

HENNEPIN COUNTY ATTORNEY'S OFFICE
Civil Division
M E M O R A N D U M

TO: Minnesota HIV Services Planning Council

FROM: Dan Rogan, Sr. Assistant County Attorney

RE: HIV Planning Council

DATE: June 3, 2011

INTRODUCTION

I was asked by members of the Minnesota HIV Services Planning Council ("Council") for advice regarding a number of questions regarding Minnesota's Open Meeting Law and Data Practices Act, as it relates to the Council.

BRIEF QUESTIONS

1. Is the Minnesota HIV Services Planning Council required to follow Minnesota's Open Meeting Law?
 - A. Can voting be done by proxy or e-mail?
 - B. Can voting be done by secret ballot?
 - C. On what basis can the council go into closed session?
2. Is the Council subject to Minnesota's Data Practices Act?
 - A. Are home addresses of appointed members public?
 - B. Are e-mails to county staff considered public?
3. Are de-identified data regarding survey results public data?
4. Are e-mail addresses sent as part of the consumer satisfaction survey public?

ANALYSIS

- 1. Is the Minnesota HIV Services Planning Council required to follow Minnesota's Open Meeting Law?**

No. The Minnesota HIV Services Planning Council is the planning body for funds authorized under Parts A and B of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990 and subsequent amendments. The Planning Council must abide by all policies set forth in the Act and subsequent amendments and reauthorizations and by the Act policies and guidance issued by the Health Resources and Services Administration (HRSA)

HIV/AIDS Bureau (HAB). Pursuant to the Ryan White HIV/AIDS Treatment Extension Act of 2009, the following applies to Council meetings:

- (7) PUBLIC DELIBERATIONS.-With respect to a planning council under paragraph (1), the following applies:
 - (A) The council may not be chaired solely by an employee of the grantee under section 2601(a).
 - (B) In accordance with criteria established by the Secretary:
 - (i) **The meetings of the council shall be open to the public and shall be held only after adequate notice to the public.**
 - (ii) The records, reports, transcripts, minutes, agenda, or other documents which were made available to or prepared for or by the council shall be available for public inspection and copying at a single location.
 - (iii) Detailed minutes of each meeting of the council shall be kept. The accuracy of all minutes shall be certified to by the chair of the council.
 - (iv) This subparagraph does not apply to any disclosure of information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy, including any disclosure of medical information or personnel matters.

(emphasis added). Thus, the meetings are governed by this federal law, and not the Minnesota Open Meeting Law. The meeting shall be open to the public and only after notice to the public has been given. There is no specific guidance that I have found regarding voting procedures that are required.

A. Can voting be done by proxy or e-mail?

There is nothing in the federal law that I found that would prohibit voting by proxy or e-mail. Moreover, the Council's bylaws allow proxy voting in certain circumstances. Council Bylaws § 7.4. Similarly, based on my review of other bylaws from other State Councils, many allow voting by proxy. Finally, the Minnesota Department of Health's Community Cooperative Council on HIV/AIDS Prevention meeting procedures allows voting by proxy and voting by an appointed alternate.

B. Can voting be done by secret ballot?

Again, there is nothing in federal law that I have found that directly prohibits this. This is not allowed under Minnesota's Open Meeting Law. So, it is my advice that open meetings require voting procedures that are not secret. So, absent some authority to the contrary, I suggest that future voting should be done in the open and there should not be secret ballots. Ballots can be written, but absent some countervailing privacy concern, the vote should be done publicly.

C. On what basis can the Council go into closed session?

Again, there is nothing in federal law that I have found that directly addresses this subject. It is clear that one area in which meetings should be closed or data limited is when discussion would relate to personal matters that would constitute unwarranted invasion of privacy, including disclosure of medical matters. Id. § 2502(7). I think the Council should only close meetings in accord with the Minnesota Open Meeting Law, and when necessary to protect the privacy interests of a member.

2. Is the Council subject to Minnesota's Data Practices Act?

There is nothing directly on point regarding this. The federal law creating the council does protect some data. However, in general, since the members of the Council are appointed by state officials and Hennepin County staffs the Council, I believe that unless otherwise provided in federal law, the Minnesota Data Practices Act would apply to data collected and maintained by the Council and by County staff supporting the Council.

A. Are home addresses of appointed members public?

The Council is a public body, under the Minnesota Data Practices Act. Its members are appointed by state and local officials. Accordingly, pursuant to Minn. Stat. 13.601, subd. 3(b)(1), the residential address of members appointed to the Council, are public.

B. Are e-mails to county staff considered public?

In general, unless the content of the e-mail would make a particular e-mail private, e-mails from Council members and from the public to county staff would be considered public data. There may be specific e-mails that contain private data about a particular person. In those cases, the data would likely be considered private and/or confidential. There would need to be a review of e-mails to determine if there was any basis to treat them as private and/or confidential.

3. Are de-identified data regarding survey results public data?

In general, summary data is public and de-identified data is public. This data is public, unless the de-identified data reveals private and/or confidential data about an individual. Pursuant to Minn. Stat. section 13.02, subdivision 19, summary data are accessible to the public. Further, Minnesota Rules, section 1205.0200, subpart 16, provides that summary data may include reports once "all the data elements that could link the data to a specific individual have been removed." Thus, as long as the de-identified and/or summary data does not identify a particular recipient, the data is public.

4. Are e-mail addresses sent as part of the consumer satisfaction survey public?

Generally this data is public. Some electronic data sent to the County and/or the Council may be protected as not public data, but in general an e-mail address is not considered not public. First, Minn. Stat. § 13.15 classifies electronic access data as not public. Electronic

access data are defined as, “data created, collected, or maintained about a person’s access to a government entity’s computer for the purpose of: (1) gaining access to data or information; (2) transferring data or information; or (3) using government services.” This section classifies the following types of data about a person accessing a government computer: the IP (internet protocol) address of the person’s computer, cookie information related to the person’s internet browsing, geographic information of the person’s computer, duration of time at the government website, person’s activity on the government’s website, and so on.

In contrast, the Department of Administration has issued two advisory opinions regarding e-mail address for individuals who have provided the e-mail address so that they can get periodic information from a government entity. In both opinions, the Department of Administration concluded that e-mail addresses are public. In Advisory Opinion 08-024, the Department concluded that the e-mail address of individuals, who requested to receive periodic updates from the City of Buffalo by filing out a form on the City’s website. Similarly, in Opinion 01-093, the Department concluded that e-mail addresses collected by a school district for distributing an electronic newsletter were public.

Data regarding a consumer satisfaction survey from the Council may be unique. It is likely that the individuals who would be providing feedback will be individuals with HIV. There may be others who provide responses, but it would be because they work with or are related to individuals with HIV. Thus, an e-mail list containing the e-mail address (and other information like name) would identify these respondents and individuals who have HIV or work with people who do have HIV. It is my opinion that the e-mail addresses and identities of individuals who complete customer satisfaction surveys are private welfare data under Minn. Stat. 13.46, and cannot be shared with the public. I would need to examine the specific results, the number of respondents, and to whom the survey was sent to confirm this conclusion.

This memo is responsive to the questions asked by Council members. Please feel free to contact me if you should have additional questions.