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May 8, 2014

Valerie Bombach
Principal Program Evaluator
Office of the Legislative Auditor
Room 140
Centennial Building
658 Cedar Street
St. Paul, MN 55155-1603

Dear Ms. Bombach,

Thank you for your April 29, 2014, response to my data request of April 22, 2014, and for your production of the request for proposal (RFP) responsive to Item 1 of my request, and the written description of the "Managed Care Organizations' Administrative Expenses" project.

In your letter, you state that "all of the other data listed ... are currently classified as not public pursuant to Minnesota Statutes 2013, 3.979" until the release of your final report.

Data under Item 4 of my request (seeking correspondence regarding Items 1-3) may properly fall within Minn. Stat. 3.979, Subd. 3, which classifies "audit data" as being not public until the "final report of (an) audit has been released by the legislative auditor or the audit is no longer being actively pursued." However, elements of Items 2 and 3 of my request are public data under the Data Practices Act, Minn. Statutes Chapter 13, and as such should be produced, as discussed below.

Items 2 documents should be produced under Minn. Stat. 13.591

Minn. Stat. 13.591, Subd. 3(b) states that "data submitted by a business to a government entity in response to a request for proposal, as defined in section 16C.02, subdivision 12, are private or nonpublic until the time and date specified in the solicitation that proposals are due, at which time the name of the responder becomes public." The same is true of the names of bidders submitting in response to a request for bids under Minn. Stat. 13.591, Subd. 3(a).

According to the RFP produced by your office, proposals and/or bids were due on August 23, 2013. As of that date, the names of all responders and/or bidders were public data, and thereby should be released in response to Item 2 of my request.

And, if OLA has completed its selection and/or evaluation process for the proposals it

solicited, all remaining data submitted by responders/bidders is public, with the exception of trade secret data, pursuant to Minn. Stat. 13.591, Subd. 3(a), (b).

If all responses/bids were rejected after the completion of the selection/evaluation process, all of the data described in the paragraph above would be public, and should be produced as responsive to Item 2 of my request, with one exception: If a government entity plans a re-solicitation of proposals/bids within one year of the proposal/bid opening date, all data except the names of responders/bidders are private or nonpublic during that time. If this is the case, please clarify as much, as is obligated by Minn. Stat. 13.03, Subd. 3(f) (which requires that you describe the "specific statutory section, temporary classification" upon which a denial is based).

Items 3 documents are presumptively public, absent the possibility of litigation

Item 3 of my request seeks "any and all contracts executed between (OLA) and/or the State of Minnesota and any entity contracted to conduct, or help conduct, the audits required by Minn. Stat. 256B.69, Subd. 9d."

If any such contracts exist, they are presumptively public pursuant to Minn. Stat. 13.03, Subd. 1, which states that "all government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification" as not public data of any kind. See Data Practices Advisory Opinion 03-027 for its discussion of the presumptively public status of state contracts.

Furthermore, such contracts are not nonpublic data under the plain reading of Minn. Stat. 3.979, Subd. 3(a). While Minn. Stat. 3.979, Subd. 3(b) does contemplate that data that the Legislative Auditor "reasonably believes will be used in litigation" can be withheld as "not public" data until such time as "litigation has been completed or is no longer being actively pursued," absent the possibility of litigation, any signed contracts responsive to Item 3 of my request are presumptively public under Minn. Stat. 13.03, Subd. 1. If your office is relying upon the litigation language in 3.979 Subd. 3(b) to deny access to "Item 3" data, please clarify as much as is obligated by Minn. Stat. 13.03, Subd. 3(f).

Inspection and copying of public data

Please contact me to arrange a time to inspect and/or copy public documents that are responsive to Items 2 and 3 of my request. Furthermore, please provide me with the statutory basis for any assertions regarding the "not public" status of any remaining data, as described above. I can be reached at 651-335-2037 or info@publicrecordmedia.com if you would like to discuss this matter further.

Sincerely,



Matt Ehling
Public Record Media