that are independent of the contractually based activities shall not be subject to these rules.

4. These rules shall not apply to personnel data maintained on employees of such social service agencies.

C. These rules shall not apply to any governmental data collected, created, used, stored, or disseminated which is not data on individuals as defined in Minn. Stat. § 15.162, subd. 3, except these rules shall apply to summary data.

D. Nothing in these rules shall limit the discovery procedures available at law to any party in a civil or criminal action or administrative proceeding as described in the Minnesota Rules of Civil Procedure and the Minnesota Rules of Criminal Procedure as adopted by the Minnesota Supreme Court or in Minnesota Statutes.

E. Nothing in these rules shall restrict or limit the scope or operation of any judicial order or rule issued by a state or federal court.

F. Nothing in these rules shall be construed to diminish the rights conferred on subjects of data by Minn. Stat. § 15.165, or any other statute.

G. The purpose of these rules is to aid governmental entities in implementing and administering Minn. Stat. §§ 15.162 through 15.1671. These rules are intended to guide entities so that while protection is given to individual privacy, neither necessary openness in government nor the orderly and efficient operation of government is curtailed.

2 MCAR § 1.202 Definitions. All terms shall have the meanings given them by Minn. Stat. § 15.162. Those terms and additional terms as used in these rules shall have the meanings as follows:

A. Act means Minn. Stat. §§ 15.162 through 15.1671, as amended,

commonly referred to as the "Data Privacy Act" or the "Minnesota Fair Information Practices Act".

B. Arrest Information means only those elements of data that are expressly listed in § 15.162, subd. 1a of the Act. Arrest information shall only include data which is collected, created, or maintained by an entity whose officers, employees, or agents are given arrest powers by statute, or the power to take into custody any person arrested by another citizen of this state.

1. Such entities include, but are not limited to, municipal police departments, county sheriff departments, the Minnesota State Patrol, and officers deputized as game wardens under the provisions of Minn. Stat. § 97.50.

C. Data means "data on individuals" as defined in § 15.162, subd. 3 of the Act, unless stated otherwise.

1. Data can be maintained in any form, including, but not limited to, paper records and files, microfilm, computer medium, or other processes.

2. The duration of the existence of data, including whether certain data is temporary rather than permanent, is not relevant to compliance with these rules.

3. All data, in whatever form it is maintained, is "data on individuals" if it can in any way identify a unique individual.

4. Code numbers representing unique individuals in certain data constitute "data on individuals", provided a list or index of any type is made available by which the code number can be cross referenced to identify unique individuals. Such data may qualify for treatment as summary data, pursuant to 2 MCAR § 1.209.

a. Code number means the labeling or enumeration of data by use of a letter, number, or combination thereof, which is used in place of an individual's name, including but not limited to index numbers, dummy numbers, SOUNDEX codes, and social security numbers.

5. Data is "data on individuals" if it identifies an individual in itself, or if it can be used in connection with other data elements to uniquely identify an individual. Such data shall include, but is not limited to, street addresses, job titles and so forth where the particular data could only describe or identify one individual.

D. Confidential Data, as defined in § 15.162, subd. 2a of the Act, shall only include data which is expressly classified by either a state statute, including the provisions of § 15.1642 of the Act, or federal law.

1. Data is confidential only if a state statute or federal law provides substantially that:

a. Certain data shall not be available either to the public or to the data subject; or

b. Certain data shall not be available to anyone for any reason except agencies which need the data for agency purposes.

2. Data is not confidential if:

a. A state statute or federal law provides that the data is confidential, but the context of the statute or federal law, in which the term confidential appears, reasonably indicates the data is accessible by the data subject.

3. A state agency rule, an executive order, and administrative decision, or a local ordinance shall not classify data as "confidential", or use wording to make data inaccessible to the data subject unless there is a state statute or federal law as the basis for the classification.

E. Private Data, as defined in § 15.162, subd. 5a of the Act, shall only include data which is expressly classified by either a state statute, including the provisions of § 15.1642 of the Act, or federal law.

1. Data is private if a state statute or federal law provides substantially that:

a. Certain data shall not be available to the public but shall be available to the subject of that data;

b. Certain data shall not be available to anyone, except the data subject or his designated representative such as an attorney;

c. Certain data shall be confidential and the person the data is about may view the data at reasonable times; or

d. Certain data shall be confidential and may be shown to the data subject at the discretion of the person holding the data. Such data shall be private if the state statute or federal law does not provide standards which limit the exercise of the discretion of the person maintaining the data.

2. Data is not private if:

a. Absent a statutory or federal law basis for classification, a state agency rule, an executive order, an administrative decision or a local ordinance provides substantially that certain data shall be private, pursuant to Minn. Stat. § 15.162, subd. 5a, or any other similar wording.

b. A federal agency rule provides substantially that as a part of its plan for implementation of a certain federal program, a state agency, statewide system, or political subdivision must provide for the confidentiality of data obtained from program subjects.

F. Public Data shall mean "data on individuals",as defined in § 15.162, subd. 5b of the Act, which is neither private nor confidential data, and which is data that is an official record pursuant to Minn. Stat. § 15.17.

1. Data is public if:

a. A state statute or federal law substantially provides

that certain data shall be made available to the public, pursuant to Minn. Stat. § 15.17, or any other similar wording;

b. A state statute or federal law substantially requires the collection of certain data by a state agency, political subdivision or statewide system, and does not classify that data as private or confidential;

c. A state agency, statewide system, or political subdivision, without any express enabling authority to do so, collects certain data because that data is necessary to its operations; as defined at 2 MCAR § 1.216, B.1.

2. This rule shall not limit the ability of an entity to apply for emergency classifications of data pursuant to § 15.1642 of the Act.

G. Designee means any person designated by a responsible authority to be in charge of individual file(s) or system(s) containing "data on individuals".

H. Entity means any governmental agency subject to the requirements of the Act, including state agencies, political subdivisions, and statewide systems as those terms are defined in § 15.162 of the Act.

1. State agency shall include any entity which is given power of statewide impact by statute or executive order.

2. Political subdivision shall include those local government entities which are given powers of less than statewide impact by statute or executive order.

3. Statewide systems shall include, but are not limited to, record keeping and data administering systems established by statute, federal law, administrative decision or agreement, or joint powers agreement.

a. Statewide systems shall include, but are not limited to, the Criminal Justice Information System administered by the Bureau of Criminal Apprehension, the Statewide Accounting System, the Minnesota Education Computing Consortium, and the various welfare systems primarily administered by the Department of Public Welfare.

I. Federal Law means United States Code, rules of federal agencies as published in the Federal Register, and federal case law, including decisions of any court in the federal judicial system.

J. Individual means any living human being. 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 natural person.

K. Records Management Act means Minn. Stat. § 138.17.

L. Responsible Authority means the individual in each entity who is designated or appointed pursuant to § 15.162, subd. 6 of the Act.

1. In state agencies, the Responsible Authority shall be as follows:

a. Departments: the commissioner of the department.

b. Constitutional Offices: the constitutional officer.

c. University of Minnesota: the individual appointed by the Board of Regents.

d. All other state agencies: the chief executive officer, or if none, then an individual chosen by the agency's governing body.

2. In political subdivisions, the Responsible Authority shall be as follows:

a. Counties: each elected official of the county shall be the Responsible Authority for his respective office. An individual who is an employee of the county shall be appointed by the county board to be the Responsible Authority for any data administered outside the offices of elected officials.

b. Cities: the city council shall appoint an individual who is an employee of the city.

c. School Districts: the school board shall appoint an individual who is an employee of the school district.

d. Nonprofit Corporations or Nonprofit Social Service

Agencies: unless a statute or the governmental entity which created the corporation or agency appoints an individual, the governing body of the corporation or agency shall appoint an individual. If no appointment is made, the chief executive officer of the nonprofit corporation or agency shall be the Responsible Authority. If the corporation or agency is part of a statewide system, the Responsible Authority for the statewide system shall be the Responsible Authority for the corporation or agency as determined by this rule.

e. All other political subdivisions: the governing body shall appoint an individual who is an employee of the political subdivision.

3. In "Statewide Systems", the Responsible Authority shall be as follows:

a. The commissioner of any state department or any executive officer designated by statute or executive officer designated by statute or executive order as responsible for such a system; or

b. If a state statute or executive order does not designate an individual as Responsible Authority, the Commissioner of Administration shall appoint the Responsible Authority after the entities which participate in the system jointly apply for such an appointment in a form provided by the Commissioner of Administration.

M. Summary Data, as defined in § 15.162, subd. 9 of the Act, means data which has been extracted, manipulated, or summarized from private or confidential data, and from which all data elements that could link the data to a specific individual have been removed.

1. Summary data includes, but is not limited to, statistical data, case studies, reports of incidents, and research reports.

2. Data is summary data if any list of numbers or other data which could uniquely identify any individual in the summary data is physically separated from the summary data and is not made available to persons who gain access to, or possession of the summary data.

2 MCAR § 1.203 Access to Public Data. The Responsible Authority shall comply with the following general rules governing access to public data.

A. The Responsible Authority shall provide access to public data to any person, regardless of that person's interest in the data.

1. The Responsible Authority shall establish procedures to describe how such access may be gained.

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a. In such procedures, the Responsible Authority may limit the time that public access is available to the normal office hours of the agency.

b. In such procedures, the Responsible Authority shall provide for a response to a request for access within a reasonable time.

unless otherwise provided by law

c. The Responsible Authority shall charge a reasonable fee for providing copies of public data, unless the costs incurred by the entity in providing the copies are minimal.

d. In determining the amount of the reasonable fee, the

11

Responsible Authority shall be guided by the following:

1. The cost of materials, including paper, used to provide the copies.

2. The cost of the labor required to prepare the copies.

3. Any schedule of standard copying charges as established by the agency in its normal course of operations.

4. Any special costs necessary to produce such copies from machine based record keeping systems, including but not limited to computers and microfilm systems.

5. Mailing costs.

2 MCAR § 1.204 Access to Private Data. Pursuant to §§ 15.1641 and 15.162, subd. 5a of the Act, the Responsible Authority shall comply with the following rules concerning access to private data:

A. Access to private data shall be available only to the following:

1. The subject of such data.

2. Individuals within the entity, whose work assignments reasonably require access.

3. Entities and agencies as determined by the Responsible Authority who are authorized by statute, including

§ 15.1641 (c) of the Act, or federal law to gain access to that specific data.

4. Entities or individuals given access by the express written direction of the data subject.

B. The Responsible Authority shall establish written procedures to assure that access is gained only by those parties identified in Part A of the rule.

1. In those procedures, the Responsible Authority shall provide for reasonable measures that will assure that the person seeking to gain access to the private data is actually the subject of that data or the authorized representative of the data subject.

2. Such reasonable measures include, but are not limited to the following:

a. Requiring the person seeking to gain access to appear at the offices of the entity to gain such access or requiring the notarized signature of any data subject who is unable to appear at the offices of the entity.

b. Requiring the person to provide reasonable identification.

C. The Responsible Authority may limit the time that access is available to the data subject to the normal working hours of the agency.

D. The Responsible Authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data.

E. The Responsible Authority shall charge the data subject a reasonable fee for providing copies of private data.

1. In determining the amount of the reasonable fee, the Responsible Authority shall be guided by the criteria set out in 2 MCAR § 1.203 concerning access to public data.

2 MCAR § 1.205 Access to Private Data Concerning Data Subjects Who Are Minors. Pursuant to . §§ 15.1641 and 15.162, subd. 4 and 5a of the Act, the Responsible Authority shall comply with the following rules concerning access:

A. In addition to the particular requirements of this rule , access to private data concerning a minor data subject shall be subject to the requirements of 2 MCAR § 1.204 concerning access to all private data.

B. Access to private data concerning minors shall be available only to the following:

1. Those parties identified as having access to private data under part A of 2 MCAR § 1.204.A.

2. Subject to the provisions of Minn. Stat. § 15.162, subd. 4, any other applicable statute, and the exception set out at part C-1 below, the parents of the minor data subject. §1.204

a. For purposes of this rule, the Responsible Authority shall presume the parent has the authority to exercise the rights inherent in the Act unless the Responsible Authority has been provided with evidence that there is a state law or court order governing such matters as divorce, separation, or custody, or a legally binding instrument which provides to the contrary.

C. Pursuant to the provisions of Minn. Stat. § 15.162, subd. 4, the Responsible Authority shall establish procedures to provide access by the parents of a minor data subject to private data concerning that minor, subject to the following:

1. The Responsible Authority may deny parental access to private data when the minor, who is the subject of that data, requests that the Responsible Authority deny such access.

a. The Responsible Authority may require the minor data subject to submit a written request that the data be withheld. The written request shall set forth the reasons for denying parental access and shall be signed by the minor.

2. Upon receipt of such a request, the Responsible Authority shall determine if honoring the request to deny parental access would be in the best interest of the minor data subject.

a. In making the determination, the Responsible Authority shall be guided by at least the following:

(1) 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.

(2) Whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm.



(3) Whether there is ground for believing that the

minor data subject's reasons for precluding parental access are reasonably accurate.

(4) 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.

(5) Whether the data in question is subject to the right of parental access outlined in the "Family Educational Rights and Privacy Act of 1974", Public Law 93-380,and the rules promulgated thereunder.

(6) Whether the data concerns medical, dental or other health services provided pursuant to Minn. Stat. §§ 144.341 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 MCAR § 1.206 Access to Confidential Data. Pursuant to Minn. Stat. §§ 15.1641 and 15.162, subd. 2a, the Responsible Authority shall comply with the following rules concerning access to confidential data:

A. Access to confidential data is available only to the following:

1. Individuals within the entity, whose work assignments reasonably require access.

2. Entities and agencies who are authorized by statute, including § 15.1641 of the Act, or federal law go gain access to that specific data.

B. The Responsible Authority shall establish written procedures to assure that access may be gained only by those parties identified in Part A of this rule.

1. In the drafting and administration of those procedures, the Responsible Authority shall provide measures by which data subjects shall be informed, upon request, if they are the subjects of confidential data.

a. The Responsible Authority shall not disclose the actual confidential data to the data subjects, but shall inform them whether confidential data concerning them is or is not retained.

b. The Responsible Authority shall take reasonable measures to assure that the person making inquiry is actually the individual data subject.

c. Reasonable measures may include, but are not limited to:

(1) Requiring the inquiring person to appear at the office of the entity to make his/her request.

(2) Requiring the inquiring person to provide identificati

(3) Requiring the notarized signature of any data subject who is unable to appear at the offices of the entity.

2 MCAR § 1.207 Access to Arrest Information. Pursuant to § 15.162, subd. 1a, 2a, and 5a of the Act, the Responsible Authority, shall comply with the following rules concerning access to arrest

information:

A. For the duration of time, defined in Part B of this rule, that immediately follows the creation of data constituting arrest information, the Responsible Authority shall make such information available to anyone who requests it in writing, by personal appearance, by telephone inquiry, or any other means.

B. For purposes of this rule, "duration of time" commences with the creation or recording of the arrest information subsequent to the actual detention or citation of the arrested party. "Duration of time" ends at that point in time when an arrested party is:

1. Either released without a criminal complaint being filed against him/her; or

2. Appears before a judicial officer for the offense for which he/she was arrested, or any lesser included offense as described in the Rules of Criminal Procedure as adopted by the Minnesota Supreme Court.

C. During the duration of time described in Part B of this rule, the Responsible Authority shall not be limited to publicly releasing only arrest information, as defined by § 15.162, subd. 1a of the Act. The Responsible Authority may release additional information after consideration of at least the following:

1. Whether the status afforded to certain data as investigative data, pursuant to § 15.162, subd. 2a of the Act, is no longer needed to protect the integrity of an investigation.

2. Whether there is concern and interest on the part of the public in the person arrested or the alleged crime committed.

3. Whether the release of additional data and its subsequent publication may prejudice the arrested individual's right to a fair and impartial trial.

4. Whether the data subject has requested that arrest disposition data pertaining to that data subject be disseminated.

5. Whether the identity of any victims of or witnesses to the crime should be protected.

D. The Responsible Authority shall not make available to the public any data concerning the dentntion of a juvenile individual, unless that juvenile is judicially certified to be tried as an adult as described in the Minnesota Rule of Criminal Procedure. The Responsible Authority shall make any data concerning the detention of a juvenile available to the parents of the juvenile.

2 MCAR § 1.208 Access to Investigative Data. Pursuant to Minn. Stat. §§ 15.162, subd. 2a and 15.1641 of the Act, the Responsible Authority shall comply with the following general rules concerning access to investigatory data:

A. Investigatory data is confidential data, pursuant to § 15.162, subd. 2a(b). The Responsible Authority shall comply with the provisions of 2 MCAR § 1.206, concerning access to confidential data.



B. The Responsible Authority shall determine that data maintained

by his entity is investigative data only if all criteria set out in Parts 1, 2, and 3 of this section are met.

1. Collecting Agency Criteria. The data is collected, created, or maintained by or at the direction of one of the following entities, or by an agent of such entity:

a. Law Enforcement agencies, whose agents are given arrest powers, including, but not limited to those entities listed in 2 MCAR § 1.201, B.1.

b. Public Attorneys, who are given the statutory or constitutional authority to prosecute or to defend civil or criminal actions as defined by the Minnesota Rules of Civil Procedure and the Minnesota Rules of Criminal Procedure including, but not limited to, municipal and county prosecutors and members of the Attorney General's staff.

c. Judicial entities, whose agents are given the statutory or constitutional authority to adjudicate cases and to render sentences.

d. Any agency given statutory authority to revoke or suspend licensure.

e. Any entity which has a reasonable expectation that certain data, in its possession may become the subject of a legal action, as set forth in Part 2 of this section.

2. Purpose of Collection Criteria. The data is collected or created for the purpose of the commencement of a legal action. Any of

the following shall constitute a "legal action", for the purposes of this rule, and as used in Minn. Stat. § 15.162, subd. 2a(b):

a. Arrest of any individual.

b. Issuance of a citation, complaint, or an indictment as described in Minnesota Rules of Criminal Procedure.

c. Service of a civil complaint on behalf of the state, a state agency, or a political subdivision.

d. Service of a civil answer on behalf of the state, a state agency, or a political subdivision.

e. Maintaining or prosecuting a civil or criminal action on behalf of the state, a state agency, or political subdivision.

f. Conducting any arbitation proceeding pursuant to Chapter 572 of Minnesota Statutes.

g. Conducting any proceeding which may lead to the suspension or revocation of any type of license issued by a state agency or political subdivision.

3. Active Data Criteria. Active data includes:

a. Data collected for the purpose of the commencement of a criminal action in which all perpetrators of the criminal violation have not been apprehended, the matter has not been fully adjudicated,

the statute of limitations for the alleged violation has not run, or all rights of appeal in the judicial system have not been exhausted.

b. Data collected for the purpose of bringing or defending a civil action where that action has not been finally resolved, including exhaustion or extinguishment of all rights of appeal in the judicial system.

c. Data collected for the purpose of participation in an arbitration proceeding where that proceeding has not resulted in a binding decision, including exhaustion of all rights of appeal in the judicial system.

d. Data collected for the purpose of participation in a license revocation or suspension proceeding where that proceeding has not resulted in a binding decision, including exhaustion of all rights of appeal in the judicial system.

2 MCAR § 1.209 Access to Summary Data. Pursuant to Minn. Stat. § 15.641 (d), the Responsible Authority shall comply with the following general rules concerning access to summary data:

A. Summary data is public data. The Responsible Authority shall comply with 2 MCAR § 1.203, concerning access to public data.

B. The Responsible Authority shall prepare and implement procedures in his/her agency to assure that access to summary data is given to anyone who requests such data. In the preparation and administration of such procedures, the Responsible Authority shall comply with the following:

1. Preparation of summary data may be requested by any person. The request shall be in writing in a form provided by the Responsible Authority. Within ten days of the receipt of such a request, the Responsible Authority shall inform the requestor of the estimated costs if any, pursuant to subd. 2 of this rule and subject to the provisions of that section either:

a. Provide the summary data requested; or

b. Provide a written statement to the requestor, describing a time schedule for preparing the requested summary data, including reasons for any time delays; or

c. Provide access to the requestor to the private or confidential data for the purpose of the requestor's preparation of summary data, pursuant to § 15.1641 (d) of the Act and subd. 4 of this section.

2. Any costs incurred in the preparation of summary data shall be borne by the requesting person. In assessing the costs associated with the preparation of summary data, the Responsible Authority shall:

a. Be guided by the provisions of 2 MCAR § 1.203 in determining costs.

b. Provide to the requesting person an estimate of the costs associated with the preparation of the summary data.

c. Prior to preparing or supplying the summary data, collect

any funds necessary to reimburse the entity for its costs.

d. Charge no more than reasonable copying costs when the summary data being requested requires only copying and no other preparation.

e. Take into account the reasonable value to the entity of the summary data prepared.

3. For the purposes of administering Minn. Stat. § 15.1641 (d), the following terms shall have the meanings given them.

a. "Administrative officer" includes, but is not limited to, the entity's research director, statistician, or computer center director.

b. "Person outside" the entity includes the person requesting the summary data or any other person designated by the person requesting the data.

4. A non-disclosure agreement, as required by § 15.1641 (d) of the Act shall contain at least the following:

a. A general description of the private or confidential data which is being used to prepare summary data.

b. The purpose for which the summary data is being prepared.

c. A statement that the preparer understands he/she may be subject to the civil or criminal penalty provisions of the Act in the event that the private or confidential data is disclosed.

5. Methods of preparing summary data include but are not limited to the following:

a. Removing from a set of data, a file, or a record keeping system all unique personal identifiers so that the data that remains fulfills the definition of summary data as defined by § 15.162, subd. 9 of the Act.

b. Removing from the entity's report of any incident, or from any collection of data similar to an incident report, all unique personal identifiers so that the resulting report fulfills the definition of summary data in § 15.162, subd. 9 of the Act.

c. For purposes of this rule, "removing all unique personal identifiers" includes but is not limited to:

(1) Blacking out personal identifiers on paper records.

(2) Tearing off or cutting out the portions of paper records that contain the personal identifiers.

(3) Programming computers in such a way that printed or terminal output does not contain personal identifiers.

2 MCAR § 1.210 Classification of Data. In order to comply with the

provisions of §§ 15.162, 15.1641, 15.165 and 15.163 of the Act the Responsible Authority shall:

A. Review and identify all of the types of data maintained by the entity, including data retained as active and inactive.

B. Determine the private, confidential, or public classification for each type of data, according to the definitions of those terms pursuant to § 15.162 of the Act and 2 MCAR § 1.202.

C. Identify either a state statute or provisions of federal law supporting any determination that certain data is either private or confidential.

B. Administer all agency data in accordance with the determinations made under 2 MCAR § 1.210 B.

2 MCAR § 1.211 Authority of the Responsible Authority. Jurisdiction, as that term is used in § 15.1641 (a) of the Act, means that the Responsible Authority shall have the authority to:

A. Implement the Act and these rules in each entity.

B. Make good faith attempts to resolve all administrative controversies arising from the entity's practices of creation, collection, use, and dissemination of data.

C. Prescribe changes to the administration of the entity's programs, procedures, and design of forms to bring those activities into compliance

with the Act and with these rules.

D. Take all administrative actions necessary to comply with the general requirements of the Act, particularly Minn. Stat. § 15.165, and these rules.

E. Where necessary, direct designees to perform the detailed requirements of the Act and these rules under the general supervision of the Responsible Authority.

2 MCAR § 1.212 Appointment of the Responsible Authority.

A. Pursuant to § 15.162, subd. 6 of the Act, the governing body of each political subdivision and the governing body of each state agency whose activities are subjct to the direction of a governing body shall, within 30 days of the effective date of these rules, appoint a Responsible Authority.

1. This rule shall not affect the appointments of Responsible Authorities made previous to the adoption of this rule.

2. The governing body shall confer on the Responsible Authority full administrative authority to carry out the duties assigned by the Act and by these rules.

3. Governing bodies may use the forms set forth in the appendix to these rules to appoint the Responsible Authority.

2 MCAR § 1.213 Appointment Power of the Responsible Authority. Pursuant

to § 15.1641 (a) of the Act, the Responsible Authority shall, if he deems it to be in the best interest of the administration and enforcement of the Act, appoint designees who shall be members of the staff of the entity. In the exercise of this appointment power, the Responsible Authority shall comply with the following:

A. The appointment order shall be in writing and copies of the order constitute public data on individuals, pursuant to Minn. Stat. § 15.162, subd. 5(b) of the Act.

B. The Responsible Authority shall instruct any designees in the requirements of the Act and of these rules. If the Responsible Authority deems it necessary, such instruction shall include:

1. Distribution to designees of written materials describing the requirements of the Act and of these rules.

2. Preparation of training programs whose objective is to familiarize agency personnel with the requirements of the Act and of these rules.

3. Requiring attendance of designees and other entity personnel at training programs held within or outside the entity.

2 MCAR § 1.214 Duties of the Responsible Authority Relating to Public Accountability. Pursuant to § 15.163 of the Act, the duties of the Responsible Authority shall include, but not be limited to the following:

A. For the purposes of public accountability, the Responsible Authority shall, within sixty days of the effective date of these rules, or until August 1 of each year when the requirements of Part B of this rule are fully complied with, place his/her name, job title and business address, and the name(s) and job titles of any designees selected by the Responsible Authority on a document.

1. Such document shall be made available to the public and/or posted in a conspicuous place in each entity.

2. The document shall identify the Responsible Authority or designees as the persons responsible for answering inquiries from the public concerning the provisions of the Act or of these rules.

B. In the public document to be prepared or updated by August 1 of each year as required by § 15.163 of the Act, the Responsible Authority shall identify and describe all records, files, or processes maintained by his entity, which contain private or confidential data.

1. In addition to the items to be placed in the public document as required by § 15.163 of the Act, the Responsible Authority shall include the following:

a. The name, title, and address of designees appointed by the Responsible Authority.

b. Identification of the files or systems for which each designee is responsible.

c. A citation of the state statute or federal law which classifies the data as private or confidential.

2. The Responsible Authority shall draft the descriptions of records, files, and processes in easily understandable English. Technical or uncommon expressions, understandable only a minority of the general public shall be avoided, except where required by the subject matter.

3. The Responsible Authority may use the form set forth in the appendix to these rules to prepare this public document.

2 MCAR § 1.215 Duties of the Responsible Authority Relating to the Administration of Private and Confidential Data. In order to administer the requirements of § 15.1641 (c) of the Act, the Responsible

Authority, shall determine for each record, file, or process identified in 2 MCAR § 1.214 whether the data contained therein was collected prior or subsequent to August 1, 1975.

A. For each record, file, or process containing data collected prior to August 1, 1975, the Responsible Authority shall:

1. Review the federal, state or local legal enabling authority which mandated or necessitated the collection of the private or confidential data.

2. Based on that review, determine the lawful purpose for the collection of the data at the time it was originally collected.

3. Direct the staff of the entity that private or confidential data collected prior to August 1, 1975, shall not be used, stored, or disseminated for any purpose, unless that purpose is authorized by the enabling authority.

B. For each record, file, or process containing private or confidential data collected subsequent to August 1, 1975, the Responsible Authority shall:

1. Review the legal enabling authority which mandates or necessitates the collection of the data.

2. Identify the purposes for the collection of and the intended uses of all private or confidential data that have been communicated to data subjects or should have been communicated to data subjects at the

time of data collection, pursuant to § 15.165, subd. 2 of the Act.

C. Using the purposes and uses identified in Parts A. and B. of this rule, the Responsible Authority shall:

1. Prepare lists which identify the uses of and purposes for the collection of private or confidential data for each type of record, file, or process identified in 2 MCAR § 1.214.

a. Each list shall identify all persons, agencies, or entities authorized by state or federal law to receive any data disseminated from the particular record, file or process.

2. Pursuant to § 15.165, subd. 2 of the Act, either:

a. Attach each list identifying purposes, uses and recipients of data to all agency forms which collect the private or confidential data that will be retained in each record, file or process; or

b. Communicate, in any reasonable fashion, the contents of each list to data subjects at the time particular data that will be retained in each record, file, or process is collected from them. For purposes of this section, "reasonable fashion" shall include, but not be limited to:

(1) Oral communications made to data subjects.

(2) Providing data subjects with brochures that describe the entity's purposes for the collection of and the uses to be made of

private and confidential data.

D. In administering the entity's private or confidential data consistent with the provisions of the rules, the Responsible Authority shall:

1. Educate entity personnel as to authorized purposes and uses.

2. Prepare administrative procedures that will acquaint entity personnel with authorized purposes and uses.

3. Distribute policy directives requiring compliance with the entity's determination of authorized purposes and uses.

E. The Responsible Authority shall authorize a new purpose for the collection of private or confidential data or a new use for private or confidential data under any one of the following conditions:

1. If passage of federal or state legislation requires initiation of a new or different purpose or use pursuant to § 15.1641 (c)(2) of the Act; or

2. The Responsible Authority, prior to initiation of the new or different purpose or use, complies with the provisions of either § 15.1641 (c)(1) or (3) of the Act.

a. For the purposes of administration of Minn. Stat. § 15.1641 (c)(1), the Responsible Authority shall file a statement on a form provided by the Commissioner.

A Responsible Authority shall not initiate a new or different purpose or use of private or confidential data until the Responsible Authority receives written approval from the Commissioner.

b. For the purposes of Minn. Stat. § 15.1641 (c)(3) the following term shall have the meaning given it:

(1) "Informed consent" means the data subject possesses and exercises sufficient mental capacity to make a decision which reflects an appreciation of the consequences of allowing the entity to initiate a new purpose or use of the data in question.

c. For the purposes of the administration of Minn. Stat. § 15.1641 (c)(3), the Responsible Authority shall comply with the following:

(1) The Responsible Authority shall not take any action to coerce any data subject to give an "informed consent". The Responsible Authority shall explain the necessity for or consequences of the new or different purpose or use.

(2) All informed consents shall be given in writing. Prior to any signature being affixed to it by the data subject, such writing shall identify the consequences of the giving of informed consent.

(3) If the Responsible Authority makes reasonable efforts to obtain the informed consent of a data subject and if those efforts are not acknowledged in any way, the Responsible Authority shall interpret the silence of the data subject as the giving of an implied consent to

the new or different purpose or use of the data.

(a) For purposes of this section, "reasonable efforts" shall include:

(i) Depositing in the United States Mail, postage pre-paid and directed to the last known address of the data subject, at least two communications requesting informed consent.

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

(4) The data subject may give informed consent to less than all of the data elements in any list of data elements presented by a Responsible Authority, thereby giving only partial consent.

(a) Only those elements that the data subject has expressly consented to shall become part of the new or different purpose or use.

2 MCAR § 1.216 Duties of the Responsible Authority as They Relate to the Administration of all Entity Data. Pursuant to § 15.1641 (b) of the Act, the Responsible Authority shall, within eighteen months of the effective date of these rules, formulate a plan that will provide for the review and analysis of the data administration practices of the entity.

A. In the formulation of this plan, the Responsible Authority shall at least provide for the preparation of a list of or index to all data or types of data currently collected, stored, used, or disseminated by the entity.

1. The list or index developed shall include the identification of the state statute(s), federal law(s), or local ordinance(s) that authorize(s) the programs or functions for which data is collected, or which authorize(s) the actual data collection, storage, use or dissemination.

a. The plan shall further provide for the list or index to be updated when new or different data collection, storage, use, or dissemination is authorized.

b. This list or index shall be available to members of the general public, upon request.

B. The Responsible Authority shall use this plan and the list or index developed to aid in the determination of whether collection and storage of data and use and dissemination of private and confidential data is necessary.

1. For purposes of this section, data is necessary if:

a. The particular data is both:

(1) Required to carry out programs and functions that are expressly or impliedly authorized by a provision of state statute, federal law or a local ordinance; and

(2) Periodically examined, updated, modified or referred to by the entity; or

b. 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

c. Retention of the particular data is required in the event that a legal action is brought against or by the entity; or

d. Retention of the particular data is 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.

C. For any data determined to be not necessary pursuant to Part B, of this rule, the Responsible Authority shall provide for the following activities in the entity's plan.

1. Taking all actions which include making changes to forms designs rewriting procedures, and so forth, to assure that all such data is no longer collected and stored and all such private and confidential data is no longer used and disseminated. Private data shall continue to be disseminated upon request by the data subject.

2. Disposing of such data pursuant to the procedures of the Records Management Act.

a. Inquiries concerning procedures for disposition of data may be directed to the Records Management Division, Department of Administration, St. Paul, Minnesota, 55155.

D. In the formulation of the plan described in Part A. of this rule, the Responsible Authority shall provide for the establishment of administrative mechanisms and procedures that comply with § 15.1641 (e) of the Act. For purposes of this section,

1. "Accurate means that the data in questions 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.

2 MCAR § 1.217 Duties of the Responsible Authority as They Relate to Computerized Data. For the purposes of the administration of § 15.1641 (e) of the Act, the Responsible Authority shall be guided by the following:

A. "Directly Accessible Files" means files maintained by any entity which contain private or confidential data, to which access can be made or updating performed through the use of any type of communication terminal, including, but not limited to, teletypewriters and cathode ray tube terminals.

B. Within 180 days of the effective date of these rules, the Responsible Authority shall perform an audit of the physical and software security measures that the entity has installed to protect the integrity of "directly accessible files".

C. The nature and extent of the audit shall be at the discretion of the Responsible Authority, subject to the following:

1. The audit shall emphasize a review of any measures taken to assure that private or confidential data is not accessible to the public through the use of a communications terminal.

2. The audit shall include a review of the measures taken to assure all of the entity's computer based data is protected from tampering by unauthorized persons.

D. If it reasonably appears to the Responsible Authority that there are weaknesses in the entity's data security procedures, the Responsible Authority shall:

1. Provide for terminal security and system and data integrity through the establishment of appropriate security measures.

a. Appropriate security measures include, but are not limited to, usage of password systems, establishment of procedures to assure physical security of terminals, utilization of system usage audits, and update verification routines, and establishments of limits on the system usage capacilities given to terminals.

E. Auditing security measures on an annual basis shall be a part of the ongoing administration of the entity's computerized data system.

2 MCAR § 1.218 Administrative Appeal. Pursuant to § 15.165, subd. 4 of the Act, an individual may appeal an adverse determination of a Responsible Authority to the Commissioner of Administration.

A. The appeal shall follow the procedures established in Minnesota Statutes, Chapter 15, as amended, and the rules of the Office of Hearing Examiners relating to Contested Case Proceedings.

B. Notice of an appeal must be submitted to the Commissioner within a reasonable time of the determination made by the Responsible Authority pursuant to § 15.165, subd. 4 of the Act.

1. The notice shall be in writing and addressed to the Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

2. The notice shall contain the following information:

a. The name, address, and phone number, if any, of the appealing party.

b. The name of the Responsible Authority and the entity which he or she represents.

c. A description of the nature of the dispute, including a description of the data.

d. A description of the desired result of the appeal.

3. The Commissioner may require additional information if it is reasonably necessary in order to establish the Contested Case Proceeding.

4. Upon written request of the data subject stating reasons, the appeal may be processed under the name of a pseudonym.

C. The Department of Administration shall be reimbursed for all costs associated with the Contested Case Proceeding by the entity whose Responsible Authority has been the impetus for the individual's appeal to the Commissioner.

1. The Commissioner shall establish appropriate accounting procedures to provide to the entity an itemized invoice.

2 MCAR § 1.219 General Powers of the Commissioner. Pursuant to § 15.163, subd. 2 of the Act and to assist in the general implementation and enforcement of the Act, the Commissioner shall have the following powers:

A. If the Commissioner determines that certain information is relevant to monitoring any entity's data collection and handling practices, policies and procedures, the Commissioner shall require the Responsible Authority of such entity to submit the information.

B. Any inquiries concerning the Act or these rules and any information submissions required to be made by Section A. of this rule shall be directed to the Data Privacy Unit, Department of Administration, State

of Minnesota, 50 Sherburne Avenue, St. Paul, Minnesota 55155.

C. The Data Privacy Unit shall respond promptly to all inquiries within personnel and budgetary limitations.

2 MCAR § 1.220 Duties of the Commissioner Relating to Emergency Classification of Data. Pursuant to Minn. Stat. § 15.1642, the Commissioner and Responsible Authorities shall comply with the following:

A. The Responsible Authority, pursuant to § 15.162, subd. 6 of the Act, shall prepare any application for emergency classification in writing in a form provided by the Commissioner.

1. The form for an application is set out in the appendix to these rules. Copies of the form are available from the Data Privacy Unit.

B. For the purposes of the administration of § 15.1642 of the Act, the following terms have the meanings given to them:

1. "Days" means calendar, not working days.

2. "Upon filing" means upon receipt of either an original or amended application by the Commissioner.

3. "Date of Disapproval" means the date the Responsible Authority actually receives the disapproval notification from the Commissioner.

4. "Within 20 days of submission to the Attorney General" means within 20 days of the date that the Attorney General's Office in the

Department of Administration actually receives the record from the Commissioner.

C. Application for emergency classification of data shall be submitted to the Data Privacy Unit, Department of Administration, State of Minnesota, St. Paul, Minnesota 55155.

D. If the Data Privacy Unit requires the Responsible Authority to submit additional information in support of the application, that application is deemed to have been filed on the date the additional material is received by the Data Privacy Unit. The Commissioner shall return any application to the applicant if the additional information requested is not received within 30 days.

E. The provisions of this rule shall terminate and cease to have force and effect on whichever of the following dates or events occurs later:

1. On August 1, 1979; or

2. On the effective date of a statute that repeals the Commissioner's authority to rule on emergency classification of data, pursuant to Minn. Stat. § 15.1642, subd. 3.

2 MCAR § 1.221 Severable Provisions. If any provisions of these rules are found invalid for any reason, the remaining provisions shall remain valid.

ADVISORY FORM A

RESOLUTION APPOINTING A COUNTY RESPONSIBLE AUTHORITY

State of Minnesota

County of (name of county)

WHEREAS, Minnesota Statutes, Section 15.162, Subdivision 6, requires that (name of county) County appoint one person as the Responsible Authority to administer the requirements for collection, storage, use and dissemination of data on individuals within the county and,

WHEREAS, the (name of county) County Board of Commissioners shares the concern expressed by the legislature on the responsible use of all County data and wishes to satisfy this concern by immediately appointing an administratively and technically qualified Responsible Authority as required under the statute.

BE IT RESOLVED, the County Board of Commissioners appoints (name of individual) as the Responsible Authority for the purpose of meeting all requirements of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADOPTED BY (name of county) COUNTY COMMISSIONERS ON (date).

ATTESTED TO: (signature of appropriate official)

(title of appropriate official)

ADVISORY FORM B

RESOLUTION APPOINTING A CITY RESPONSIBLE AUTHORITY

State of Minnesota

City of (insert name of city)

Resolution Title: Appointment of Responsible Authority

WHEREAS, Minnesota Statutes, Section 15.162, Subdivision 6, as amended, requires that the City of (insert name of city) appoint one person as the Responsible Authority to administer the requirements for collection, storage, use and dissemination of data on individuals, within the City and,

WHEREAS, the (insert name of city) City Council shares concern expressed by the legislature on the responsible use of all City data and wishes to satisfy this concern by immediately appointing an administratively qualified Responsible Authority as required under the statute.

BE IT RESOLVED, the City Council of (insert name of city) appoints (name of individual appointed) as the Responsible Authority for the purposes of meeting all requirements of Minnesota Statutes, Section 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADOPTED BY (insert name of city) CITY COUNCIL ON (date).

ATTESTED TO BY THE:

(Signature of Mayor) on (date)

(Signature of City Clerk) (date)

ADVISORY FORM C

RESOLUTION APPOINTING A SCHOOL DISTRICT RESPONSIBLE AUTHORITY

State of Minnesota

(name of district) School District

School District Number ____

Pursuant to the provisions of Minnesota Statutes, Section 15.162, Subdivision 6, as amended, (Insert name of individual), is hereby appointed Responsible Authority for the (insert name of district) School District Number ____.

(insert name of individual appointed) is hereby authorized to take all actions necessary to assure that all programs, administrative procedures and forms used within School District (insert number) are administered in compliance with the provisions of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration as published in the State Register on (insert appropriate date).

ADVISORY FORM D

RESOLUTION APPOINTING A RESPONSIBLE AUTHORITY FOR STATE OR LOCAL BOARDS OR COMMISSIONS

State of Minnesota

(insert name of board or commission)

Under the provisions of Minnesota Statutes, Section 15.162, Subdivision 6, as amended, (name of individual is hereby appointed Responsible Authority for (insert name of board or commission).

(insert name of individual appointed is hereby authorized to take all actions necessary to assure that all programs, administrative procedures and forms used by the (insert name of board or commission are administered in compliance with the provisions of Minnesota Statutes, Sections 15.162 through 15.169, as amended, and with rules as lawfully promulgated by the Commissioner of Administration and published in the State Register on (insert date.

ADVISORY FORM E

PUBLIC DOCUMENT AS REQUIRED BY MINNESOTA STATUTES, SECTION 15.163 STATUTES, SECTI

GOVERNMENTAL ENTITY: (Name of Entity)
(Address)

RESPONSIBLE AUTHORITY: (Name)
(Title)
(Address)

| NAME OF RECORD, FILE, SYSTEM OR PROCESS | DESCRIPTION OF RECORD, FILE, SYSTEM OR PROCESS | CLASSIFICATION | CITATION OF STATUTE OR FEDERAL LAW THAT CLASSIFIES THE DATA | NAME, TITLE AND ADDRESS OF DESIGNEE, IF ANY FOR FILE, ETC. |
|---|---|---|---|---|
| (Insert a name sufficient to identify.) | (Describe in terms understandable by the general public.) | (Insert private or confidential.) | (Insert citation to state or federal statute, federal rule, case law) | (Insert name, etc. of person appointed to be in charge of this file, etc |
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ADVISORY FORM F

APPLICATION FOR EMERGENCY CLASSIFICATION OF DATA

Check One: /__/ NEW APPLICATION /__/ AMENDED APPLICATION

APPLICATION FOR EMERGENCY CLASSIFICATION

Instruction: This application must be completed in full. Information requested is based on the requirements of M.S. 15.1642. This application cannot be processed unless it is complete. Submit this application to:

Commissioner, Department of Administration
% Data Privacy Unit
2nd Floor, State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

If questions arise, contact the Data Privacy Unit, (612) 296-6729 or 296-6733.

THIS APPLICATION IS A PUBLIC RECORD

It is strongly recommended that an agency or subdivision prepare this application in consultation with its legal advisor. Preparation of responses to certain questions, such as "compelling need," deal with legal standards for which legal guidance is indicated.

1. This is an application for emergency classification of data as:

/__/ PRIVATE /__/ CONFIDENTIAL

pursuant to M.S. 15.162. (Only one box may be checked. An agency cannot apply for both types of classification on the same form. Separate applications must be prepared requesting private or confidential emergency classifications.)

2. Name and address of requesting agency:

_____

_____

_____

3. Is this application for: (Check one)

This agency only /__/ or for all similar agencies /__/ ?

ADVISORY FORM F

APPLICATION FOR EMERGENCY CLASSIFICATION OF DATA - PAGE 2

4. Name and title of Responsible Authority making the application.

_____

_____

M.S. 15.1642 states that only the Responsible Authority for an agency or subdivision, as described in M.S. 15.162, subdivision 6 can prepare this application.

5. Describe all data or types of data to be covered by this classification. This description must be as explicit and detailed as possible. Although item by item listings of data items are not required, general terms such as "all personnel records", "all police records", etc., are not acceptable. Where possible specific file or record titles may be used.

As part of your description you may exempt specific items that are public information. Attach separate sheet, if necessary.

6. Is there a Minnesota statute or federal law which currently allows classification of this data as non-public?

_____ YES _____ NO

If you are able to specifically cite such a statute or federal law, there is NO need to submit this application. The data you desire to classify is already classified by law.

7. Applicants must clearly establish that "data similar to that for which the emergency classification is sought has been treated as either private or confidential by other state agencies or political subdivisions and by the public." Please describe below, or on a separate attached sheet, how this data has been treated by other similar agencies, including examples where possible.

ADVISORY FORM F

APPLICATION FOR EMERGENCY CLASSIFICATION OF DATA - PAGE 3

8. Has any of the data covered by this application ever been made available to the general public, including the media, in the past?

_____ YES _____ NO

If yes, explain below, or on separate sheet and attach.

9. Describe, on a separate sheet and attach, why your agency feels an immediate emergency classification is needed. Pay close attention to the provisions of M.S. 15.1642, Subdivision 2 (c) which states" "That a compelling need exists for immediate emergency classification, which is not granted could adversely affect the public interest or the health, safety, wellbeing or reputation of the data subject."

Consult with your legal advisor about the meaning of the phrase "compelling need". It is not sufficient to merely affirm that a "compelling need" exists. You are required to state explicitly the nature of the compelling need and to cite facts supporting your assertions. For example, how might the data damage an individual's reputation if released?

I affirm that all of the above statements are true, to the best of my knowledge, and that I am aware that any classification made under this application expires July 31, 1979.

Date: _____ _____

Signature of Applicant

All Applicants please note:

Pursuant to M.S. 15.1642 (as amended 1978), upon the filing of a NEW application, the data for which private or confidential classification has been requested is deemed to receive the requested classification for a period of 30 days, or until the commissioner approves or disapproves the application, (whichever is earlier). In the case of an AMENDED application, the time period is 15 days.
Your agency will be notified shortly regarding the progress on your application.