

## 13.8 LEGAL REMEDIES

Any entity subject to the Data Practices Act or responsible authority that violates the Data Practices Act can be sued by any individual or representative of a decedent for damages sustained as a result of the violation plus costs and reasonable attorneys' fees.<sup>1</sup> The statute of limitations on such actions is six years.<sup>2</sup> In cases of willful violation, the government entity may be liable for exemplary damages of not less than \$1,000 and not more than \$15,000, for each violation.<sup>3</sup> Injunctive relief is available to stop violations or proposed violations.<sup>4</sup> In addition, an aggrieved person may bring an action in district court to compel compliance with the Data Practices Act. In such an action, the court may award the person costs and disbursements, including reasonable attorneys' fees.<sup>5</sup> However, any action brought that is frivolous and without merit or basis in fact may subject the person bringing the action to reasonable costs and attorneys' fees.<sup>6</sup> Finally, any person who willfully violates the provisions of the Data Practices Act or any of its rules is guilty of a misdemeanor, and with respect to a public employee, a willful violation constitutes just cause for suspension without pay or dismissal.<sup>7</sup>

A member of the public requesting data whose request is denied by a government entity may request that the commissioner of administration issue an opinion concerning the data.<sup>8</sup> A government entity may also request an opinion from the commissioner.<sup>9</sup> Opinions may address the rights of data subjects, public access to data and the classification of data. Although the opinions are not binding on the entity, courts must give deference to

<sup>1</sup> *Id.* § 13.08, subd. 1; *see also* *Westrom v. Dep't of Labor & Indus.*, 686 N.W.2d 27, 34-37 (Minn. 2004) (finding, where family sued for damages because Department released penalty orders and written objections to those orders to the news media, that data was collected as part of an active investigation leading to a civil legal action and, therefore, confidential and nonpublic pursuant to MINN. STAT. § 13.39); *Navarre v. S. Wash. Cnty. Schs.*, 652 N.W.2d 9, 29-31 (Minn. 2002) (concluding that damages recoverable under the Data Practices Act include damages for emotional harm and loss of reputation). *But see* *Estate of Benson v. Minn. Bd. of Med. Practice*, 526 N.W.2d 634, 637-38 (Minn. Ct. App. 1995) (denying claim for invasion of decedent's statutory privacy interests where the wrongful publications occurred prior to decedent's death).

<sup>2</sup> *Manteuffel v. City of N. St. Paul*, 570 N.W.2d 807, 812 (Minn. Ct. App. 1997)

<sup>3</sup> MINN. STAT. § 13.08, subd. 1 (2014).

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

<sup>5</sup> *Id.*, subd. 4; *Wiegel v. City of St. Paul*, 639 N.W.2d 378, 383-84 (Minn. 2002) (finding person who is the subject of private data on individuals, and who is denied access to that data by a government agency is an "aggrieved person" and may recover attorney fees in an action to compel compliance with the Data Practices Act); *Star Tribune v. City of St. Paul*, 660 N.W.2d 821, 827 (Minn. Ct. App. 2003) (finding names of individual police officers in data collected for traffic stop study to address racial profiling was data on an individual employee and was therefore private personnel data unavailable to a newspaper); *Washington v. Indep. Sch. Dist. No. 625*, 610 N.W.2d 347, 350 (Minn. Ct. App. 1999) (holding a party is not "aggrieved" until its rights are infringed; finding, therefore, attorney fees could not be awarded for work prior to entry of court order where not-public investigative personnel data was available only upon court order).

<sup>6</sup> MINN. STAT. § 13.08, subd. 4(a) (2014).

<sup>7</sup> *Id.* § 13.09.

<sup>8</sup> *Id.* § 13.072, subd. 1.

<sup>9</sup> *Id.*

them.<sup>10</sup> Entities relying on an opinion of the commissioner are freed of liability for damages, attorney fees or costs.<sup>11</sup> The attorney general may issue an opinion that takes precedence over that of the commissioner.<sup>12</sup>

<sup>10</sup> *Id.*, subd. 2.

<sup>11</sup> MINN. STAT. § 13.072, subd. 2 (2014). Opinions are available online, in a searchable format, from the Minnesota Department of Administration's Information Policy Analysis Division (IPAD) webpage, at [www.ipad.state.mn.us](http://www.ipad.state.mn.us).

<sup>12</sup> *Id.*, subd. 1(f). For an analysis of the scope of and weight to be given to the commissioner's opinions, see Margaret Westin, *The Minnesota Government Data Practices Act: A Practitioner's Guide and Observations on Access to Government Information*, 22 WM. MITCHELL L. REV. 839, 869 (1996).