Essential Policies and Procedures for Handling Data

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The Minnesota State Colleges and Universities system is an Equal Opportunity employer and educator.
Overview

- ID key data practices concepts and laws
- Classification of government data
- Government entity responsibilities
- Rights of access to government data
- Government data requests & responses
- Data subject rights
- Civil remedies and penalties
- FERPA responsibilities

Presentation adapted from IPAD resources.
Key Concepts in Data Practices Laws

- State and federal laws give general guidance and form the basic legal framework governing data handling practices for MnSCU.

- These laws impose specific duties on government entities relative to:
  - Access to government data requested by members of the public
  - Access to government data requested by data subjects and their additional rights as data subjects
  - The classification of government data
  - Collecting, creating, maintaining, using, disseminating, and properly disposing of government data
Key Records Laws

- The Data Practices Act
  - Minnesota Statutes, Chapter 13 and Minnesota Rules, Chapter 1205
- The Official Records Act
  - Minnesota Statutes, section 15.17
- The Records Management Statute
  - Minnesota Statutes, section 138.17
- Family Educational Rights and Privacy Act
  - 20 USC 1232g; 34 CFR 99
Government Data Practices Act
Minnesota Statutes, chapter 13

- Covers all “government data”
  - Provides rights for the public and data subjects
  - Presumes *government data* are public
  - Classifies data that are not public
  - Requires that data on individuals are accurate, complete, current, and secure
  - Provides penalties for violations

- Minnesota Rules, Chapter 1205
What Are “Government Data?”

- Government data means “all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.”
  - (Minn. Stat. § 13.02, subd. 7)
- Includes data in any media: paper, email, CD, videotape, photographs, etc.
- Does not include mental impressions that are not recorded
The Official Records Act
Minn. Stat. § 15.17

Requires government entities to make and preserve records to document official activities ("official records").

- Records must be passed on to successors in office.
Records Management Statute
Minn. Stat. § 138.17

- Requires government entities to follow a process when disposing of “official records”
  - Must maintain official records for time period specified in approved retention schedule
  - Resource: State Archives group at Minnesota State Historical Society
    - [www.mnhs.org/preserve/records/gov_services.htm](http://www.mnhs.org/preserve/records/gov_services.htm)
- “Non-official” records may be kept/destroyed when no longer useful to custodian.
FERPA

- Federal law (tied to funding) that applies only to “education records;”
- Gives students certain rights to access, seek amendment and control disclosure of data about themselves;
- Requires schools to adopt certain policies and practices and provide notice to students.

Education records are private unless

“directory data.”
What Are “Education Records?”

- Education records are records that are
  - Directly related to an individually identifiable student; and
  - *Maintained by* an educational agency or institution or party acting for the agency or institution.
  - In MN, also includes applicant data.

Very broad – not just standard academic records!
General Types of Government Data

- There are two general types of government data:
  - **Data on individuals**: an individual can be identified as the subject of the data
  - ▪ Minn. Stat. § 13.02, subd. 5
  - **Data not on individuals**: data that are not about individuals, e.g., data on businesses, organizations, or intangible objects or de-identified or aggregate data created from data about individuals.
  - ▪ Minn. Stat. § 13.02, subd. 4
Data Classification

- Default MGDPA rule on government data generally is that they are public unless specifically classified by law otherwise
  - Most data not on individuals;
- Default rule on individual data (personnel or educational) is private unless public
  - Minn. Stat. §13.43, subd. 2(a) lists public personnel data;
  - School decides what are public “directory” data.
### MGDPA Classifications of Government Data

<table>
<thead>
<tr>
<th>Classification</th>
<th>Meaning of classification</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>Available to anyone for any reason</td>
<td>• Government employee’s name</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Directory data</td>
</tr>
<tr>
<td>Private/Nonpublic</td>
<td>Available to:</td>
<td>• Social security numbers</td>
</tr>
<tr>
<td></td>
<td>• Data subject</td>
<td>• Most education data</td>
</tr>
<tr>
<td></td>
<td>• Those in entity whose work requires access</td>
<td>• Most personnel data</td>
</tr>
<tr>
<td></td>
<td>• Entities authorized by law</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Those authorized by data subject</td>
<td></td>
</tr>
<tr>
<td>Confidential/Protected nonpublic</td>
<td>Available to:</td>
<td>• Active civil investigative data (determined by legal counsel)</td>
</tr>
<tr>
<td></td>
<td>• Those in entity whose work requires access</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Entities authorized by law</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Not available to data subject</td>
<td></td>
</tr>
</tbody>
</table>
Government Entity Responsibilities for Data Handling

Some general examples:

- Identify/appoint key individuals with data practices responsibilities
- Respond appropriately to data requests
- Establish required policies and procedures
  - Minnesota Statutes, section 13.025
  - FERPA
Government Entity
Responsibilities - MGDPA

Key individuals

- **Responsible Authority (RA)**
  - Responsible for entity’s data practices decisions and policies – MnSCU presidents and chancellor
  - May appoint one or more **designees** to assist in meeting obligations
    - Minn. Stat. § 13.05, and Minn. Rules 1205.0200, subparts 12-15

- **Data Practices Compliance Official (DPCO)**
  - Appointed by the RA (please keep OGC informed)
  - Receives and responds to questions about data practices
  - RA may also act as DPCO
    - Minn. Stat. § 13.05, subd. 13
MGDPA Access Policy Requirements

The MGDPA requires adoption of several policies:

- **Public Access** – post publicly to inform public of how/to whom to make data requests – may require written requests
  - Timely, accurate responses; copy charge policy

- **Subject Access**
  - Inform students, employees, others of how/to whom to make data requests; copy charges

**IPAD model policies:**

http://www.ipad.state.mn.us/docs/accesspol.html
Right to Access Government Data
Public Data - MGDPA

- **Members of the public** (not data subjects)
  - Right to inspect and/or get copies of public government data within a “reasonable time”
    - Minn. Stat. § 13.03, subd. 3
  - Inspection (viewing only) is free; charge for copies in accordance with MGDPA: [http://www.ipad.state.mn.us/docs/copycost.html](http://www.ipad.state.mn.us/docs/copycost.html)
    - Note charges differ for paper and electronic data.

Note: most RFP/B response data is public after contract is signed per Minn. Stat. § 13.591.
Responding to Data Requests

Members of the Public

- Data that are public
  - Provide data to requestor as soon as reasonably possible (may charge as per policy)

- Data that are classified as not public
  - Data cannot be released – must provide statutory citation denying access
    - Minnesota Statutes, section 13.03, subd. 3(f)

- Requested data do not exist at the entity
  - Entity must inform requestor
  - Entity not required to create data
Establish and follow campus procedures for intake; consulting with OGC/AGO; handling; notice to other campus or system office divisions (e.g., public affairs for media inquiries).

1. Is the request for “government data?”

2. Is it public? Or is there some provision of the law that allow access to nonpublic data? e.g., unions to some private personnel data
   - Are redactions of nonpublic data needed?
   - No obligation to create “new” data unless agreement to pay
     - Could choose to create new data (e.g., spreadsheet) if convenient for response but could not charge for time

3. Are copies requested – or just viewing?

4. How are copy charges calculated?

5. Have you responded within a “reasonable time?” or 10 biz days for subject?
Right to Access Government Data

Data Subject - MGDPA

- Data subject (person that the data are about)
  - Right to find out what data a government entity has about him/her
  - Right to inspect and/or get copies of public and private data about him/her immediately, or within 10 business days
    - Minn. Stat. § 13.04, subd. 3
  - Applies to MnSCU employees and students
  - May charge only “actual cost” for copies
    - CBA may also inform costs for employees
Responding to Data Requests

Data Subjects

- Data that are classified as public or private
  - Provide public data and private data about the subject within 10 days (may charge per policy)

- Data that are classified as confidential or are not about the data subject
  - Data cannot be released – must provide statutory citation denying access
    - Minnesota Statutes, section 13.03, subd. 3(f)

- Requested data do not exist at the entity
  - Entity must inform requestor
  - Entity not required to create data
## Charging for government data

### Copy costs

<table>
<thead>
<tr>
<th>Type of Request</th>
<th>Type of Requester: Member of the Public</th>
<th>Type of Requester: Data Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspection</td>
<td>No charge or fee allowed</td>
<td>No charge or fee allowed</td>
</tr>
<tr>
<td>Copies</td>
<td><strong>25¢ per page</strong></td>
<td><strong>Actual cost</strong></td>
</tr>
<tr>
<td></td>
<td>✓ 100 or fewer, black/white, letter/legal size paper copies</td>
<td>✓ Cannot charge to search for and retrieve data</td>
</tr>
<tr>
<td></td>
<td><strong>Actual cost</strong></td>
<td>✓ Cannot charge to separate public from not public data</td>
</tr>
<tr>
<td></td>
<td>✓ All other copies, including electronic data (e.g. email)</td>
<td>✓ Cannot charge to redact private/confidential data about others</td>
</tr>
<tr>
<td></td>
<td>✓ Cannot charge to separate public from not public data</td>
<td></td>
</tr>
</tbody>
</table>
Data Requests for Legal Processes

- E.g.: court orders; subpoenas; letter from attorney; law enforcement requests; demands from county attorney
- Refer immediately to OGC/AGO for consultation
  - Notice to student of compliance with valid subpoena required unless prohibited by authorizing judge.

Search warrants usually require immediate compliance but provide notice to OGC or AGO ASAP.
MGDPA Policy Requirements

- Inventory of not public data, Minn. Stat. §13.025, subd.1;
- Annual “comprehensive security assessment” of “personal data” defined in Minn. Stat. §325E.61, (e) and (f). Minn. Stat. §13.05, subd. 6;
- Document procedures to ensure (only) appropriate access to private data:
  - establish appropriate security safeguards for all records containing data on individuals, including procedures for ensuring that data that are not public are only accessible to persons whose work assignment reasonably requires access to the data, and is only being accessed by those persons for purposes described in the procedure. Minn. Stat. § 13.05, subd. 5.

IPAD Guidance at: [http://www.ipad.state.mn.us/docs/accesspol.html](http://www.ipad.state.mn.us/docs/accesspol.html)
Other Data Subject Rights

Data Privacy Notice (Minn. Stat. 13.04, subd. 2)

- When an entity collects private or confidential data from an individual, the entity must give a notice that includes:
  - Purpose and intended use of data;
  - Whether the individual may refuse or is legally required to provide the data (if a SSN, must cite legal authority, if any);
  - Known consequences from supplying or refusing to supply the data;
  - Identity of other persons or entities with statutorily authorized access to the data.

Review data collection forms to ensure appropriate notices are included.
Other Data Subject Rights
Informed Consent (Minn. Stat. 13.05, subd. 4(d))

- When an entity has private or confidential data on an individual (i.e., after government entity has collected data)

- Written informed consent is necessary when:
  - Individual asks the entity to release data to 3rd Party
  - A new release of data by the entity (unless required by law)
  - Different use of data than described in Data Privacy Notice
  - Different release than described in Data Privacy Notice

Must be signed, dated and describe data to be released and to whom (and any limitations on use).
Sample HR Forms

- Sample Data Privacy Notices available:
  MMB for employee collection (remember: a generic notice may not cover your situation; customization may be needed):
    - [http://mn.gov/mmb/employee-relations/labor-relations/resources-for-agencies/tennessen-notices-for-new-employees.jsp](http://mn.gov/mmb/employee-relations/labor-relations/resources-for-agencies/tennessen-notices-for-new-employees.jsp)

- Sample Informed Consent forms:
  - MnSCU HR: [http://www.hr.mnscu.edu/forms/index.html](http://www.hr.mnscu.edu/forms/index.html)
Other Sample Forms

Many sample forms for access to or release of education or personnel records available through the OGC website:

- [http://www.ogc.mnscu.edu/dataprivacy/toolbox.html](http://www.ogc.mnscu.edu/dataprivacy/toolbox.html)
Other General Data Subject Rights

- Limits on the government’s collection and storage of data on individuals
  - Entities may only use and disseminate private or confidential data that are necessary for the administration of programs authorized by law
    - Minn. Stat. § 13.05, subd. 3
- Expectation in the security of data
  - Entities must establish appropriate safeguards for all data
  - Entities must have written procedures regarding access to private data – limited to “need-to-know”
  - Entities must notify individuals if there is a “breach in security” of not public data
    - Minn. Stat. § 13.055
MGDPA Breach Notification

Notice required of breach of security of *any* private or confidential data. MnSCU system guideline (under revision) outlines procedures and issues

http://mnsuc.edu/board/procedure/523p1g13.html

- **Important** to contact OGC/AGO representative ASAP to help determine proper response to suspected breach situation.

**IPAD guidance** on breach notification:
http://www.ipad.state.mn.us/docs/13055.html
Basic Security Measures

- Never share passwords or log-on id’s
- Clear off your desk and secure confidential information before leaving for the day
- Properly dispose of confidential and sensitive information
- Log-off or use a password activated screen saver when you leave your work station
- Don’t discuss confidential information in public areas
- Be careful when e-mailing – always double check address and consider need-to-know standard
- Be careful about “loose” documents (on copier, fax machines)
- Adjust your computer screen so it is not easily viewed by those who do not have a need-to-know.
Other Security Measures - CONTRACTS

When considering contracting or grant agreements with 3rd parties to perform services that include handling of nonpublic data (collection, transmission, storage – especially electronic and cloud use).

- Consult with OGC/AGO for appropriate security terms – beginning with the RFP language
  - OGC webinar 9/10/15 dealt with FERPA contracting requirements for education records: http://www.ogc.mnscu.edu

Use contract templates and consult the OGC for assistance in drafting final contracts to help ensure accountability.

- http://ptac.ed.gov/ is a good resource for FERPA compliance.
Other General Data Subject Rights

- Right to challenge the accuracy and/or completeness of data
  - Minn. Stat.§ 13.04, subd. 4
    - Students have parallel rights under FERPA
      - 34 CFR 99.20 - 22
  - Remember that students at colleges/universities all have same rights to control their records regardless of age (or PSEO student status).

Sample procedure:

Institution Responsibilities - FERPA

- Provide students with annual notice of rights, including right to file complaint with US Department of Education
  - Sample also available on OGC website Data Privacy Toolbox

- Provide public notice of its list of directory data and its procedure for “opting out.”
  - 34 CFR 99.37 (a) (may include in annual notice);
    - May include policy of “limited directory data;”
    - Include notice of other data sharing policies.
More Policy Notices under FERPA

- FERPA permits disclosure of education records without consent under many exceptions described in regulations; **some require notice to students** (annual notice or policy):
  - Definition of directory data and how to “opt-out;”
  - Definitions of *school officials* (remember to include contractors) and *legitimate educational interests*;
  - Practice of disclosing to another educational institution where the student “seeks or intends to enroll” or is already enrolled so long as the disclosure is for purposes related to the enrollment or transfer.

See US Dept Ed FERPA postsecondary guidance materials:
Use/Disclosure under FERPA

- To use/discard private education records without specific consent, must ensure:
  - Consistent with data privacy notice when/if collected from individual; and
  - Consistent with applicable FERPA regulation.

E.g., releasing private data to 3d P for assistance in conducting a study

- Look at how data was collected and content of notice; ensure compliance with written agreement requirements of 34 CFR 99.31 (a) (6).
Remedies and Penalties MGDPA

- **Court process**
  - A person may bring a civil action against government entity or responsible authority
    - Request for injunction from collecting/disclosing data
    - Action to compel compliance with Chapter 13
    - Money damages for injuries
  - Government employees may be prosecuted for willful violations

- **Administrative remedy**
  - A person may request a hearing at the Office of Administrative Hearings
    - Action to compel compliance with Chapter 13
    - Must be filed within 2 years of the occurrence
    - $1000 filing fee
  - Non-binding advisory opinions from the Commissioner of Administration
FERPA Enforcement

- No private action for money damages;
- Students have right to bring complaint to US Dept of Education
  - could bring enforcement action including withdrawal of federal funding.
Contact Information
Minnesota State Colleges & Universities
System Office

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