

Worksheet for Developing Data Practices Policies

Part 1: Identification of Staff with Data Practices Responsibilities (Policies for Members of the Public and Data Subjects)

Name and contact information for these staff members should be listed in the *Data Practices Contacts* form.

- Each government entity must designate or appoint an individual to be the responsible authority (RA). (Minnesota Statutes, section 13.02, subdivision 16, and Minnesota Rules 1205.1000.) Entities seeking guidance in selecting a responsible authority should look to language in Minnesota Rules 1205.0200, subparts 12 – 15, and Minnesota Statutes, section 13.46, subdivision 10. More information is available on IPAD's website at www.ipad.state.mn.us/docs/radpco.html. Sample forms to use for appointing an RA are at Minnesota Rules 1205.2000.

Who is your responsible authority? _____

- Minnesota Statutes, section 13.05, subdivision 13, requires all RAs to appoint or designate a data practices compliance official (DPCO). The RA and DPCO may be the same person. The DPCO must be a government entity employee who assists with data practices related issues.

Who is your DPCO? _____

- Minnesota Statutes, section 13.03, subdivision 2, allows RAs to appoint one or more designees. The definition of designee is in Minnesota Statutes, section 13.02, subdivision 6.

Has your RA appointed/designated any staff to be data practices designees?

☐ Yes

☐ No

Who are they? _____

Do you want to direct requestors to specific designees depending on what data are requested?

☐ Yes

☐ No

If yes, list name and type of data for which designee is responsible.

If the answer to this question is "No," all requests should be directed to the RA. The RA may appoint the DPCO as the designee for all data requests.

Note: By law, all data requests must be made to the RA or designee; however, you need to make decisions about how your specific entity will handle requests in a way that ensures you respond within

the statutory time frames. For example, once a data request is made to the RA, will the RA handle the request, or will the RA give all requests to the DPCO or another staff person to coordinate responses? Regardless of which staff person actually manages a data request, the RA ultimately is responsible.

Part 2: Setting Parameters for Data Requests

(Policies for Members of the Public and Data Subjects)

- Minnesota Statutes, Chapter 13, does not require that individuals make data requests in writing; however, IPAD recommends that government entities make this their policy. If you decide to require written requests, you should include it in your Data Practices Policy (see [Advisory Opinion 01-014](#)). If you decide not to require written requests, you should still have some system of documenting data requests made verbally.

Do you want to require requestors to make their data requests in writing?

☐ Yes

☐ No

If you require that data requests be made in writing, will you allow requests by mail, fax, and/or email?

☐ Yes

☐ No

Notes (if necessary) _____

If you allow for data requests to be made by email, do you have a central location where email messages are sent that can be accessed by more than one staff person?

☐ Yes

☐ No

Notes (if necessary) _____

- Minnesota Statutes, section 13.05, subdivision 5, requires that all government entities establish appropriate security safeguards for all records containing data on individuals.

When an individual requests data about him/herself, you must verify that the requestor is the data subject or the data subject's parent or guardian. You should know how you verify someone's identity and it is good practice to document how you made the verification.

Part 3: Responding to Data Requests

(Policies for Members of the Public and Data Subjects)

Time frames

- Minnesota Statutes, Chapter 13 sets forth the time frames within which government entities must respond to data requests.

Entities must respond to members of the public seeking public data in an appropriate and prompt manner (section 13.03), and within a reasonable time (Minnesota Rules 1205.0300).

Entities must respond to data subjects seeking access to data about them within ten business days (section 13.04). In other words, entities must either provide the data to the data subject or inform the data subject there are no data available within ten business days. This does not mean that an entity can not arrange for a longer period of the time to respond, as long as the data subject agrees.

IPAD recommends that entities respond to all data requests in writing.

Charging for copies of data

- Minnesota Statutes, Chapter 13, allows, but does not require, government entities to charge for copies of data.

Some entities choose an amount below which it is not cost effective to charge for copies. You should check with your entity's financial department to find out if there is such an amount. Do you have a dollar figure below which you will not charge for copies?

☐ Yes

☐ No

If yes, what is the amount? _____

- Government entities may require pre-payment for copies of data if documented in the Data Practices Policy (see [Advisory Opinion 04-068](#)).

Will you require pre-payment for copies?

☐ Yes

☐ No

- If you decide to charge for copies of data, the allowable amount depends upon whether the person requesting the data is the data subject or a member of the public.

Members of the public

Minnesota Statutes, section 13.03, subdivision 3(c)

For 100 or fewer black and white paper copies, the maximum amount government entities can charge is 25¢ per page.

For more than 100 black and white paper copies and most other types of copies (photographs, audiotapes, data on a CD or DVD, data stored electronically, etc.) government entities can charge only the actual cost of employee time to: (1) search for and retrieve the data and (2) make the copies. See also Minnesota Rules 1205.0300. When a requestor asks that the data be sent electronically (e.g., via email), the copy charge may include the actual cost of sending the data. When calculating employee time for making the copies, you should use the hourly wage of the lowest-paid employee who is able to search for, retrieve, and make the copies. **Note:** Your actual cost could be less than 25¢ per page.

If you charge members of the public for copies, IPAD recommends re-calculating, on an annual basis, your actual costs for copying. IPAD also recommends documenting this calculation. More

information about charging members of the public for copies is located on IPAD's website at www.ipad.state.mn.us/docs/copycost.html.

Are there statutes, other than Minnesota Statutes, section 13.03, that set specific copy charges for your data?

☐ Yes

☐ No

If yes, cite the statute section(s) and corresponding fee(s) _____

[For example, under Minnesota Statutes, section 144.226, subdivisions 1, 3, and 4, the Minnesota Department of Health charges \$16 for a certified copy of a birth certificate. Under Minnesota Statutes, section 169.09, the Commissioner of Public Safety charges certain persons \$5 for a copy of an accident report.]

Data subjects

Minnesota Statutes, section 13.04, subdivision 3

When a data subject asks for copies, a government entity may charge the actual cost for an employee to make paper copies or to print copies of electronically stored data. See also Minnesota Rules 1205.0300 and 1205.0400. When calculating employee time for making the copies, you should use the hourly wage of the lowest-paid employee who is able to make the copies.

Note: Government entities may not charge for search and retrieval time if a data subject requests copies.

Part 4: Creating New Data

(Policies for Members of the Public and Data Subjects)

- Requests for creation of new data not already collected or maintained by a government entity fall outside the requirements of Chapter 13. So, you are not required to create data to respond to a data request. If you choose to create data, IPAD recommends working with the requestor on a case-by-case basis.

Part 5: Summary Data

(Policy for Members of the Public)

- Minnesota Statutes, section 13.02, subdivision 19, defines summary data and Minnesota Statutes, section 13.05, subdivision 7, discusses the preparation of summary data. Section 13.05 requires an RA to prepare summary data if the request is made in writing and the cost of preparing the summary data is paid for by the requestor. Section 13.05 also allows the RA to delegate the preparation of summary data.
- Minnesota Rules 1205.0700 discusses requirements for responding to summary data requests and preparing summary data. Subpart 3 requires RAs to prepare and implement summary data access procedures. Subpart 4 requires government entities to respond to summary data requests within ten days.

- Minnesota Rules 1205.0700, subpart 5, discusses the requirements of a nondisclosure agreement.

Part 6: Parent Access to Private Data about Minor Children (Policy for Data Subjects)

- Based on the definition of “individual” in Minnesota Statutes, section 13.02, subdivision 8, parents and guardians generally are entitled to the same Chapter 13 rights as their minor children. However, Minnesota Rules 1205.0500 discusses that a minor has the right to ask that his/her private data not be released to his/her parent or guardian. The rules provide guidance to government entities about responding to a minor’s request to limit access to data about him/her.
Note: Government entities may not deny parents/guardians access to educational data that are maintained by an educational agency or institution.

Document your policy or practice for notifying minors that they have a right to request that you not release their private data to their parent or guardian. Also, for each situation where you receive a request from a minor, document how/why you made the determination to withhold or release.

Part 7: Tennesen Warning Notices (Policy for Data Subjects)

- Minnesota Statutes, section 13.04, subdivision 2, discusses the notice that government entities must provide to an individual when collecting private and/or confidential data about that individual from that individual. This notice is commonly referred to as a Tennesen warning.

With limited exceptions, you may not collect, store, use or disseminate private or confidential data for any purpose other than those you specified in the Tennesen warning notice. Because the consequences of not giving a proper notice are so severe, you must tailor your notices to your entity’s specific programs. IPAD suggests you seek legal advice when developing your notices. More information about Tennesen warning notices located on IPAD’s website at www.ipad.state.mn.us/docs/tw.html.

Part 8: Informed Consent (Policy for Data Subjects)

- Minnesota Statutes section 13.05, subdivision 4, and Minnesota Rules 1205.1400, discuss informed consents. You must create legally-valid consent forms. More information about informed consent requirements, including sample consent forms, is located on IPAD’s website at www.ipad.state.mn.us/docs/consentmain.html.

Will you require data subjects to use only the consent forms your entity has created or will you release data pursuant to a consent form created by another entity?

Explain _____

Part 9: Keeping Data Secure

(Policy for Data Subjects)

- Minnesota Statutes, section 13.05, subdivision 5, requires that all government entities establish appropriate security safeguards for all records containing data on individuals.

IPAD recommends documenting your policy or practice for keeping data on individuals secure.

- Minnesota Rules 1205.0400 states that private data are accessible to individuals within a government entity whose work assignments reasonably require access. Minnesota Rules 1205.0600 states that confidential data are accessible to individuals within a government entity whose work assignments reasonably require access. The rule parts require government entities to create written procedures ensuring that only appropriate individuals get access to private and confidential data.

Document your policy or practice for identifying which staff, because of their work assignment, gets access to what private and confidential data.

- Minnesota Statutes, section 13.055, requires state agencies to notify data subjects when a security breach has occurred and an unauthorized person has gained access to data. Although this section only applies to state agencies, IPAD recommends that local government entities follow a similar practice.

IPAD recommends documenting your policy or practice for meeting the requirements in section 13.055.

Part 10: Creating, Updating, and Posting Policies

(Policies for Members of the Public and Data Subjects)

- Minnesota Statutes, section 13.025 require government entities to create policies that describe the processes members of the public and data subjects need to follow when requesting data.
- Government entities should update their policies yearly. Particularly, entities should update the data practices contact information (to be consistent with staff changes) and make sure the hourly wage rates they use for determining actual copy charge costs are current.

Have you updated your access documents within the last year?

- ☐ Yes
☐ No

- Minnesota Statutes, section 13.025, subdivision 4, also requires that government entities make their policies easily available to the public by distributing free copies, or by posting a copy on the government entity's website.

Do you have free copies available for the public, or have them posted at your website?

- ☐ Yes
☐ No

Government Entity Decision Checklist

To complete the Data Practices Policies for Members of the Public and Data Subjects, your entity must make the following decisions.

* Indicates obligation under Chapter 13.

	Yes	No
Do we have an RA? *		
Do we have a DPCO? *		
Do we have any designees?		
Do we have our policies available for distribution, or have them posted within our entity? *		
Do we direct data requestors to staff, other than the RA, for response to data requests?		
Do we require written requests?		
If requests must be in writing, do we allow requests by mail, fax, and/or email?		
Do we have a policy to verify a data subject's identity? *		
Do we respond to data requests in writing?		
Are there statutory provisions, outside of Chapter 13, that give us authority to charge specific amounts for copies of data?		
If we charge for copies of data, do we have a minimum amount before we charge?		
If we charge for copies of data, do we require pre-payment?		
Do we have a policy for creating new data?		
Do we have a written policy describing our policy/practice for notifying minors that they have the right to ask us to withhold their private data from their parents/guardians? *		
Do we have a written policy describing our policy/practice for evaluating a minor's request? *		
Each time we evaluate a minor's request, do we document how we make our decision? *		
Do we require that individuals use our consent forms?		
Do we have a written policy/practice on how we keep data on individuals secure?*		
Do we have a written policy/practice detailing which staff has access to private and/or confidential data?*		
Have we documented our policy/practice on how we will handle a breach in security of private or confidential data? (applies only to state agencies)		
When did we last update our access documents? *	Date:	