

13.10 EXPEDITED DATA PRACTICES COMPLAINTS

In 2010, the legislature added Minnesota Statutes section 13.085 to the Data Practices Act, creating an expedited complaint procedure for alleged violations of the Act.¹ The statute permits a complainant alleging a violation of the Data Practices Act to file a complaint requesting an order to compel compliance with the Act.² The complaint is subject to a two-year limitations period, unless the act or failure to act that is the subject of the complaint involves concealment or misrepresentation by the government that could not be discovered during that period. In that case, the complainant has one year after the concealment or misrepresentation is discovered.³ A statutory fee of \$1,000 (or a bond to guarantee payment of the fee) must accompany the complaint when it is filed.⁴ The OAH has a standard form for Expedited Data Practices Complaints posted at its website.⁵

Once a complaint is received, OAH must immediately notify the Respondent.⁶ The Respondent must file a response to the complaint within 15 business days of receiving the notice, unless the time is extended by OAH for good cause shown.⁷ OAH must also notify, if practicable, an individual or entity that is the subject of all or part of the data at issue.⁸ OAH is also required to notify the Commissioner of Administration when a complaint is received. If the Commissioner of Administration accepted a request for an opinion pursuant to Minnesota Statutes section 13.072 on the same matter before the complaint was filed with OAH, the complaint must be dismissed and the filing fee refunded.⁹

The ALJ must make a preliminary determination on the complaint within 20 business days after the Response is filed, or the time to respond has expired. The ALJ may determine that the complaint presents insufficient facts to establish probable cause to believe that a violation of the Data Practices Act has occurred, and dismiss the complaint; or the ALJ may determine that the complaint establishes probable cause to believe that a violation of the Act has occurred, and a hearing must be scheduled.¹⁰

If the complaint is dismissed, the complainant may petition the Chief ALJ for reconsideration within five business days after the complaint is dismissed. If the

¹ 2010 Minn. Laws, ch. 297, § 3, at 2-5.

² The expedited process excludes accuracy and completeness challenges and sex offender accuracy and completeness challenges pursuant to MINN. STAT. §§ 13.04, subds. 4, 4a, .085, subd. 2(a) (2014). *See Utes v. Minn. Bd. of Physical Therapy*, OAH 8-0305-30394, 2013 WL 1411606, at *2-3 (Minn. Off. Admin. Hrgs. March 13, 2013).

³ MINN. STAT. § 13.085, subd. 2(b) (2014).

⁴ *Id.*(c).

⁵ Available at <http://mn.gov/oah/administrative-law/filing/data/forms/index.jsp>.

⁶ MINN. STAT. § 13.085, subd. 2(d) (2014).

⁷ *Id.*(f).

⁸ *Id.*(d).

⁹ *Id.*(e).

¹⁰ *Id.*, subd. 3(a). The purpose of a probable cause determination is to determine whether, given the facts disclosed by the record, it is fair and reasonable to hear the matter on the merits. *State v. Florence*, 239 N.W. 2d 892, 902 (Minn. 1976).

Chief ALJ determines that the ALJ made a clear material error, the matter will be scheduled for a hearing.¹¹

A hearing on the complaint must be held within 30 days after the parties are notified that a hearing will be held. The parties and the ALJ may waive an oral hearing.¹² Parties may submit evidence, affidavits, documentation and arguments at a hearing.¹³ The ALJ may continue a hearing to enable the parties to submit additional evidence or testimony and must consider any evidence submitted until the hearing record is closed.¹⁴ The hearing must be open to the public, but the ALJ may inspect the disputed data *in camera*, and close the hearing as needed to consider not public information in the record.¹⁵ The ALJ may also issue needed protective orders, and seal all or part of the hearing record.¹⁶ Proceedings on a complaint brought pursuant to section 13.085 are not contested cases or governed by chapter 14, except to the extent specified by section 13.085.¹⁷

Within ten business days after the hearing record closes, the ALJ must render a decision. The ALJ must determine whether a violation of the Data Practices Act occurred, and must make at least one of the following dispositions:

- (1) dismiss the complaint;
- (2) find that an act or failure to act constituted a violation of this chapter;
- (3) impose a civil penalty against the respondent of up to \$300;
- (4) issue an order compelling the respondent to comply with a provision of law that has been violated, and may establish a deadline for production of data, if necessary; and
- (5) refer the complaint to the appropriate prosecuting authority for consideration of criminal charges.¹⁸

An order issued pursuant to section 13.085 is enforceable through the district court in the district where the Respondent is located.¹⁹

A final decision on a complaint may be appealed pursuant to Minnesota Statutes sections 14.63 to 14.69.²⁰ The decision is not controlling in a subsequent action in district court for alleging the same violation and seeking damages. A government entity or person that releases data pursuant to an order issued under section 13.085 is immune from civil and criminal liability for that release.²¹

The statute establishes a rebuttable presumption that a complainant who substantially prevails on the merits in an action brought under section 13.085 is

¹¹ MINN. STAT. § 13.085, subd. 3(c) (2014).

¹² *Id.*, subd. 4(a).

¹³ *Id.*, subd. 3(b).

¹⁴ *Id.*, subd. 4(a), (b).

¹⁵ *Id.*(c).

¹⁶ *Id.*

¹⁷ *Id.*, subd. 5(d).

¹⁸ *Id.*(a).

¹⁹ *Id.*(c).

²⁰ *Id.*(d).

²¹ *Id.*(e), (f).

entitled to an award of reasonable attorney fees, up to \$5,000, unless the ALJ determines that the violation is merely technical or that there is a genuine uncertainty about the law's meaning.²² In addition, if the Respondent government entity was also the subject of a written opinion pursuant to Minnesota Statutes section 13.072 and the ALJ finds that the opinion was directly related to the matter in dispute and the government entity failed to act in conformity with the opinion, reasonable attorney fees up to \$5,000 must be awarded to the complainant.²³

OAH must refund the \$1,000 filing fee to a substantially prevailing complainant, except for \$50. In such a case, OAH's costs, up to \$1,000 must be billed to the Respondent.²⁴

If the ALJ determines that the complaint was frivolous, or brought for purposes of harassment, the ALJ must order that the complainant pay the Respondent's reasonable attorney's fees, not to exceed \$5,000.

²² *Id.*, subd. 6(a); see Schmid v. Gerhardt, O.A.H. 8-0305-21608-DP, 2011 WL 346133, at *6 (Minn. Off. Admin. Hrgs. January 25, 2011).

²³ MINN. STAT. § 14.085, subd. 6(b) (2014).

²⁴ *Id.*(c).