

HOW DO YOU PROVIDE REFERENCE SERVICE TO GOVERNMENT RECORDS?

Granting access to government records is one of the most important services you provide as you fulfill your mission as a government agency or historical society. Because Minnesota statutes govern access to government records, it is necessary that you become familiar with these statutes, and that you grant access to records in accordance with them. The statutes that govern access apply not only to those records that remain in their local jurisdiction, but also to those that are moved to another location or another repository.

In this chapter you will learn about the Minnesota Government Data Practices Act and your responsibilities as a government entity or repository for being in compliance with its requirements. You will also be exposed to a sampling of how government records are classified to ensure proper accessibility to the public. This chapter also contains a discussion on the importance of reference policies and procedures for ensuring equal and easy access to your government records. Finally, Appendix C contains a useful list of local government records and their accessibility.

What laws govern access to government records?

Access to Minnesota government records is guaranteed and regulated by the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes Chapter 13, and Minnesota Rules Chapter 1205. The full text of Chapter 13 is available at <http://www.revisor.leg.state.mn.us/stats/13>. The full text of Chapter 1205 is available at <http://www.revisor.leg.state.mn.us/rules/1205.html>. The MGDPA applies to all state and local jurisdictions with the exception of the court system (which is governed by its own access rules) and townships (which are exempted by statute). Effective August 1, 2001, any township in the Twin Cities metropolitan area that is exercising powers under Minnesota Statutes Chapter 368 will be covered by the MGDPA. Though this statute is long and complex, its basic tenet is clear: government records are presumed to be public and open to everyone unless the data in the records are classified as not public. This statute clearly states that:

- Citizens and researchers do not need to identify themselves or give reasons for viewing public records
- Government agencies must allow public records to be viewed for free and photocopied
- Government agencies may charge reasonable fees for photocopying public records that recover the actual cost of making the photocopies

Why should you be concerned about access to government records?

Access to government records is governed by federal and state laws, and government agencies and repositories that acquire records need to abide by these laws. In addition to the MGDPA, other laws govern the access to government records, particularly adoption records. Entities that hold and manage government records can be sued for disseminating information protected under the MGDPA. In fact, some entities have been successfully sued for improperly handling protected records and significant monetary awards have resulted. Furthermore, withholding

records that are open to the public or releasing information that is protected can lead to substantial embarrassment for your agency or historical society.

While you cannot rely on your records retention schedules to classify the data held in your records, these schedules are a great place to start to identify those records that contain restricted data. These schedules can be of great assistance when responding to requests to access records.

According to the MGDPA, what is the responsibility of local government entities?

As a government entity, you must be in compliance with the MGDPA. This means you need to designate a responsible authority and a data practices compliance official, and establish your own specific data practices policies and procedures. To assist you, the Minnesota Department of Administration, Information Policy Analysis Division (IPAD) has made available on its website several data practices education resources at <http://www.ipad.state.mn.us/dpgoveducation.html>.

How does the MGDPA classify information?

The MGDPA recognizes that not all government records should be open to everyone, and therefore classifies government data into varying levels of access restrictions. The classifications of data are provided below, and demonstrate the complexity of protecting the privacy of Minnesota individuals and organizations.

Data on Individuals

This classification includes government data on individuals that are living and are clearly identified as the subject of the data (unless the appearance of the name is clearly incidental to the government data, or the government data are not accessed by the name or identifying data of the individual).

Public Data on Individuals. This subclassification includes data that are open without restrictions to the public (examples include birth records not relating to births to unwed mothers).

Private Data on Individuals. This subclassification includes data that are open only to the individual concerned and the creating agency (examples include most student records, most medical case files, public library loan information, and correspondence with elected officials).

Confidential Data on Individuals. This subclassification includes data that are not open to the individual concerned (examples include adoption records and certain prison inmate files).

Data on Decedents

This classification includes government data on deceased individuals.

Public Data on Decedents. This subclassification includes data that were accessible without restrictions to the public prior to the death of the decedent, including death certificates.

Private Data on Decedents. This subclassification includes data that were open to the decedent and the creating agency prior to the death of the decedent (examples include certain criminal justice data and certain parts of prison inmate case files).

Confidential Data on Decedents. This subclassification includes data that were not accessible to the decedent prior to death (for example, certain psychological reports from prison inmate case files).

Data Not on Individuals

This classification includes government data not on individuals, such as data on organizations and agencies.

Public Data Not on Individuals. This subclassification includes data that are open without restrictions to the public (examples include minutes of public meetings and annual reports).

Nonpublic Data Not on Individuals. This subclassification includes data accessible only to the subject of the data and the creating agency (examples include certain labor relations and trade secrets data).

Protected Nonpublic Data Not on Individuals. This subclassification includes data not accessible to the public nor the subject of the data (for example, certain investigation data).

Is confidential or protected data ever open to the public?

Confidential data on an individual becomes open to the public 30 years after creation of the data *and* 10 years after the death, or presumed death, of the individual (note: both conditions must be met). Unless it is well-known that the individual is still living, the death of an individual is presumed to be 90 years after the individual's date of birth, or 90 years after creation of the data about the individual, whichever is earliest.

Nonpublic data not on individuals is available only to the subject of the data and not to the public. Access to this data should be limited to government entities or persons who have the legal authority to view the data, and to entity staff on a need-to-know basis only.

Protected nonpublic data not on individuals is unavailable to the public and the subject of the data. These data are accessible to government entities or persons who are authorized by law to view the data, and to government staff whose work assignments require reasonable access to the data (even though the data are not accessible to the data subject).

The MGDPA provides further guidelines on the accessibility of private, confidential, and nonpublic and protected nonpublic data.

What reference policies and procedures should you use?

Reference policies and procedures will help you provide equal and easy access to your holdings. No one particular set of policy and procedures works for all agencies and repositories, so you will need to design your own using common sense. Your policies and procedures should be designed keeping in mind the accessibility and security of your collections, the services you intend to provide archives researchers, and statutory requirements. For a more complete discussion of archival storage issues, see Chapter 5 of the guidelines (*How do you preserve and store government records?*).

Easy Access to Your Holdings

Written lists or inventories are necessary for records you are holding. By having such inventories available, you provide the researcher the ability to narrow the scope of records that might be useful for their needs. The following is an example of an inventory for School District No. 101/274 (Lake Johanna Township) in Pope County:

1. Clerk's books, 1927-1938. 2 volumes.
 1927-1932
 1932-1938
2. Treasurer's books, 1946-1952. 2 volumes.
 1946-1949
 1949-1952
3. Classification registers, 1926-1933. 2 volumes.
 1926-1932
 1932-1933
4. All in one record, 1933-1937. 1 folder.
 Includes censuses and teachers' reports to the county superintendent.
5. Attendance register, 1930-1933. 1 folder.
6. Consolidation order, 1960. 1 folder.

These inventories can appear in many forms, although the form is less important than having the information available. The inventories can appear as lists, finding aids, card catalogs, online catalogs, and online databases. Cataloging guidelines and the PastPerfect software package might be helpful, and a more complete description of these is found in Chapter 3 of these guidelines (*How do you describe government records?*).

As an agency or repository, you have the professional and legal responsibility to ensure that all researchers have appropriate access to the information in your holdings; you should not grant special privileges or exclusivity to any one particular group or individual.

Available Space for Viewing Your Records

You should maintain a work space where researchers can view your records. This space can be a counter, table, or even a separate viewing area or room, and should make researchers feel welcome and comfortable. It is also important for you to have the necessary playback equipment available if you hold microform, audio or video tape, or electronic records. Chapter 4 of the

guidelines (*What are the issues regarding information technology and electronic records?*) has more information on the technology needs of archives.

Security of Your Records

As a government agency or repository, you need to ensure the safety and integrity of your holdings. In general, government agencies cannot require researchers to identify themselves. On the other hand, historical repositories can, and should, ask researchers to read and acknowledge, by signature, the rules of the repository.

Although we do not like to think so, researchers do occasionally try to take records home with them. You can guard against this by:

- Monitoring researchers when they view records
- Limiting the quantity of records given to a researcher at any one time
- Following a record check in/out procedure
- Discouraging parcels, bags, and topcoats in the record viewing area

Researchers can also feel compelled to “correct” or alter records. For example, a researcher might change the date of birth or marriage, alter a tax record to enhance personal status, or change the spelling of a name. Monitoring the viewing area will help you discourage these possibilities.

Services You Provide to Researchers

You should keep a written policy on the services you provide, and have it available for review by researchers. This policy statement should include a description of your photocopying services (such as hours, cost, response time, and what can and cannot be copied), and staff services (such as staff hours, availability for assistance, cost, and acceptable request formats). In determining costs, those entities governed by the MGDPA should consult Minnesota Rules, section 1205.0300, subpart 4 for additional information on how to calculate costs.

What represents good reference service?

Whether you are a government agency or a historical society, managing access to government records requires time, policies and procedures, and knowledge of the data creation and data access laws. To provide excellent reference service to researchers:

- Carefully create policies and procedures before they are needed and enforce them
- Treat all researchers consistently, fairly, and according to the governing statutes
- Practice good documentation and description when managing your archives (see Chapter 3 of the guidelines [*How do you describe government records?*])

These practices will result in fewer complications and will help you avoid litigation and public embarrassment. In addition, these practices will provide you the satisfaction that comes from serving your constituencies well, and from contributing to the preservation and interpretation of your region’s heritage.

Where can you get more information on access to government records?

Minnesota Department of Administration, Information Policy Analysis Division (IPAD)

<<http://www.ipad.state.mn.us/>>

Visit this site for assistance with interpreting and understanding the Minnesota Government Data Practices Act (MGDPA).

Society of American Archivists, Professional Resources Catalog

< <http://www.archivists.org/catalog/>>

Mary Jo Pugh's 1992 manual, *Providing Reference Services for Archives and Manuscripts*, presents useful reference services for all archives and can be ordered through this web site.

Ellis, Judith, ed. *Keeping Archives*. 2^d ed. Melbourne: Thorpe in association with the Australian Society of Archivists, 1993.

This resource is an excellent and easy-to-read book on archival theory and practice, and contains a chapter on access and reference services.