

## 13.4 CLASSIFICATION SYSTEM

The classification system used in the Data Practices Act is the key for determining what access is available and by whom. Presently, there are four types of government data: (1) data on individuals, (2) data not on individuals, (3) data on decedents, and (4) summary data. *Data on individuals* is defined as:

[A]ll government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.<sup>1</sup>

*Data not on individuals* is simply defined as “all government data that are not data on individuals.”<sup>2</sup>

For purposes of accessibility, data on individuals is classified as public, private, or confidential, and data not on individuals is classified as public, nonpublic, or protected nonpublic.<sup>3</sup> Both private data on individuals and nonpublic data consist of data that by state statute, temporary classification, or federal law are (1) not public, (2) accessible to the subjects of the data and, (3) accessible to entities and individuals within whose entities whose work assignment reasonably requires access.<sup>4</sup> Confidential data on individuals and protected nonpublic data consist of data that by state statute, temporary classification, or federal law are (1) not accessible to the general public, (2) not accessible to the subject of the data, and (3) accessible to entities and individuals within those entities whose work assignment reasonably requires access.<sup>5</sup> Data on individuals is public, unless classified as private or confidential. Likewise, data not on individuals is also public if not classified as nonpublic or protected nonpublic.<sup>6</sup>

The category of *data on decedents* is designed to solve the problem of how to treat data on an individual that was created, collected or maintained prior to the death of the individual. Data on decedents are classified as either private data on decedents or confidential data on decedents.<sup>7</sup> These classifications cover data that, before the death of the data subject, were classified by state statute or federal law as private data on individuals or confidential data on individuals respectively.<sup>8</sup> Private data on decedents and confidential data on decedents will become public when two conditions are met: ten years must elapse from the date of the actual or presumed death *and* thirty years must elapse from the date of creation of the data.<sup>9</sup> Rights under this classification are to be exercised by the representative of the decedent.<sup>10</sup> Data on decedents may be released earlier if ordered by

<sup>1</sup> MINN. STAT. § 13.02, subd. 5 (2014).

<sup>2</sup> *Id.* subd. 4.

<sup>3</sup> *Id.* subds. 3, 9, 12-15.

<sup>4</sup> *Id.* subds. 9, 12; MINN. R. 1205.0400, subp. 2 (2013).

<sup>5</sup> MINN. STAT. § 13.02, subds. 3, 13 (2014); MINN. R. 1205.0600, subp. 2 (2013).

<sup>6</sup> MINN. STAT. § 13.03, subd. 1 (2014).

<sup>7</sup> *Id.* § 13.10, subd. 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, subd. 2.

<sup>10</sup> *Id.*, subd. 3. *But see* Estate of Benson v. Minn. Bd. of Med. Practice, 526 N.W.2d 634, 637-38 (Minn.

the district court.<sup>11</sup> For the purposes of the Act, data created or collected about individuals after their death is treated as data not on individuals.<sup>12</sup>

The final category, *summary data*, is simply data that has been derived or summarized from data on individuals and from which all data elements that could link the data to a specific individual have been removed.<sup>13</sup> Examples of summary data include statistical data, case studies, or reports of incidents that do not identify data subjects. Summary data is available to the general public unless otherwise classified by state statute or federal law.<sup>14</sup>

When government data is classified as private, confidential, nonpublic, or protected nonpublic, it is referred to as “not public data.”<sup>15</sup> Not public data can only be so classified by state statute, temporary classification, or federal law.<sup>16</sup>

State statutes that classify data as “not public” can be found not only in the Data Practices Act but in other statutory provisions as well. Thus, specific provisions of the Data Practices Act as well as other statutory provisions relevant to the subject matter of the data must be checked in order to determine whether the particular piece of data is classified as “not public.” The related statutory provisions are no longer at the end of the act, but are inserted in the relevant section of the Data Practices Act. For example, if welfare data is involved, then both welfare data provisions of the Data Practices Act and statutes dealing with public assistance or welfare must be examined. However, there is no need to check state rules covering a particular area because only statutes can classify data.<sup>17</sup>

Since data can also be classified as not public by federal law, it is important to be familiar with any federal case law, federal statutes, or federal regulations that may cover the subject matter of the data. Generally, the federal law must make the data not public in the hands of a state agency for the Data Practices Act to prohibit its dissemination.<sup>18</sup>

Temporary classifications can also affect the classifications of government data. These classifications are established through a temporary classification procedure contained in the Data Practices Act.<sup>19</sup> Entities covered by the Act can apply to the state commissioner of administration for a not public classification of government data. Each year the commissioner of administration is required to submit all temporary classifications in effect to the legislature for its consideration concerning whether the temporary classification should become permanent. The temporary classification then expires on August 1st of the year following the year it is submitted to the legislature.<sup>20</sup>

Ct. App. 1995) (denying claim for invasion of decedent’s statutory privacy interests where the wrongful publications occurred prior to decedent’s death).

<sup>11</sup> MINN. STAT. § 13.03, subd. 4 (2014).

<sup>12</sup> MINN. R. 1205.0200, subp. 8 (2013).

<sup>13</sup> MINN. STAT. § 13.02, subd. 19 (2014).

<sup>14</sup> *Id.* § 13.05, subd. 7.

<sup>15</sup> *Id.* § 13.02, subd. 8a.

<sup>16</sup> *Id.* § 13.03, subd. 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Prairie Island Indian Cmty. v. Dep’t of Pub. Safety*, 658 N.W.2d 876, 882-83 (Minn. Ct. App. 2003).

<sup>19</sup> MINN. STAT. § 13.06 (2014).

<sup>20</sup> *Id.*, subd. 7.