

This Document can be made available  
in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH  
SESSION

HOUSE FILE No. **3367**

February 25, 2008

Authored by Pelowski, Greiling, Smith, Holberg and Hilty

The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

March 4, 2008

By motion, recalled and re-referred to the Committee on Governmental Operations, Reform, Technology and Elections

1.1 A bill for an act  
1.2 relating to data practices; specifying access to disputed data; requiring closed  
1.3 meetings to be recorded; granting attorney fees in certain cases; amending  
1.4 Minnesota Statutes 2006, sections 13.072, subdivision 4; 13D.05, subdivision  
1.5 1; 13D.06, subdivision 4; Minnesota Statutes 2007 Supplement, section 13.08,  
1.6 subdivision 4.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2006, section 13.072, subdivision 4, is amended to read:

1.9 Subd. 4. **Data submitted to commissioner.** A government entity may submit not  
1.10 public data to the commissioner for the purpose of requesting or responding to a person's  
1.11 request for an opinion. If the commissioner requests the data in dispute, the government  
1.12 entity must provide the data within ten days of the request. Government data submitted to  
1.13 the commissioner by a government entity or copies of government data submitted by other  
1.14 persons have the same classification as the data have when held by the government entity.  
1.15 If the nature of the opinion is such that the release of the opinion would reveal not public  
1.16 data, the commissioner may issue an opinion using pseudonyms for individuals. Data  
1.17 maintained by the commissioner, in the record of an opinion issued using pseudonyms  
1.18 that would reveal the identities of individuals protected by the use of the pseudonyms,  
1.19 are private data on individuals.

1.20 Sec. 2. Minnesota Statutes 2007 Supplement, section 13.08, subdivision 4, is amended  
1.21 to read:

1.22 Subd. 4. **Action to compel compliance.** (a) In addition to the remedies provided in  
1.23 subdivisions 1 to 3 or any other law, any aggrieved person seeking to enforce the person's  
1.24 rights under this chapter or obtain access to data may bring an action in district court to

2.1 compel compliance with this chapter and may recover costs and disbursements, including  
2.2 reasonable attorney's fees, as determined by the court. If the court determines that an  
2.3 action brought under this subdivision is frivolous and without merit and a basis in fact, it  
2.4 may award reasonable costs and attorney fees to the responsible authority. If the court  
2.5 issues an order to compel compliance under this subdivision, the court may impose a civil  
2.6 penalty of up to \$300 against the government entity. This penalty is payable to the state  
2.7 general fund and is in addition to damages under subdivision 1. The matter shall be heard  
2.8 as soon as possible. In an action involving a request for government data under section  
2.9 13.03 or 13.04, the court may inspect in camera the government data in dispute, but shall  
2.10 conduct its hearing in public and in a manner that protects the security of data classified as  
2.11 not public. If the court issues an order to compel compliance under this subdivision, the  
2.12 court shall forward a copy of the order to the commissioner of administration.

2.13 (b) In determining whether to assess a civil penalty under this subdivision, the court  
2.14 shall consider whether the government entity has substantially complied with general  
2.15 data practices under this chapter, including but not limited to, whether the government  
2.16 entity has:

2.17 (1) designated a responsible authority under section 13.02, subdivision 16;

2.18 (2) designated a data practices compliance official under section 13.05, subdivision  
2.19 13;

2.20 (3) prepared the public document that names the responsible authority and describes  
2.21 the records and data on individuals that are maintained by the government entity under  
2.22 section 13.05, subdivision 1;

2.23 (4) developed public access procedures under section 13.03, subdivision 2;  
2.24 procedures to guarantee the rights of data subjects under section 13.05, subdivision 8; and  
2.25 procedures to ensure that data on individuals are accurate and complete and to safeguard  
2.26 the data's security under section 13.05, subdivision 5;

2.27 (5) acted in conformity with an opinion issued under section 13.072 that was sought  
2.28 by a government entity or another person; or

2.29 (6) provided ongoing training to government entity personnel who respond to  
2.30 requests under this chapter.

2.31 (c) The court shall award reasonable attorney fees to a ~~prevailing~~ plaintiff who  
2.32 substantially prevails who has brought an action under this subdivision if the government  
2.33 entity that is the defendant in the action was also the subject of a written opinion issued  
2.34 under section 13.072 and the court finds that the opinion is directly related to the cause of  
2.35 action being litigated and that the government entity did not act in conformity with the  
2.36 opinion.

3.1 Sec. 3. Minnesota Statutes 2006, section 13D.05, subdivision 1, is amended to read:

3.2 Subdivision 1. **General principles.** (a) Except as provided in this chapter, meetings  
3.3 may not be closed to discuss data that are not public data.

3.4 (b) Data that are not public data may be discussed at a meeting subject to this chapter  
3.5 without liability or penalty, if the disclosure relates to a matter within the scope of the  
3.6 public body's authority and is reasonably necessary to conduct the business or agenda item  
3.7 before the public body.

3.8 (c) Data discussed at an open meeting retain the data's original classification;  
3.9 however, a record of the meeting, regardless of form, shall be public.

3.10 (d) All closed meetings shall be tape recorded at the expense of the public body.  
3.11 Unless otherwise provided by law, the tapes shall be preserved for at least three years after  
3.12 the date of the meeting.

3.13 Sec. 4. Minnesota Statutes 2006, section 13D.06, subdivision 4, is amended to read:

3.14 Subd. 4. **Other remedies; requirements; limits.** (a) In addition to other remedies,  
3.15 the court may award reasonable costs, disbursements, and reasonable attorney fees of up  
3.16 to \$13,000 to any party in an action under this chapter.

3.17 (b) The court may award costs and attorney fees to a defendant only if the court finds  
3.18 that the action under this chapter was frivolous and without merit.

3.19 (c) A public body may pay any costs, disbursements, or attorney fees incurred by or  
3.20 awarded against any of its members in an action under this chapter.

3.21 (d) No monetary penalties ~~or attorney fees~~ may be awarded against a member of a  
3.22 public body unless the court finds that there was a specific intent to violate this chapter.

3.23 (e) The court shall award reasonable attorney fees to a plaintiff who substantially  
3.24 prevails who has brought an action under this section if the government entity that is the  
3.25 defendant in the action was also the subject of a written opinion issued under section  
3.26 13.072, and the court finds that the opinion is directly related to the cause of action being  
3.27 litigated and that the government entity did not act in conformity with the opinion.