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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FOURTH SESSION

H. F. No. 3325

05/14/2025 Authored by Pursell and Finke
The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

A bill for an act

relating to data practices; modifying certain data request and retention provisions; providing a fee waiver for certain data requests; amending Minnesota Statutes 2024, sections 13.03, subdivision 3, by adding a subdivision; 13.08, subdivision 4; 138.17, subdivisions 1, 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2024, section 13.03, subdivision 3, is amended to read:

Subd. 3. **Request for access to data.** (a) Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places, and, upon request, shall be informed of the data's meaning. If a person requests access for the purpose of inspection, the responsible authority may not assess a charge or require the requesting person to pay a fee to inspect data.

(b) For purposes of this section, "inspection" includes, but is not limited to, the visual inspection of paper and similar types of government data. Inspection does not include printing copies by the government entity, unless printing a copy is the only method to provide for inspection of the data. In the case of data stored in electronic form and made available in electronic form on a remote access basis to the public by the government entity, inspection includes remote access to the data by the public and the ability to print copies of or download the data on the public's own computer equipment. Nothing in this section prohibits a government entity from charging a reasonable fee for remote access to data under a specific statutory grant of authority. A government entity may charge a fee for remote access to data where either the data or the access is enhanced at the request of the person seeking access.

(c) The responsible authority or designee shall provide copies of public data upon request. If a person requests copies or electronic transmittal of the data to the person, the responsible authority may require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting the copies of the data or the data, but may not charge for separating public from not public data. However, if 100 or fewer pages of black and white, letter or legal size paper copies are requested, actual costs shall not be used, and instead, the responsible authority may charge no more than 25 cents for each page copied. If the responsible authority or designee is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible. For state agencies, "as soon as reasonably possible" means no longer than 30 days. If the request cannot be fulfilled within 30 days, the agency must provide the requester a written explanation on why compliance with this paragraph was not possible. An agency that is required to provide a written explanation during a fiscal year must report to the Legislative Commission on Data Practices by February 1 of the following fiscal year. The report must include the number of requests received by the agency, the number of requests that were not fulfilled within 30 days, and the exigent circumstances of those requests that made compliance with this paragraph unreasonable.

(d) When a request under this subdivision involves any person's receipt of copies of public government data that has commercial value and is a substantial and discrete portion of or an entire formula, pattern, compilation, program, device, method, technique, process, database, or system developed with a significant expenditure of public funds by the government entity, the responsible authority may charge a reasonable fee for the information in addition to the costs of making and certifying the copies. Any fee charged must be clearly demonstrated by the government entity to relate to the actual development costs of the information. The responsible authority, upon the request of any person, shall provide sufficient documentation to explain and justify the fee being charged.

(e) The responsible authority of a government entity that maintains public government data in a computer storage medium shall provide to any person making a request under this section a copy of any public data contained in that medium, in electronic form, if the government entity can reasonably make the copy or have a copy made. This does not require a government entity to provide the data in an electronic format or program that is different from the format or program in which the data are maintained by the government entity. The entity may require the requesting person to pay the actual cost of providing the copy.

(f) If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall inform the requesting person of the determination either orally at the time of the request, or in writing as soon after that time as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based. Upon the request of any person denied access to data, the responsible authority or designee shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.

Sec. 2. Minnesota Statutes 2024, section 13.03, is amended by adding a subdivision to read:

Subd. 3a. **Fee waiver.** Notwithstanding subdivisions 3, paragraphs (b) to (e), and 10, a person may apply for a fee waiver. A state agency must evaluate the following factors in determining whether to issue a fee waiver:

(1) if the data concerns the operations or activities of the government;

(2) if the data is likely to contribute to an increased understanding of government operations of importance to the public;

(3) if the data is likely to contribute to a public understanding of the subject;

(4) if the data is likely to contribute significantly to public understanding of government operations or activities; and

(5) if the data is not primarily requested due to a commercial interest in disclosure.

Sec. 3. Minnesota Statutes 2024, section 13.08, subdivision 4, is amended to read:

Subd. 4. **Action to compel compliance.** (a) Actions to compel compliance may be brought either under this subdivision or section 13.085. For actions under this subdivision, in addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved person seeking to enforce the person's rights under this chapter or obtain access to data may bring an action in district court to compel compliance with this chapter and may recover costs and disbursements, including reasonable attorney's fees, as determined by the court. If the court determines that an action brought under this subdivision is frivolous and without merit and a basis in fact, it may award reasonable costs and attorney fees to the responsible authority. If the court issues an order to compel compliance under this subdivision, the court ~~may~~ shall impose a civil penalty of up to $1,000 against the government entity. This penalty

is payable to the state general fund and is in addition to damages under subdivision 1. The matter shall be heard as soon as possible. In an action involving a request for government data under section 13.03 or 13.04, the court may inspect in camera the government data in dispute, but shall conduct its hearing in public and in a manner that protects the security of data classified as not public. If the court issues an order to compel compliance under this subdivision, the court shall forward a copy of the order to the commissioner of administration.

(b) In determining whether to assess a civil penalty under this subdivision, the court or other tribunal shall consider whether the government entity has substantially complied with general data practices under this chapter, including but not limited to, whether the government entity has:

(1) designated a responsible authority under section 13.02, subdivision 16;

(2) designated a data practices compliance official under section 13.05, subdivision 13;

(3) prepared the data inventory that names the responsible authority and describes the records and data on individuals that are maintained by the government entity under section 13.025, subdivision 1;

(4) developed public access procedures under section 13.03, subdivision 2; procedures to guarantee the rights of data subjects under section 13.025, subdivision 3; and procedures to ensure that data on individuals are accurate and complete and to safeguard the data's security under section 13.05, subdivision 5;

(5) acted in conformity with an opinion issued under section 13.072 that was sought by a government entity or another person; or

(6) provided ongoing training to government entity personnel who respond to requests under this chapter.

(c) The court shall award reasonable attorney fees to a prevailing plaintiff who has brought an action under this subdivision if the government entity that is the defendant in the action was also the subject of a written opinion issued under section 13.072 and the court finds that the opinion is directly related to the cause of action being litigated and that the government entity did not act in conformity with the opinion.

Sec. 4. Minnesota Statutes 2024, section 138.17, subdivision 1, is amended to read:

Subdivision 1. **Destruction, preservation, reproduction of records; prima facie evidence.** (a) The attorney general, legislative auditor in the case of state records, state auditor in the case of local records, and director of the Minnesota Historical Society,

hereinafter director, shall constitute the Records Disposition Panel. The members of the panel shall have power by majority vote to direct the destruction or sale for salvage of government records determined to be no longer of any value, or to direct the disposition by gift to the Minnesota Historical Society or otherwise of government records determined to be valuable for preservation. The Records Disposition Panel may by majority vote order any of those records to be reproduced by photographic or other means, and order that photographic or other reproductions be substituted for the originals of them. It may direct the destruction or sale for salvage or other disposition of the originals from which they were made. Photographic or other reproductions shall for all purposes be deemed the originals of the records reproduced when so ordered by the records disposition panel, and shall be admissible as evidence in all courts and in proceedings of every kind. A facsimile, exemplified or certified copy of a photographic, optical disk imaging, or other reproduction, or an enlargement or reduction of it, shall have the same effect and weight as evidence as would a certified or exemplified copy of the original. The Records Disposition Panel, by majority vote, may direct the storage of government records, except as herein provided, and direct the storage of photographic or other reproductions. Photographic or other reproductions substituted for original records shall be disposed of in accordance with the procedures provided for the original records.

(b) For the purposes of this chapter:

(1) the term "government records" means state and local records, including all cards, correspondence, discs, maps, memoranda, microfilms, papers, photographs, recordings, reports, tapes, writings, optical disks, and other data, information, or documentary material, regardless of physical form or characteristics, storage media or conditions of use, made or received by an officer or agency of the state and an officer or agency of a county, city, town, school district, municipal subdivision or corporation or other public authority or political entity within the state pursuant to state law or in connection with the transaction of public business by an officer or agency;

(2) the term "state record" means a record of a department, office, officer, commission, commissioner, board or any other agency, however styled or designated, of the executive branch of state government; a record of the state legislature; a record of any court, whether of statewide or local jurisdiction; a correspondence of a state agency; and any other record designated or treated as a state record under state law;

(3) the term "local record" means a record of an agency of a county, city, town, school district, municipal subdivision or corporation or other public authority or political entity;

(4) the term "records" excludes data and information that does not become part of an official transaction~~.~~; library and museum material made or acquired and kept solely for reference or exhibit purposes~~.~~; extra copies of documents kept only for convenience of reference and stock of publications and processed documents~~.~~; and bonds, coupons, or other obligations or evidences of indebtedness, the destruction or other disposition of which is governed by other laws;

(5) the term "state archives" means those records preserved or appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of government or because of the value of the information contained in them, when determined to have sufficient historical or other value to warrant continued preservation by the state of Minnesota and accepted for inclusion in the collections of the Minnesota Historical Society~~.~~; and

(6) the term "correspondence" includes any written or electronic text-based communication to or from state agency staff that documents events, decisions, business, and functions of the agency, including agendas, notes, slides, chat functions, and presentations from meetings, phone conferences, and virtual meetings. Correspondence excludes purely personal communications, announcements of social events, and unsolicited advertising or promotional material that bears no substantive relationship to the events, decisions, business, or functions of the agency, public authority, or political entity.

(c) If the decision is made to dispose of records by majority vote, the Minnesota Historical Society may acquire and retain whatever they determine to be of potential historical value.

Sec. 5. Minnesota Statutes 2024, section 138.17, subdivision 7, is amended to read:

Subd. 7. **Records management.** It shall be the duty of the head of each state agency and the governing body of each county, municipality, and other subdivision of government to establish and maintain an active, continuing program for the economical and efficient management of the records of each agency, county, municipality, or other subdivision of government. Public officials shall prepare an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records, establishing a time period for the retention or disposal of each series of records. Correspondence by a state agency must be digitized, if not already in a digital format, and retained for no less than 25 years from the date of creation or receipt. When the schedule is unanimously approved by the records disposition panel, the head of the governmental unit or agency having custody of the records may dispose of the type of records listed in the schedule at a time and in a manner prescribed in the schedule for

particular records which were created after the approval. A list of records disposed of pursuant to this subdivision shall be maintained by the governmental unit or agency. When records containing not public data as defined in section 13.02, subdivision 8a, are being disposed of under this subdivision, the records must be destroyed in a way that prevents their contents from being determined.