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MSBA/MASA Model Policy 406

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406 PUBLIC AND PRIVATE PERSONNEL DATA

~~(Note: The provisions of this policy accurately reflect the Minnesota Government Data Practices Act and are not discretionary in nature.)~~

I. PURPOSE

The purpose of this policy is to provide guidance to cooperative district employees as to the data the cooperative district collects and maintains regarding its **employees, volunteers, independent contractors, and applicants ("personnel").** ~~personnel.~~

II. GENERAL STATEMENT OF POLICY

- A. All data on individuals collected, created, received, maintained or disseminated by the cooperative district, which is classified by statute or federal law as public, shall be accessible to the public pursuant to the procedures established by the cooperative district.
- B. All other data on individuals is private or confidential.

III. DEFINITIONS

- A. "Public" means that the data is available to anyone who requests it.
- B. "Private" means the data is **not public and accessible only** ~~available~~ to the following: the subject of the data, as limited by any applicable state or federal law; individuals within the cooperative whose work assignments reasonably require access; entities and agencies as determined by the responsible authority who are authorized by law to gain access to that specific data and entities or individuals given access by the express written direction of the data subject. ~~and to cooperative district staff who need it to conduct the business of the cooperative district.~~
- C. "Confidential" means the data **are is-not public and are not accessible** ~~available to~~ the subject.
- D. "Parking space leasing data" means the following government data on an ~~applicant~~ ~~application~~ for, or ~~lessee~~ ~~lease~~ of, a parking space: residence address, home telephone number, beginning and ending work hours, place of employment, location of parking space, and work telephone number.

- E. "Personnel data" means government data on individuals maintained because they are or were employees ~~of the cooperative district, applicants for employment, or volunteers for the cooperative district, or members of or applicants for an advisory board or commission.~~ Personnel data include data submitted **by an employee** to the cooperative ~~district by an employee~~ as part of an organized self-evaluation effort by the cooperative ~~district~~ to request suggestions from all employees on ways to cut costs, make the cooperative ~~district~~ more efficient, or to improve cooperative ~~district~~ operations. ~~An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion. ¶~~
- F. "Finalist" means an individual who is selected to be interviewed by the school board for a position.
- G. "Protected health information" means individually identifiable health information ~~as defined in 45 C.F.R. 160.103, that is transmitted in electronic form by a cooperative district acting as a~~ **by electronic media, maintained in electronic media, or maintained in any other form or medium by a health care provider, in connection with a transaction covered by 45 C.F. R. Parts 160, 162, and 164. .** "Protected health information" excludes **individually identifiable health information in education records covered by the Family Education Rights and Privacy Act FERPA and employment records held by a cooperative district in its role as employer; and records regarding a person who has been deceased for more than fifty (50) years. ¶**
- H. ~~"Public officials means business managers; human resource directors; chief financial officers; directors; and individuals defined as superintendents and principals or similar positions that include at least fifty (50) percent of their time spent in administration, personnel, supervision, and evaluation.~~

IV. PUBLIC PERSONNEL DATA

- A. The following information on **current and former** employees, ~~including~~ volunteers and independent contractors **of the cooperative**, is public:
1. name;
 2. employee identification number, which may not be the employee's ~~S~~**Social Security** number;
 3. actual gross salary;
 4. salary range;
 5. terms and conditions of employment relationship;

6. contract fees;
7. actual gross pension;
8. the value and nature of employer-paid fringe benefits;
9. the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
10. job title;
11. bargaining unit;
12. job description;
13. education and training background;
14. previous work experience;
15. date of first and last employment;
16. the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
17. the final disposition of any disciplinary action, as defined in Minnesota - Statutes, section ~~§~~ 13.43, ~~subdivision~~ 2(b), together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the cooperative ~~district~~;
18. the terms of any agreement settling any dispute arising out of the employment relationship, including superintendent buyout agreements, except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money, and such agreement may not have the purpose or effect of limiting access to or disclosure of personnel data or limiting the discussion of information or opinions related to personnel data;
19. work location;
20. work telephone number;
21. badge number;
22. work-related continuing education;

23. honors and awards received; and
 24. payroll time sheets or other comparable data that are used only to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.
- B. The following information on **current and former** applicants for employment **by the cooperative**~~or to an advisory board/ commission~~ is public:
1. veteran status;
 2. relevant test scores;
 3. rank on eligible list;
 4. job history;
 5. education and training; and
 6. work availability.
- C. Names of applicants are private data except when certified as eligible for appointment to a vacancy or when **applicants are considered by the cooperative board to be finalists for public employment.**~~they become finalists for an employment position.~~
- D. Applicants for appointment to a public body.
1. Data about applicants for appointment to a public body collected by the cooperative as a result of the applicant's application for employment are private data on individuals except that the following are public:
 - a. name;
 - b. city of residence, except when the appointment has a residency requirement that requires the entire address to be public;
 - c. education and training;
 - d. employment history;
 - e. volunteer work;
 - f. awards and honors;

- g. prior government service;
 - h. any data required to be provided or that are voluntarily provided in an application for appointment to a multimember agency pursuant to Minnesota Statutes, section. 15.0597; and
 - i. veteran status.
 - 2. Once an individual is appointed to a public body, the following additional items of data are public:
 - a. residential address;
 - b. either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee;
 - c. first and last dates of service on the public body;
 - d. the existence and status of any complaints or charges against an appointee; and
 - e. upon completion of an investigation of a complaint or charge against an appointee, the final investigative report is public, unless access to the data would jeopardize an active investigation.
 - 3. Notwithstanding paragraph 2., any electronic mail address or telephone number provided by a public body for use by an appointee shall be public. An appointee may use an electronic mail address or telephone number provided by the public body as the designated electronic mail address or telephone number at which the appointee can be reached.
- D.E.** Regardless of whether there has been a final disposition as defined in **Minnesota Statutes, section ~~Minn. Stat. § 13.43, Subd.~~ subdivision 2(b)**, upon completion of an investigation of a complaint or charge against a public official, as defined in **Minnesota Statutes, section ~~Minn. Stat. § 13.43, subdivision~~ Subd. 2(e)**, or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources.
- F.** Data relating to a complaint or charge against a public official is public only if:
- 1. The complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or

2. Potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement.

Data that is classified as private under another law is not made public by this provision.

V. PRIVATE PERSONNEL DATA

- A. All other personnel data not listed in Section IV are private ~~and will only be shared with cooperative district staff whose work requires such access. Private~~ data and will not be otherwise released unless authorized by law or by the employee's informed written consent.
- B. Data pertaining to an employee's dependents are private data on individuals.
- C. Data created, collected or maintained by the cooperative district to administer employee assistance programs are private.
- D. Parking space leasing data ~~with regard to data on individuals~~ are private.
- E. An individual's checking account number is private when submitted to a government entity.
- ~~FE.~~ Personnel data may be disseminated to labor organizations to the extent the responsible authority ~~cooperative district~~ determines the dissemination ~~it~~ is necessary for the labor organization to conduct elections and implement Minnesota Statutes chapters 179 and 179A. Personnel data shall be disseminated to labor organizations and the Bureau of Mediation Services ("BMS") to the extent the dissemination is ~~its business or when~~ ordered or authorized by the Commissioner of the ~~BMS Bureau of Mediation Services~~.
- ~~FG.~~ The cooperative ~~district~~ may display a photograph of a current or former employee to prospective witnesses as part of the cooperative ~~district's~~ investigation of any complaint or charge against the employee.
- ~~HG.~~ The cooperative ~~district~~ may, if ~~its the~~ responsible authority or designee reasonably determines that the release of personnel data is necessary to protect an employee from harm to self or to protect another person who may be harmed by the employee, release data that are relevant to the concerns for safety to:
 1. The person who may be harmed and to the attorney representing the person when the data are relevant to obtaining a restraining order;
 2. A pre-petition screening team conducting an investigation of the employee under Minnesota Statutes, section ~~Minn. Stat. § 253B.07, Subd.~~

subdivision 1; or

3. A court, law enforcement agency, or prosecuting authority.

HH. Private personnel data or confidential investigative data on employees may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in the investigation of ~~such~~ a crime or alleged crime committed by an employee.

JJ. A complainant has access to a statement provided by the complainant to the cooperative ~~district~~ in connection with a complaint or charge against an employee.

KK. When allegations of sexual or other types of harassment are made against an employee, the employee shall not have access to data that would identify the complainant or other witnesses if the cooperative ~~district~~ determines that the employee's access to that data would:

1. threaten the personal safety of the complainant or a witness; or
2. subject the complainant or witness to harassment.

If a disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary for the employee to prepare for the proceeding.

LL. The cooperative ~~district shall make any~~ must report to the Minnesota Professional Educator Licensing and Standards Board ("PELSB") or the Board of School Administrators ("BOSA"), whichever has jurisdiction over the teacher's or administrator's license, ~~board of teaching or the state board of education as~~ required by Minnesota Statutes, section ~~Min. Stat. §~~ 122A.20, subdivision ~~Subd.~~ 2, and shall, upon written request from the licensing board having jurisdiction over a ~~teacher's~~ license, provide the licensing board with information about the teacher or administrator from the cooperative ~~district's~~ files, any termination or disciplinary proceeding, and settlement or compromise, or any investigative file in accordance with Minnesota Statutes, section ~~Min. Stat. §~~ 122A.20, subdivision ~~Subd.~~ 2.

MM. Private personnel data shall be disclosed to the ~~Department of~~ Department of Employment and ~~Economic security~~ Development for the purpose of administration of the unemployment insurance program under Minnesota Statutes Chapter ~~Min. Stat. Ch.~~ 268.

NN. When a report of alleged maltreatment of a student in an elementary, middle school, or high school is ~~cooperative is~~ made to the Commissioner of the Minnesota Department of Education ("MDE") under Minnesota Statutes Chapter

260E, data that are relevant and collected by the cooperative about the person alleged to have committed maltreatment must be provided to the Commissioner on request for purposes of an assessment or investigation of the maltreatment report. Additionally, personnel data may be released for purposes of providing information to a parent, legal guardian, or custodian of a child in accordance with MDE Screening Guidelines.

ON. The cooperative ~~district~~ shall release to a requesting school ~~cooperative~~ district or charter school private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student, if:

1. ~~an investigation conducted by or on behalf of the cooperative district or law enforcement affirmed the allegations in writing prior to release and the investigation resulted in the resignation of the subject of the data, or~~
2. The employee resigned while a complaint or charge involving the allegations was pending, the allegations involved acts of sexual contact with a student, and the employer informed the employee in writing, before the employee resigned, that if the employee resigns while the complaint or charge is still pending, the employer must release private personnel data about the employee's alleged sexual contact with a student to a school district or charter school requesting the data after the employee applies for employment with that school district or charter school and the data remain classified as provided in Minnesota Statutes Chapter. 13.

Data that are released under this paragraph must not include data on the student. ~~4~~
~~3. _____~~

PO. Data submitted by an employee to the cooperative as part of an organized self-evaluation effort by the cooperative to request suggestions from all employees on ways to cut costs, make the cooperative more efficient, or improve the cooperative operations is private data. An employee who is identified in a suggestion, however, shall have access to all data in the suggestion except the identity of the employee making the suggestion. ~~The identity of an employee making a suggestion as part of an organized self-evaluation effort by the cooperative district to cut costs, make the cooperative district more efficient, or to improve cooperative district operations is private.~~

QP. Protected ~~h~~Health information, as defined in 45 C.F.R. Parts 160 and 164, on employees is private and will not be disclosed except as permitted or required ~~unless otherwise provided~~ by law. ~~To the extent that the cooperative district transmits protected health information, the cooperative district will comply with all privacy requirements.~~

Q. Personal home contact information for employees may be used by the cooperative ~~district~~ to ensure that an employee can be reached in the event of an emergency

or other disruption affecting continuity of cooperative operations and may be shared with another government entity in the event of an emergency or other disruption to ensure continuity of operation for the cooperative ~~district~~ or government entity.

- S. The personal telephone number, home address, and electronic mail address of a current or former employee of a contractor or subcontractor maintained as a result of a contractual relationship between the cooperative and a contractor or subcontractor entered on or after August 1, 2012, are private data. These data must be shared with another government entity to perform a function authorized by law. The data also must be disclosed to a government entity or any person for prevailing wage purposes.
- T. When a continuing contract teacher is discharged immediately because the teacher's license has been revoked due to a conviction for child abuse or sexual offenses involving a child as set forth in Minnesota Statutes, section 122A.40, subdivision 13(b), or sexual abuse or when the Commissioner of the Minnesota Department of Education (MDE) makes a final determination of child maltreatment involving a teacher under Minnesota Statutes, section 260E.21, subdivision 4 or 260E.35, the principal or other person having administrative control of the school must include in the teacher's employment record the information contained in the record of the disciplinary action or the final maltreatment determination, consistent with the definition of public data under Minnesota Statutes, section 13.41, subdivision 5, and must provide the Minnesota Professional Educator Licensing and Standards Board (PELSB) and the licensing division at MDE with the necessary and relevant information to enable the Minnesota Professional Educator Licensing and Standards Board PELSB and MDE's licensing division to fulfill their statutory and administrative duties related to issuing, renewing, suspending, or revoking a teacher's license. In addition to the background check required under Minnesota Statutes, section 123B.03, a board or other hiring authority must contact the Minnesota Professional Educator Licensing and Standards Board PELSB and MDE to determine whether the teacher's license has been suspended or revoked, consistent with the discharge and final maltreatment determinations. Unless restricted by federal or state data practices law or by the terms of a collective bargaining agreement, the responsible authority for a cooperative must disseminate to another school district private personnel data on a current or former teacher (employee or contractor) of the cooperative, including the results of background investigations, if the requesting school district seeks the information because the subject of the data has applied for employment with the requesting school district.

VI. MULTIPLE CLASSIFICATIONS

If data on individuals are classified as both private and confidential by Minnesota Statutes Chapter ~~Minn. Stat. Ch.~~ 13, or any other state or federal law, the data are private.

VII. CHANGE IN CLASSIFICATIONS

The cooperative ~~district~~ shall change the classification of data in its possession if it is required to do so to comply with ~~either other~~ judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving agency.

VIII. RESPONSIBLE AUTHORITY

The cooperative ~~district~~ has designated Sarah Mittelstadt, Executive Director, 507-238-1472 ~~[name and title, telephone]~~ as the authority responsible for personnel data.

The responsible authority, or cooperative employee if so designated, shall serve as the cooperative's data practices compliance official and, as such, shall be the employee to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practice problems.

~~If you have any questions, contact her [him/her].~~

IX. EMPLOYEE AUTHORIZATION/RELEASE FORM

An employee authorization form is included as an addendum to this policy.

Legal References:

- Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
- Minn. Stat. § 13.02 (Definitions)
- Minn. Stat. § 13.03 (Access to Government Data)
- Minn. Stat. § 13.05 (Duties of Responsible Authority)
- Minn. Stat. § 13.37 (General Nonpublic Data)
- Minn. Stat. § 13.39 (Civil Investigation Data)
- Minn. Stat. § 13.41 (Licensing Data – Public Data)
- Minn. Stat. § 13.43 (Personnel Data)
- Minn. Stat. § 13.601, Ssubd. 3 (Applicants for Employment)
- Minn. Stat. § 15.0597 (Appointment to Multimember Agencies)
- Minn. Stat. § 122A.20, sSubd. 2 (Mandatory Reporting)
- Minn. Stat. § 123B.03 (Background Check)
- Minn. Stat. § 123B.143, Ssubd. 2 (Disclose Past Buyouts)
- Minn. Stat. Ch. 179 (Minnesota Labor Relations Act)
- Minn. Stat. Ch. 179A (Minnesota Public Labor Relations Act)
- Minn. Stat. § 253B.07, (Judicial Commitment: Preliminary Procedures)
- Minn. Stat. Ch. § 260E 626.556, Subd. 7 (Reporting of Maltreatment of Minors)
- Minn. Stat. Ch. 268 (Unemployment Insurance)
- Minn. R. Pt. 1205 (Data Practices)
- P.L. 104-191 (HIPAA)
- 45 C.F.R. Parts 160, 162, and 164 (HIPAA Regulations)

Cross References: MSBA/MASA Model Policy 206 (Public Participation in School Board Meetings/Complaints about Persons at School Board Meetings and Data Privacy Considerations)
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)
MSBA/MASA Model Policy 722 (Public Data Requests)
~~MSBA Service Manual, Chapter 13, School Law Bulletin "I" (School Records – Privacy – Access to Data)~~