

13.6 RIGHTS OF INDIVIDUAL SUBJECTS OF DATA

An individual asked to supply private or confidential data concerning him or her must be informed of the following:

1. the purpose and intended use of the requested data within the collecting government entity;
2. whether he or she may refuse or is legally required to supply the requested data;
3. any known consequence arising from his or her supplying or refusing to supply private or confidential data; and
4. the identity of other persons or entities authorized by state or federal law to receive the data.¹

The above notice is referred to as the “Tennessee Warning.”² Its purpose is to inform individuals of the request for the data and of their rights, so that they can better decide whether to provide the requested data to the government entity. When the entity fails to give the warning, it cannot use or disseminate that data for any purpose.³ But where a public employer gathers information from an employee in the course of an investigation, it is not collecting private or confidential data about the employee and no Tennessee warning is required.⁴ This warning is not required to be given when an individual is asked to supply criminal investigative data to a law enforcement officer.⁵

In addition to the above notice or warning, an individual has the right to discover whether he or she is the subject of stored data on individuals and whether it is classified as public, private, or confidential.⁶ If such data exists, the individual has the right to see public data or private data of which he or she is the subject at no charge.⁷ Also, if requested, the individual must be informed of the content and meaning of the data and may obtain copies of the data.⁸ The responsible authority may require the requesting person to pay the actual cost of making and certifying the copies.⁹ After an individual has been shown the public or private data and informed of its meaning, the data need not be disclosed to the individual for six months thereafter unless (1) the individual challenges the accuracy or completeness of the data, or (2) additional data on the individual has been collected or created.¹⁰

¹ MINN. STAT. § 13.04, subd. 2 (2014).

² *Id.*; see Donald A. Gemberling & Garry A. Weissman, *Data Practices at the Cusp of the Millennium*, 22 WM. MITCHELL L. REV. 767, 788 (1996); Donald A. Gemberling & Garry A. Weissman, *Data Privacy: Everything You Wanted to Know about the Minnesota Government Data Practices Act – From “A” to “Z”*, 8 WM. MITCHELL L. REV. 573, 586 (1982).

³ Gemberling & Weissman, *Data Practices*, *supra* note 2, at 779-80.

⁴ *Kobluk v. Univ. of Minn.*, 613 N.W.2d 425, 427 (Minn. Ct. App. 2000); *Edina Educ. Assoc. v. Bd. of Educ. of Indep. Sch. Dist. No. 273*, 562 N.W.2d 306, 311 (Minn. Ct. App. 1997).

⁵ MINN. STAT. § 13.04, subd. 2 (2014).

⁶ *Id.* subd. 3.

⁷ *Id.*; *Wiegel v. City of St. Paul*, 639 N.W.2d 378, 384-85 (Minn. 2002) (finding interviewer notes on employee applying for a promotion was private data available to the employee as a matter of right).

⁸ MINN. STAT. § 13.04, subd. 3 (2014).

⁹ *Id.*

¹⁰ *Id.*

Finally, an individual may contest the accuracy or completeness of public or private data concerning himself or herself.¹¹ Accurate data is that which is reasonably correct and free from error.¹² Complete data is that which reasonably reflects the history of an individual's transactions with the agency. Omissions that place the individual in a false light are not permitted.¹³ The review by the commissioner extends not only to facts maintained by an agency but also to conclusions recorded by the agency.¹⁴ The appeal process is begun by notifying the responsible authority for the entity holding the data in writing of the nature of the disagreement with respect to the accuracy or completeness of the data.¹⁵ Within thirty days after receiving the notification, the responsible authority must either (a) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of the inaccurate or incomplete data; or (b) notify the individual subject of the data that the data is considered to be accurate and complete.¹⁶ Data in dispute can only be disclosed if the disclosure includes the individual's statement of disagreement.¹⁷

The determination of a responsible authority with respect to the accuracy and completeness of the data may be appealed to the state commissioner of administration and is treated as a contested case under the APA.¹⁸ An appeal must be submitted to the commissioner within 180 days of an adverse determination by the responsible authority. But if the agency has informed the individual of the right to appeal, in writing, the appeal must be submitted within 60 days.¹⁹ The contents of the appeal notice are set out in rule.²⁰ Before initiation of a contested case the commissioner must try to resolve the dispute through education, conference, conciliation, persuasion, or, if the parties agree, mediation.²¹ If a settlement is not reached, the commissioner initiates a contested case hearing under the APA by issuing a notice of and order for hearing. Upon initiation of the contested case hearing, the case is referred to an administrative law judge from the Office of Administrative Hearings for a hearing and recommended decision. The case is then returned to the commissioner of administration for a final decision. The review by the commissioner is *de novo*.²²

¹¹ *Id.*, subd. 4. But determinations of maltreatment of vulnerable adults or children can only be challenged by the process outlined in § 626.556, subd. 10i.

¹² MINN. R. 1205.1500, subp. 2(A) (2013).

¹³ *Id.*(B).

¹⁴ Hennepin Cnty. Cmty. Servs. Dept. v. Hale, 470 N.W.2d 159, 164 (Minn. Ct. App. 1991); *see* Schwanke v. Dept. of Admin., 851 N.W.2d 591, 594-95 (Minn. 2014) (individual can challenge a personnel evaluation completed by a supervisor); *see also In re Dunbar*, 620 N.W.2d 45, 47 (Minn. Ct. App. 2000) (upholding a decision by the Commissioner of Administration directing a school district to rescind and destroy a letter drafted by its employees that criticized a foster care provider).

¹⁵ MINN. STAT. § 13.04, subd. 4(a) (2014).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* The procedure for exercising the right of appeal is found in MINN. R. 1205.1600 (2013).

¹⁹ MINN. R. 1205.1600, subp. 2 (2013).

²⁰ *Id.* subp. 3.

²¹ MINN. STAT. § 13.04, subd. 4 (2014).

²² Hennepin Cnty. Cmty. Servs. Dept. v. Hale, 470 N.W.2d 159, 165 (Minn. Ct. App. 1991).