

PART VII
FINANCIAL REPORTS AND RECORDS MANAGEMENT

CHAPTER 27: RECORDS MANAGEMENT

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1. Records management

Counties are legally required to maintain a complete and comprehensive record of all transactions and affairs. County records perform crucial functions: they record what has occurred; inform officials how the county did things previously; act as a check on the honesty, integrity, and completeness of official actions; and serve as the basis for public reports. They can also help develop a crucial link in the communication chain between county officials and their constituents.

This chapter outlines the following subjects:

- I. Creation and retention of records**
- II. Destruction of records**
- III. Public inspection of records and the right to privacy**
- IV. Electronic records**
- V. Official newspaper**

I. Creation and retention of records

[Minn. Stat. § 15.17, subds. 1, 2.](#)

State law requires all officers and agencies of the state, including counties, to make and preserve all records necessary for a full and accurate knowledge of their official activities. These records include books, papers, letters, contracts, documents, maps, plans, and other items.

The records-management laws are found at [Minn. Stat. §§ 15.17; 138.163; 138.19-21; 138.225-.226.](#)

All government records must be kept in a physical medium of a quality that will ensure permanence. The governmental unit cannot destroy records without statutory authority.

[Managing Your Government Records: Guidelines for Archives and Agencies.](#)

The State Archives Department of the Minnesota Historical Society has published an educational resource titled *Managing Your Government Records: Guidelines for Archives and Agencies*. The manual is designed to assist local governments and historical societies. It is a comprehensive, easy-to-use introduction to basic archival principles and practices.

[Preserving and Disposing of Government Records](#)

The Minnesota Department of Administration, Information Policy Analysis Division, has published a document titled *Preserving and Disposing of Government Records*. This resource for governmental entities includes information on how to identify records, assess their value, and determine how long to keep them. The publication provides a general overview of state and local governmental entities' records-management responsibilities.

The following are a number of the records that all counties must keep in the regular course of business:

- Minn. Stat. § 375.51 • The ordinance book.
- Minn. Stat. § 384.09 • Board meeting minutes.
- Minn. Stat. §§ 384.13; 385.04 • Account book. (Unless the county has combined the offices of auditor and treasurer, each must keep separate account books.)
- Minn. Stat. § 386.03 • Legal instruments
- Minn. Stat. § 204B.40 • Election returns and related materials.
- Minn. Stat. § 384.11 • Original accounting documents (claims, checks, warrants, receipts, etc.).
- Minn. Stat. § 475.62 • Debt instruments (bonds, bond coupons, notes, etc.).
- Minn. Stat. § 138.17 • General county correspondence.

Several county officials are responsible for keeping records:

- Minn. Stat. § 384.09 • The auditor, in his or her capacity as the clerk of the county board, must keep an accurate record of its official proceedings, preserve all documents, books, records, maps, and other papers required to be deposited in the auditor's office, and an annual financial statement of the county.
- Minn. Stat. §§ 385.04; 385.19 • The treasurer must keep books with accurate accounts of all money received and paid. The books, accounts, and vouchers of the treasurer and all money remaining in the treasury shall at all times be subject to the inspection and examination of the county board.
- Minn. Stat. ch. 386. • The recorder is responsible for recording, transcribing, or otherwise obtaining: official bonds of county officers; records of lands granted to the state; certificates of discharge from the Armed Services; certificates made by sheriffs upon sales of real estate on mortgage foreclosures, judgments, and executions; farm names; and bankruptcy documents.
- Minn. Stat. § 15.17, subd. 2. • Another state law makes the chief administrative officer of each public agency responsible for the preservation and care of the records.

Minn. Stat. § 15.17, subd. 3. The responsible officer must carefully protect and preserve all records from deterioration, mutilation, loss or destruction, and must deliver them promptly to his or her successor in office. The successor, in turn, must issue a receipt for all records he or she receives, and must file a signed acknowledgment of the delivery.

For more information see the League of Minnesota Cities memo, *Management of Personnel Files*.

The management of personnel records is governed by a variety of state and federal laws. Both employees and the county have a stake in making sure these records are maintained properly. The League of Minnesota Cities memo, *Management of Personnel Files*, is applicable to counties and provides a good overview of managing personnel records.

II. Destruction of records

[Minn. Stat. § 15.17.](#)

[Minn. Stat. § 138.225.](#)

[Minn. Stat. §§ 138.161-.21.](#)

[A.G. Op. 851F \(Feb. 5, 1973\).](#)

[Preserving and Disposing of Government Records.](#)

More information and forms are available from the

The General Records Retention Schedule is available from the [Minnesota Historical Society, Minnesota State Archives Division.](#)

[Minn. Stat. § 138.17.](#)

[Minn. Stat. § 138.17.](#)

Records that public officers are required to keep, and those that are necessary and appropriate to the proper discharge of the duties of an office, are public records. It is a crime to destroy such records without the approval of the records disposition panel, which consists of the attorney general, director of the Minnesota Historical Society, and either the legislative auditor (for state records) or the state auditor (for local records). In general, rather than seeking approval for each record, local governments establish a schedule for retention and destruction, which must be approved by the records disposition panel.

The law establishing the records disposition panel supersedes earlier, more specialized statutes concerning destruction of specific kinds of records.

The Minnesota Department of Administration document *Preserving and Disposing of Government Records* includes information on how to identify records, assess their value, and determine how long to keep them. The publication provides a general overview of state and local governmental entities' records-management responsibilities.

A county that has not established a program for the destruction of records must submit a form and receive approval from the Records Disposition Panel before disposing of any public records.

The state has adopted a general schedule for the retention and destruction of a variety of county records. Counties that have adopted the general schedule have continuing authority to destroy listed records after keeping them for the prescribed time. A county must not destroy public records that are not on the schedule without specific authorization from the Records Disposition Panel.

State archives employees may inspect any documents listed on a records-disposition application or records schedule to determine if they have continuing value and should be retained permanently.

Records of continuing value, as defined by law, must either be retained by the county or transferred to the state archives, even if the Minnesota Government Data Practices Act (MGDPA) classifies them as private. The county transferring records must notify the archivist of the MGDPA classification of the records. State law allows public access to state archive records unless the archivists determine special circumstances exist requiring limited access.

III. Public inspection of records and the right to privacy

Minn. Stat. ch. 13.

Every county in Minnesota must comply with the Minnesota Government Data Practices Act (MGDPA), which, in conjunction with other state and federal laws, classifies all information or data collected, created, received, maintained or disseminated by governmental entities—regardless of the data’s physical form, storage media, or conditions of use. Data are classified in different categories depending on whether they are accessible by the public and by the subject of the data.

See *Washington v. Indep. Sch. Dist. No. 625*, 610 N.W.2d 347 (Minn. Ct. App. 2000) (discussing the right of a data subject to see his or her personnel records).

Government data means all data collected, created, received, maintained or disseminated by the county regardless of its physical form, storage media or conditions of use. There is a presumption that government data are public and are accessible by the public for inspection and copying unless there is a federal law, state statute or temporary classification of data that provides differently.

Minn. Stat. § 13.02, subd 16.

Every county must appoint a specific person as its responsible authority. That person is responsible for the collection, use, and dissemination of any governmental data, as well as other obligations of administering the MGDPA, including preparing a public document containing procedures that the official will use to administer the MGDPA.

Minn. Stat. § 13.03, subd. 2.

Minn. Stat. § 13.05.

The appointment of the responsible authority should be made by resolution and must confer full administrative authority on this individual to carry out the duties imposed by the MGDPA. A responsible authority may designate one or more designees to assist in administering the MGDPA.

Minn. Stat. § 13.03, subd. 2.

Minn. Stat. § 13.05.

The responsible authority must review and identify all the types of data maintained by the county, determine what data are private or confidential, and keep records containing government data in such an arrangement and condition so they are easily accessible for convenient use.

Minn. Stat. § 13.05, subd. 13.

Each responsible authority is required to designate an employee to act as the data-practices-compliance official. This official is responsible for responding to questions or concerns from persons who are attempting to access data or enforce their rights under the MGDPA. The data-practices-compliance official may be the same person as the responsible authority or some other county employee.

Minn. Stat. § 13.05, subd. 8.

Model Policy: Public Access to Government Data and Rights of Subjects of Data

Counties are required to adopt written public-access procedures that must be updated annually as needed. Counties must make copies of their public-access procedures easily available to the public through free distribution or posting. The Department of Administration, Information Policy Analysis Division, has published a model policy that counties can adopt in order to comply with this requirement.

Minn. Stat. § 13.05, subd. 12.

Counties are prohibited from requiring individuals to identify themselves or explain or justify a request for access to public data unless specifically authorized to do so by statute. Counties may ask individuals to provide certain information in order to ensure they obtain the correct data.

[Minn. Stat. § 13.03, subd. 3.](#)

Counties that maintain public data in a computer-storage medium are required to provide copies, upon request, in electronic form if copies can be reasonably made. There is no obligation to provide the data in an electronic format or program different than that used by the county. Counties can require the requesting person to pay the actual cost of providing copies. If 100 or fewer pages of black and white, letter or legal size paper copies are requested, however, actual costs shall not be used, and instead, the county may not charge more than 25 cents for each page copied.

[Minn. Stat. § 13.072.](#)

To request an advisory opinion, write to the [Commissioner of Administration, c/o Information Policy Analysis Division](#), 201 Administration Building, 50 Sherburne Ave. St. Paul, Minnesota 55155, Paul, Minnesota 55155, FAX: (651) 205-4219.

Counties may request advisory opinions from the commissioner of the Department of Administration on any question concerning public access to government data, rights of subjects of data, or classification of data. Advisory opinions are not binding, but a court must give deference to the opinion in a proceeding that involves the data in dispute. Counties that take action in conformance with the opinion will not be liable for compensatory or exemplary damages, awards of attorney fees, or penalties. Counties interested in requesting an opinion can contact the Department of Administration, Information Policy Analysis Division.

[Index to Advisory Opinions of the Commissioner of Administration](#)

[Advisory opinions.](#)

The Department of Administration maintains an index to advisory opinions on its web site.

[Minn. Stat. § 13.04, subd. 2.](#)

See *Edina Educ. Ass'n v. Bd. of Educ. of Indep. Sch. Dist. No. 273*, 562 N.W.2d 306 (Minn. Ct. App. 1997) and *Kobluk v. Univ. of Minn.*, 613 N.W.2d 425 (Minn. Ct. App. 2000).

A “Tennessee” warning must generally be given when individuals are asked to supply private or confidential data concerning themselves. The individual must be informed of the following:

- The purpose and intended use of the requested data.
- Whether the individual may refuse to supply the requested data.
- Any known consequence arising from supplying or refusing to supply private or confidential data.
- The identity of other persons or entities authorized by state or federal law to receive the data.

Once a Tennessee warning has been given to an individual, the county cannot collect, store, use or disseminate the data for any other purpose except those specified in the warning.

[Minn. Stat. § 13.04.](#)

Subjects of data have the right to know what data are maintained about them and how it is classified. They have the right to view all such public and private data, to have it explained, to receive copies of the data, and to challenge its accuracy and completeness. If their challenge results in an adverse decision, they can appeal to the commissioner of the Department of Administration.

Because the Legislature has historically amended the MGDPA every session, the county should review and possibly amend the public document detailing the county's data-practices procedures after each legislative session. Unless a statute or an advisory opinion specifically classifies data as private or confidential, all county records—including the assessment and tax records—and all other information or data must be open to public inspection. There is only one general exception: personnel data not explicitly made public is private, but may be released pursuant to a court order.

[Minn. Stat. § 13.43.](#)

[Minn. Stat. § 13.03, subd. 3.](#)

Data-practices requests should be directed to the responsible authority. The responsible authority must provide access to public data to any person without regard to the nature of the person's interest in the data. The responsible authority must allow any person to inspect and copy county records at reasonable times and places. If requested, information on the meaning of the data should be provided. Unless ordered by a court, public officials should not permit the original copies of records to leave their possession. If the responsible authority determines the requested data are not classified as public, access by individuals that are not the subject of the data must be denied.

[Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231 \(Minn. 1998\).](#)

Release of data on individuals classified as private or confidential may not only result in a lawsuit alleging violation of the MGDPA. It may also result in a lawsuit claiming violation of an individual's right to privacy. In Minnesota, the right to privacy could give rise to three types of claims for invasion of privacy. The type of claim that most likely would be involved in the release of private or confidential government data would involve a claim that the county had improperly provided access to private facts about an individual (if the information would be highly offensive to a reasonable person and is not of legitimate concern to the public).

[Minn. Stat. § 13.03, subd. 3.](#)

[See IPAD 96-014 \(Mar. 29, 1996\); and 96-037 \(Aug. 14, 1996\) ; See also Minn. R. 1205.0300, subpt. 4.](#)

[Minn. R. 1205.0400, subpt. 5.](#)

Counties may not charge a fee for allowing inspection of data, but the responsible authority may charge for copies of records as long as the fee does not exceed the actual costs of searching for, retrieving, and making copies of the requested data. This can include the cost of labor in making the copies. The county must be able to demonstrate the charges are appropriate. If 100 or fewer pages of black and white, letter or legal size paper copies are requested counties may not charge more than 25 cents for each page copied. Counties cannot charge for separating public data from non-public data. If the county is not able to provide copies at the time of request, it must supply them as soon as reasonably possible.

[Minn. Stat. § 13.03, subd. 3.](#)

If the responsible authority determines that access to data must be denied, he or she must cite the specific statutory section, temporary classification, or specific provision of law on which the determination is based. The requesting party may ask for this information in writing.

[See IPAD 97-002 \(Jan. 15, 1997\); and 97-014 \(Apr. 1, 1997\); see also Minn. Stat. § 13.601, subd. 2.](#)

Correspondence between elected officials and employees is public unless it contains information specifically classified as non-public, even though the MGDPA states that correspondence between individuals and elected officials is private. In Advisory Opinion 97-002, the Commissioner of Administration explained: "Government employees are not operating as individuals when they prepare documents, reports and other data as part of their jobs as public servants, but instead are acting as agents of government entities."

[Minn. Stat. § 13.393.](#)

Most data is public under the MGDPA. The MGDPA, however, makes an exception for data covered by the attorney-client privilege. For instance, attorney-client privilege would apply to documents created for the purpose of giving legal advice, such as a letter between the county attorney and a county official. The MGDPA does not expand or narrow the availability of the attorney-client privilege, but it does incorporate existing law to define its scope. Courts strictly construe the privilege because it is invoked to exclude evidence and testimony, and tends to suppress relevant facts. Thus, when one party claims the privilege, the burden rests with that party to present facts establishing the privilege unless it appears from the face of the document itself that it is privileged.

[Kobluk v. Univ. of Minn., 574 N.W.2d 436 \(Minn. 1998\).](#)

[Minn. Stat. § 13.06 subd. 1.](#)

The commissioner of the Department of Administration has authority to make temporary classifications of data as private (accessible only to the county and the individual to whom it pertains), or confidential (accessible only to the county) on application by any county. When a county files an application for temporary classification, the data is classified according to the request for a period of 45 days or until the commissioner disapproves, rejects or grants the classification.

[Minn. Stat. § 13.08.](#)

[Navarre v. South Washington County Sch., 652 N.W.2d 9 \(Minn. 2002\).](#)

There are civil penalties for willfully releasing private and confidential data and for willfully refusing to release public data. The liability consequences are great. A county that violates any provision of the MGDPA is liable for any damage as a result of the violation. The person damaged may bring an action against the county to cover any damages, plus costs and reasonable attorney fees. However, courts have ruled that if a governing body publishes or releases defamatory matter under the requirements of the MGDPA, there will be no civil liability.

[Freier v. Indep. Sch. Dist. No. 197, 356 N.W.2d 724 \(Minn. Ct. App. 1984\); Johnson v. Dirkswager, 315 N.W.2d 215 \(1982\).](#)

[Minn. Stat. § 13.08, subs. 1, 4.](#)

[Quade & Sons Refrigeration, Inc. v. Minn. Mining & Mfg. Co., 510 N.W.2d 256 \(Minn. Ct. App. 1994\); Baldwin v. Indep. Sch. Dist. No. 2687, C3-98-92 \(Minn. Ct. App. July 14, 1998\) \(unpublished opinion\); Wiegel v. City of St. Paul, 639 N.W.2d 378 \(Minn. 2002\); Minn. Stat. § 13.08, subd. 4 \(c\).](#)

Costs and attorney fees are recoverable in an action for damages or to compel compliance with the MGDPA. The trial court generally has discretion to determine whether the prevailing party in a district court action to compel compliance with the MGDPA is entitled to costs and reasonable disbursements, including attorney fees. The trial court shall award reasonable attorney fees, however, to a prevailing plaintiff in an action to compel compliance if the county was the subject of an advisory opinion written by the commissioner of the Department of Administration and the trial court finds that the opinion is directly related to the cause of action being litigated and that the county did not act in conformity with the opinion.

Minn. Stat. § 541.05, subd. 1(2).

Manteuffel v. City of N. St. Paul, 570 N.W.2d 807 (Minn. Ct. App. 1997).

Minn. Stat. § 13D.05.

See the discussion on the Open Meeting Law in Handbook, ch. 7.

Although the MGDPA does not specify a limitations period, the courts have determined the applicable limitations period is six years from the date of the violation.

The open meeting law prohibits the closing of a meeting solely to discuss private data (except in limited circumstances clearly listed in the statute), and provides that private data may be discussed openly at any public meeting without fear of liability or penalty as long as the release of the data is reasonably necessary to conduct the business the data relates to. If private data needs to be discussed at a public meeting, it is recommended that the board try to protect the information by assigning numbers, letters, or similar designations to it, and that those designations be used instead of the actual data even though the statutes say this is no longer necessary.

There are some important limitations on the discussion of private data at a public meeting. For example, the board must close a meeting to consider preliminary allegations or charges against an individual subject to its authority (unless the individual requests the meeting be open), and it may close a meeting to evaluate the performance of an individual subject to its authority (unless the individual requests the meeting be open).

IV. Electronic records

In ever-increasing numbers, governments are converting manual record keeping to computer-assisted information systems. At some future date, perhaps all Minnesota counties will be using automated reporting systems that are standardized in some records areas and customized in others to meet specific local needs, but that are, on the whole, compatible with the needs of state and federal agencies. Many such systems are in place and working well. Other systems are in various stages of development or implementation.

Minn. Stat. § 15.17, subd. 1.

Minn. Stat. ch. 325L.

Minn. Stat. § 325L.02 (p).

Minn. Stat. § 325L.07 (c).

Minn. Stat. § 325L.02 (m).

Minn. Stat. § 325L.12.

Government records may be kept in the form of computerized records.

The Uniform Electronic Transactions Act (UETA) applies to all electronic transactions, which are defined by the law as an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs.

UETA provides that if a law requires a record to be in writing, an electronic record satisfies the law. A record is defined by UETA as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.”

If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that is accurate and accessible for later reference.

[Minn. Stat. § 325L.17.](#)

[Minn. Stat. § 15.17.](#)

[Minn. Stat. § 138.17.](#)

[Minn. Stat. § 325L.18.](#)

Each county is required to determine whether and to what extent it will create and retain electronic records. These records are subject to the MGDPA and the records-retention laws mentioned earlier in this chapter.

With certain exceptions as to types of records, each county is required to determine whether and to what extent it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

Counties are conducting more and more of their business electronically. There has been significant growth in the number of records kept electronically of those transactions. Some official government records may now only exist in digital form. If electronic records are not filed correctly, not only is useful information lost, but it is impossible to prove that the transactions occurred.

Good records should be kept so that retrieval of the information is quick and easy. Also, records should be retrievable throughout their entire life. While electronic records are easily retrieved, this may become more difficult as time passes and software gets updated and hardware gets replaced.

These suggestions and comments are paraphrased from *FYI*, Volume 2, Issue 3, a publication of the [Department of Administration, Information Policy Analysis Division](#).

More detailed guidelines have been produced by the [State Archives](#).

The Information Policy Analysis Division of the Department of Administration offers the following suggestions:

- The county should agree on a common naming system for files, especially those on a network's shared directory. The vocabulary used on the county's approved records-retention schedules is a good model.
- Folders and directories dedicated to record keeping should be established. Not all of a county's digital documents will become official records. But those that are records are more easily managed if they are in separate files. The determination of which documents are records remains with the author or the county. The computer cannot make that decision.
- Identifying metadata should be attached to electronic records. Metadata is data that describes data, such as the title, date, author, and data-privacy classification. The need for metadata is the major difference between digital and paper records. While identifying data is usually visible on paper records, electronic documents require that actions be taken to identify data as a record.
- All employees should be trained on how the filing system works. This training should include metadata standards and requirements. This documentation of the county's system will allow others to continue to protect and preserve the records after staffing changes.
- Duplicate copies of vital records should be stored off site. Backups are for system recovery only. Backup copies are not the county's archives nor are they record-keeping copies.

- The approved records-retention schedule should be followed. Electronic records that are official should appear in the county's records-retention schedule. Electronic records should be disposed of when their retention requirements have been satisfied. Final disposition may mean that some electronic records will have to be converted to an archival storage medium such as microfilm for historical preservation.

V. Official newspaper

Minn. Stat. § 375.12

Minn. Stat. ch. 331A.

The board must annually, at its first meeting of the year, designate a legal newspaper of general circulation in the county as its official newspaper. The qualifications for an official newspaper are established by law, and only a newspaper that qualifies may be selected. The following are some of the notices that must be published:

Minn. Stat. § 13D.04, subd. 2

Special meetings. As an alternative to mailing or delivering notice of special meetings to affected parties, the county may publish the notice once in its official newspaper.

Minn. Stat. § 375.51

Ordinances. Before an ordinance may be enacted, it must be published in the official newspaper of the county not less than ten days before the meeting at which it is to be considered. In addition, for ordinances relating to comprehensive plans or official controls, a public hearing must first be held, which also requires publication in the official newspaper at least 10 days before the hearing. An ordinance must also be published within 45 days after being passed.

Minn. Stat. § 331A.05, subd. 2(c)

Minn. Stat. § 375.17

- **Annual financial reports.** Annually, the county board shall make a full and accurate statement of the receipts and expenditures of the preceding year. The board shall publish the statement or a summary of the statement in a form as prescribed by the state auditor, for publication in the official newspaper.

Minn. Stat. §§ 375.12; 331A.01, subd. 10; 331A.08, subd. 3.

Board minutes. After every regular or special meeting, counties must publish the official council proceedings, or a summary of the official minutes if the board determines that will adequately inform the public. The summary must include action on motions, resolutions, ordinances, and other official proceedings. Publication of the minutes must generally occur within 30 days of the meeting.

Minn. Stat. § 375.169

Summary budget. According to state law, the county board must publish a summary budget statement in the official newspaper of the county. The statement must contain information relating to anticipated revenues and expenditures in a form prescribed by the state auditor.

Minn. Stat. § 375.21

Competitive bidding. Counties must publish all requests for competitive bids in the official newspaper at least two weeks before the last day for submission of bids.

Other publication requirements. There are many other publication requirements as well as the few mentioned above.

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