

JT Haines  
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Public Record Media  
2375 University Avenue West  
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July 28, 2014

Commissioner Spencer Cronk  
200 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155

RE: Minnesota Data Practices Advisory Opinion



Dear Commissioner Cronk,

I am writing on behalf of Public Record Media, a Minnesota non-profit corporation (PRM). PRM seeks an advisory opinion under the Minnesota Government Data Practices Act (DPA), Minn. Stat. 13.072, subd.1(a). PRM seeks an opinion regarding an outstanding DPA request with the Office of the Minnesota Legislative Auditor (OLA), the procedural history for which is described below. All written correspondence referenced in this letter is enclosed for your reference.

**PRM April 22 Request (encl)**

On April 22, 2014, PRM sent via certified mail a letter to OLA seeking access to the following government data under the Minnesota Government Data Practices Act:

1. Any and all RFPs issued by the Office of the Legislative Auditor and/or the State of Minnesota that seek accounting firms or other entities to conduct, or help conduct, the audits required by Minn. Stat. 256B.69, subd. 9(d);
2. Any and all bids submitted in response to the RFPs identified in Item 1, above;
3. Any and all contracts executed between the Office of the Legislative Auditor and/or the State of Minnesota and any entity contracted to conduct, or help conduct, the audits required by Minn. Stat. 256B.69, subd. 9(d);
4. Any and all correspondence between staff members of the Office of the Legislative Auditor regarding Items 1-3 above.

### **OLA April 29 Letter (encl)**

On April 29, 2014, Ms. Valerie Bombach responded to PRM's data request. Her response letter included the following enclosures: (1) An RFP responsive to Item 1 of PRM's request; and (2) an OLA "project description" document dated January 2014, entitled "Managed Care Organizations' Administrative Expenses." Regarding Items 2-4, Ms. Bombach stated that "all of the other data listed in your request are currently classified as not public pursuant to Minnesota Statutes 2013, 3.979, until we release our final report," and that "any information or data that is otherwise classified as not public will continue to retain such classification following release of our report later this year."

### **PRM May 8 Letter (encl)**

PRM responded to OLA's correspondence via letter dated May 8, 2014, in which it detailed its disagreement with OLA's asserted basis for withholding Item 2 and Item 3 data (PRM did not contest the Item 4 withholding). PRM's May 8 letter also noted that if OLA was withholding data under another basis, OLA was obligated to provide "the specific statutory section, temporary classification, or specific provision of federal law" upon which its denial is based, and related authorities.

### **Invitations to Discuss**

Between May 8 and May 30, I called Ms. Bombach twice on behalf of PRM with an invitation to discuss whether an accommodation could be reached regarding the outstanding data request, with no response provided to date.

### **PRM May 30 Letter from Counsel to Legislative Auditor (encl)**

On May 30, I delivered a letter to OLA's DPA responsible authority James Nobles, on behalf of PRM and in regards to this matter, detailing the status of the matter and requesting a response by June 16, 2014. No response has been provided to date.

### **Advisory Opinion Sought**

PRM seeks an Advisory Opinion regarding its April 22, 2014 request and related responses, including: (1) whether the names of responders to an RFP (sought in Item 2) are public data in this instance; (2) whether bids (or related "cost proposals") submitted in response to an RFP (sought in Item 2) are public data in this instance; and (3) whether any contracts executed between the State of Minnesota and/or OLA and a private entity related to an RFP (sought in Item 3) are public data in this instance.

PRM contends that data responsive to Items 2 and 3 of PRM's request are not "data related to an audit" under Minn. Stat. 3.979, or cannot otherwise be withheld under Minn. Stat. 3.979. Rather, such data - like the RFP already produced in response to Item 1 - precede the existence of any resulting audit. Relying on Minn. Stat. 3.979 to withhold Item 2 and 3 data would therefore produce an "absurd result" under Minnesota Statutes Chapter 645.

### **Litigation**

PRM is not currently involved in litigation with OLA regarding its request, nor is it involved in litigation pertaining to any of the data that may be responsive to the items in

its request.

**Conclusion**

PRM is lawfully entitled to inspect and copy government data responsive to Items 2 and 3 of its request.

I can be reached at (612) 743-7781 or [jthaines@publicrecordmedia.com](mailto:jthaines@publicrecordmedia.com) to respond to any questions you may have. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "JT Haines". The signature is fluid and cursive, with a large initial "J" and "H".

JT Haines  
Special Counsel, Public Record Media

cc: Janet Hey, IPAD  
201 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155

cc: James R. Nobles  
Legislative Auditor  
Office of the Legislative Auditor  
Room 140  
658 Cedar Street  
St. Paul, MN 55155-1603



Matt Ehling  
President  
Public Record Media  
2375 University Ave W.  
Suite 200  
St. Paul, MN, 55114



April 22, 2014

Data Practices Responsible Authority  
Office of the Legislative Auditor  
658 Cedar Street  
Room 140  
St. Paul, MN 55155

RE: Minnesota Data Practices Act request

Dear Responsible Authority,

This is a request for access to public data under the Minnesota Government Data Practices Act (MGDPA).

I am seeking to inspect and/or obtain copies of the following public data:

1. Any and all RFPs issued by the Office of the Legislative Auditor and/or the State of Minnesota that seek accounting firms or other entities to conduct, or help conduct, the audits required by Minn. Stat. 256B.69, Subd. 9d;
2. Any and all bids submitted in response to the RFPs identified in Item 1, above;
3. Any and all contracts executed between the Office of the Legislative Auditor 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;
4. Any and all correspondence between staff members of the Office of the Legislative Auditor regarding Items 1-3 above.

If responsive data are identified, I would first like to schedule an opportunity to inspect such data, prior to making copies of the same.

Please consider this letter a formal request for the indefinite retention of the requested data, pending resolution or reclassification of its status.

As required by section 13.03, Subd. 3(f) of the Minnesota Statutes, I am requesting that in the event that any portion of this request is not granted, that your department certify in writing that the request has been denied, and cite the specific statutory section, temporary classification, or other provision of law upon which the denial is based.

This request is made as part of news gathering, and is not for commercial use.

If you have questions regarding this request, I can be reached by telephone at 651-335-2037, or by e-mail at [info@publicrecordmedia.com](mailto:info@publicrecordmedia.com).

Sincerely,

A handwritten signature in black ink, appearing to be 'M Ehling', written in a cursive style.

Matt Ehling  
President, Public Record Media



**OFFICE OF THE LEGISLATIVE AUDITOR**  
STATE OF MINNESOTA • James Nobles, Legislative Auditor

April 29, 2014

Matt Ehling  
Public Record Media  
Suite 200  
2375 University Ave West  
St. Paul, MN 55114

Dear Mr. Ehling:

This letter is in response to your request dated April 22, 2014, seeking access to public data. Per item #1 in your request, enclosed is a copy of the RFP issued by the Office of the Legislative Auditor under *Minnesota Statutes*, 256B.69, subd. 9(d). All of the other data listed in your request are currently classified as not public pursuant to *Minnesota Statutes* 2013, 3.979, until we release our final report.

In addition, please note that any information or data that is otherwise classified as not public will continue to retain such classification following release of our report later this year. I have included copies of *Minnesota Statutes* 2013, 3.979, and the project description for *Managed Care Organizations' Administrative Expenses* for your reference.

Sincerely,

A handwritten signature in black ink, appearing to read 'Valerie Bombach', written over a horizontal line.

Valerie Bombach  
Principal Program Evaluator  
Office of the Legislative Auditor

Enclosures



Matt Ehling, President  
Public Record Media  
2375 University Avenue West  
Suite 200  
Saint Paul MN 55114

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](mailto:info@publicrecordmedia.com) if you would like to discuss this matter further.

Sincerely,

  
Matt Ehling  
Public Record Media

JT Haines  
Special Counsel, Public Record Media  
2375 University Avenue West  
Suite 200  
Saint Paul MN 55114



May 30, 2014

James R. Nobles  
Legislative Auditor  
Office of the Legislative Auditor  
Room 140  
658 Cedar Street  
St. Paul, MN 55155-1603

Dear Mr. Nobles,

My client, Public Record Media, has been in contact with your office concerning a public data request of April 22, 2014. Please see the attached copy of the original request for reference.

To date, your office has produced the request for proposal (RFP) responsive to Item 1 of PRM's request and a project description of the "Managed Care Organizations' Administrative Expenses" project.

However, in her letter of April 29 (enclosed), Ms. Valerie Bombach of your office asserted that "all of the other data listed in your request are currently classified as not public pursuant to Minnesota Statutes 2013, 3.979" until the release of the final report.

PRM's letter of May 8 (enclosed) in response to Ms. Bombach's letter details PRM's position as to the public nature of the data requested. I have called Ms. Bombach twice to follow up on PRM's May 8 letter, and to seek a mutually agreeable resolution, with no response as of the date of this letter.

I am writing to you today in your capacity as the data practices responsible authority for the Office of the Legislative Auditor, and am requesting a response regarding the issues raised in PRM's letter of May 8. In aid of resolving this matter, I would appreciate a written response by June 16, 2014.

Thank you for your prompt attention to this matter. I can be reached at 612-743-7781 or [jt@publicrecordmedia.com](mailto:jt@publicrecordmedia.com).

Sincerely,

/s/JT Haines  
JT Haines  
Special Counsel, Public Record Media

(encl)