13.3 WHAT DATA IS COVERED BY THE DATA PRACTICES ACT

The Data Practices Act uses the word *data* throughout its provisions but never defines that term. It does, however, define the phrase "government data" as "[all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use."[1] Under this extremely broad definition, government data includes such forms of data as notes, drafts of documents or reports, email, tape recordings, phone messages, pictures, and computer USB flash drives. However, by not specifically defining what data is, the legislature left open the question of whether government data includes information contained within the minds of government employees in those cases where such information has never been reduced to some physical form.

This question was considered by the Minnesota Court of Appeals in *Keezer v. Spickard*,[2] a case in which a sheriff and a county caseworker had made oral comments about the plaintiff's mental status. The Court noted that, read literally, "government data" could include knowledge that exists only in the mind of a government employee. It decided that this would lead to absurd results and observed that it was nearly impossible to regulate any function related to data until a record is created somewhere outside the human brain.[3] The court held that in order to show a violation of the Act, a plaintiff must show that the data was recorded in some physical form. But where private recorded data is disclosed orally, the Act is violated.[4]

Data need not be in the physical possession of the agency to be classified as government data. It has been held that tape recordings and field notes retained by a private investigator were public data where a state university contracted with the investigator to do a background check on an applicant for the position of director of security.[5]

1 MINN. STAT. § 13.02, subd. 7 (2014).

2 493 N.W.2d 614 (Minn. Ct. App. 1992).

3 *Id.* at 618.

4 Navarre v. S. Wash. Cnty. Schs., 652 N.W.2d 9, 25 (Minn. 2002) (finding disclosure of mental impressions derived directly from personnel data in physical form is private data); Deli v. Hasselmo, 542 N.W.2d 649, 654 (Minn. Ct. App. 1996).

5 Pathmanathan v. St. Cloud State Univ., 461 N.W.2d 726, 728 (Minn. Ct. App. 1990).