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### Statement of Position Classification of Data During An Audit

This Statement of Position covers the classification of data during:

- Examinations, financial audits, compliance audits, or investigations performed by the Office of the State Auditor (OSA);
- Audits or investigations performed by a political subdivision's internal audit office; and
- Audits or investigations performed for a political subdivision by CPA firms or other persons.<sup>1</sup>

#### Background: Data Classifications

The Minnesota Government Data Practices Act ("MGDPA"), Minn. Stat. ch. 13, regulates the collection, creation, storage, maintenance, dissemination, and access to governmental, regardless of the data's physical form, storage media, or conditions of use.<sup>2</sup> All government entities are governed by the MGDPA.<sup>3</sup>

Almost all government data are either *data on individuals* or *data not on individuals*.

- Data on individuals are classified as public, private, or confidential.
- Data not on individuals are classified as public, nonpublic, or protected nonpublic.

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<sup>1</sup> The term "political subdivision" includes local governments: "Political subdivision" means any county, statutory or home rule charter city, school district, special district, any town exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2, and any board, commission, district or authority created pursuant to law, local ordinance or charter provision. . . . " Minn. Stat. § 13.02, subd. 11.

<sup>2</sup> See Minn. Stat. §§ 13.01, subd. 3; 13.02, subd. 7.

<sup>3</sup> Minn. Stat. § 13.01, subd. 1.

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This Statement of Position is not legal advice and is subject to revision.

The chart below shows how these classifications determine who may see or have copies of government data.

<b>Data on Individuals</b>	<b>Meaning of Classification</b>	<b>Data Not on Individuals</b>
Public	Available to anyone for any reason	Public
Private	Available to: <ul style="list-style-type: none"> <li>• Data subject</li> <li>• Those whose work requires access<sup>4</sup></li> <li>• Entities authorized by law</li> <li>• Those authorized by the data subject</li> </ul>	Nonpublic
Confidential	Available to: <ul style="list-style-type: none"> <li>• Those whose work requires access</li> <li>• Entities authorized by law</li> </ul> Not available to the data subject	Protected Nonpublic

“Not public data” means any government data classified as private, confidential, nonpublic or protected nonpublic.

**Releasing Data to the Office of the State Auditor**

Officers and employees of political subdivisions are required to cooperate with the OSA in the performance of its duties.<sup>5</sup> It is not a violation of the MGDPA, or any other statute related to the classification of data, for a state agency, statewide system, or political subdivision to provide data or information to the state auditor, including data classified as not public, for the purpose of an audit or in compliance with the mandatory reporting requirements of Minn. Stat. § 609.456, subd. 1.<sup>6</sup> An “audit” includes “an examination, financial audit, compliance audit, or investigation performed by the state auditor.”<sup>7</sup>

**Audit Data**

The classification of data related to an audit depends on whether the final audit report has been released (or the audit is no longer being actively pursued).<sup>8</sup> Unless noted otherwise, these classifications apply to audits of political subdivisions by the OSA, private CPAs, or internal audit offices.

Data relating to an audit are “protected nonpublic data” or “confidential data on individuals” until the final report of the audit has been published, or the audit is no longer

<sup>4</sup> “Individuals within the [governmental] entity whose work assignments reasonably require access” may see private data. Minn. R. 1205.0400, subd. 2

<sup>5</sup> See, e.g., Minn. Stat. §§ 6.52 and 6.53.

<sup>6</sup> See Minn. Stat. § 6.715, subd. 4. Under Minn. Stat. § 609.456, subd. 1, public employees and officers of political subdivisions, charter commissions, or local public pension plan are required to report evidence of theft, embezzlement, unlawful use of public funds or property or misuse of public funds by a charter commission or any person authorized to expend public funds to the State Auditor.

<sup>7</sup> See Minn. Stat. § 6.715, subd. 1(a).

<sup>8</sup> See Minn. Stat. §§ 6.715, subd. 2 (State Auditor data) and 13.392, subd. 1 (internal auditing data).

being actively pursued.<sup>9</sup> If, before releasing a report, the OSA provides data relating to an audit for the purpose of review and verification of the data, the person receiving the data must protect the data from unlawful disclosure.<sup>10</sup> So, when a political subdivision receives preliminary audit data, such as a draft audit report, the political subdivision must protect the not public status of the data. If the political subdivision must share the data with the city attorney, bond counsel, and/or professional consultants to prepare a response to the draft audit findings, these professionals must also maintain the data's not public classification.<sup>11</sup>

In addition to possessing not public audit data, however, the political subdivision may have data relevant to the subject of the audit that remain public in the political subdivision's hands. For example, public financial data that the political subdivision may provide to its auditor during the audit remain public data in the hands of the political subdivision.<sup>12</sup> The same data, however, will be not public in the auditor's hands until the final audit report is released (or the audit is no longer actively pursued).

The State Auditor may share information relating to an audit with appropriate law enforcement agencies, notwithstanding the data's classification as not public.<sup>13</sup>

### **TIF Examination Data**

During a TIF examination (desk or field) by the OSA, the "final report" of the examination is the final notice of noncompliance. As a result, the initial notice of noncompliance, the response to the initial notice of noncompliance from the governing body of the municipality that approved the TIF district, and work papers are not public data until the final notice of noncompliance has been released.<sup>14</sup>

The general rule is that meetings cannot be closed merely to discuss data that are not public.<sup>15</sup> As a result, draft findings, the initial notice of noncompliance and the governing body's response in a TIF examination may be discussed at an open meeting without liability or penalty if the disclosure relates to a matter within the scope of the public body's authority and is reasonably necessary to conduct the business or agenda item before the public body.<sup>16</sup> However, the data discussed at an open meeting retain the

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<sup>9</sup> See Minn. Stat. §§ 6.715, subd. 2 and 13.392.

<sup>10</sup> Minn. Stat. § 6.715, subd. 5; *see also* § 13.03, subd. 4(c) (data have the same classification in the hands of the entity receiving the data as they had in the hands of the government entity providing the data).

<sup>11</sup> *See, e.g.*, Minn. Stat. § 13.05, subd. 6 (Contractor must comply with ch. 13 when handling data on individuals.).

<sup>12</sup> *See* Minn. Stat. § 13.03, subd. 4(d) (when a government entity gives data to another government entity, a classification for the data in the hands of the entity receiving the data does not affect the classification of the data in the hands of the entity that disseminates the data).

<sup>13</sup> *See* Minn. Stat. § 6.715, subd. 3.

<sup>14</sup> *See* Minn. Stat. § 469.1771, subd. 1(c).

<sup>15</sup> *See* Minn. Stat. § 13D.05, subd. 1. Certain types of not public data must be discussed at a closed meeting, and the discussion of other types of not public data may be conducted at a closed meeting. *See* Minn. Stat. § 13D.05, subs. 2 and 3. However, the governing body's response to draft audit findings or the initial notice of noncompliance in a TIF audit do not appear to fall within these categories of data.

<sup>16</sup> *See* Minn. Stat. §§ 13.03, subd. 11; and 13D.05, subd. 1(b).

data's original classification, even though the record of the meeting is public.<sup>17</sup> Therefore, draft copies of the examination, or the initial notice of noncompliance and the governing body's response in a TIF examination may not be distributed to the public even though these items were discussed at an open meeting.<sup>18</sup>

### **When Data Becomes Public**

Once a final report has been published or an audit or examination is no longer being actively pursued, the report and supporting documentation (e.g., work papers, the initial notice of noncompliance and the governing body's response in a TIF examination) become public data, unless the data are classified as not public under some other data classification provision.<sup>19</sup>

Three types of data will remain not public after publication of the final report or when the audit or examination is no longer being actively pursued:

- Data that could reasonably be used to determine the identity of an individual supplying data for the audit are private, if the individual supplied data that were needed for the audit and the individual would not have provided the data to the auditor without an assurance that the individual's identity would remain private.<sup>20</sup>
- Data that support the conclusions of a report published by the OSA that the OSA reasonably believes will result in litigation remain protected nonpublic data or confidential data on individuals "until the litigation has been completed or is no longer being actively pursued."<sup>21</sup>
- Data that could reasonably be used to determine the identity of an individual supplying information to the OSA under the mandatory reporting statute, Minn. Stat. § 609.456, are private.<sup>22</sup>

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<sup>17</sup> See Minn. Stat. § 13D.05, subd. 1(c).

<sup>18</sup> See Minn. Stat. § 13D.01, subd. 6(b).

<sup>19</sup> See Minn. Stat. §§ 6.715, subd. 2, and 13.392, subd. 1. Under the MGDPA, any supporting data the auditor received from a political subdivision which was classified as not public in the political subdivision's hands retain that same classification in the auditor's hands. See Minn. Stat. §§ 13.03, subd. 4(c); 13.05, subd. 6. Examples include benefit data classified as private under Minn. Stat. § 13.462 or social security numbers classified as private under Minn. Stat. § 13.355.

<sup>20</sup> See Minn. Stat. §§ 6.715, subd. 2 (or the State Auditor reasonably believes the individual would not have provided the data without such an assurance) and 13.392, subd. 2 (internal audit office or person performing audit for political subdivision).

<sup>21</sup> See Minn. Stat. § 6.715, subd. 2.

<sup>22</sup> See Minn. Stat. § 6.715, subd. 2. Under Minn. Stat. § 609.456, a public employee or officer of a political subdivision, charter commission, or local public pension plan who discovers evidence of theft, embezzlement, unlawful use of public funds or property, or misuse of public funds by a charter commission or any person authorized to expend public funds, must promptly report a detailed description of the alleged incident(s) in writing to the State Auditor. See Minn. Stat. § 609.456, subd. 1.

## **Information Policy Analysis Division (IPAD)**

The Minnesota Department of Administration's Information Policy Analysis Division (IPAD) has authority to issue non-binding advisory opinions on data practices and open meeting law issues.<sup>23</sup> Information about the MGDPA and Minnesota's Open Meeting Law is available on IPAD's website at [www.ipad.state.mn.us](http://www.ipad.state.mn.us).

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<sup>23</sup> See Minn. Stat. § 13.072.