DEPARTMENT OF ADMINISTRATION

Advisory Opinion 17-008

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2017). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

Chief Scott Johnson of the Grand Rapids Police Department asked for an opinion regarding the classification of certain data.

Chief Johnson provided a summary of the facts as follows:

> The refusal on the part of Minnesota non-profit advocacy organizations to release location data to Minnesota peace officers regarding the victim of a domestic violence crime has been a reoccurring issue over a number of years. This refusal prevents Minnesota peace officers from performing their duties and is of concern to law enforcement agencies as they conduct follow-up criminal investigations, including the taking of victim and witness statements, subpoena service and, when requested from other government agencies, checking on the safety of victims. Somehow this issue is never resolved.

Chief Johnson met with the director of a local non-profit program that provides assistance to victims of domestic violence. The program is not a government entity, nor is its employees or volunteers under the direct control of a government entity. The program receives federal funding through a grant administered by the Office of Justice Programs in the Minnesota Department of Public Safety (OJP). After the initial meeting, the program director arranged a conference call which included Chief Johnson, the Grand Rapids City Attorney, and Suzanne Elwell, the director of the Crime Victim Justice Unit at OJP.

As part of his request, Chief Johnson also submitted materials prepared by Ms. Elwell and the Minnesota Criminal Justice Collaborative on Domestic Violence, which included representation from the Minnesota County Attorneys Association, the Minnesota Sheriff's Association, the Minnesota Chiefs Association and other community stakeholders.

Issue:

Based on the opinion request, the Commissioner agreed to address the following issue:

> Pursuant to Chapter 13, what is the classification of location data maintained by a nonprofit domestic violence advocacy organization that would reveal where a victim of violence is residing?

Discussion:

The Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, applies to government entities. A government entity is a political subdivision, a state agency, or a statewide system. (See Minnesota Statutes, section 13.02, subdivisions 7a, 11, 17 and 18.) The Data Practices Act also applies to contractors in certain circumstances. (See Minnesota Statutes, section 13.05, subdivision 11 and Advisory Opinions 11-005 and 15-003.)

Certain programs that provide assistance to victims of domestic abuse and sexual assault are specifically exempt from the Data Practices Act:

> Except as otherwise provided in this subdivision, a program that provides shelter or support services to victims of domestic abuse or a sexual assault and whose employees or volunteers are not under the direct supervision of a government entity is *not subject to this chapter*, except that the program shall comply with sections 13.822, 611A.32, subdivision 5, 611A.371, subdivision 3, and 611A.46. (Emphasis added.) (Minnesota Statutes, section 13.823, subdivision 2.)

While section 13.823 exempts non-governmental programs from the Data Practices Act, the provisions cited in that section provide protection for information that those programs collect and maintain. Section 13.822, classifies as private data about sexual assault communications with a sexual assault counselor. Minnesota Statutes, section 611A.32, gives the Commissioner of Corrections the authority to issue grants to programs that serve victims of domestic violence. Subdivision 5 of that section provides:

> Personal history information and other information collected, used or maintained by a grantee from which the identity or location of any victim of domestic abuse may be determined is private data on individuals, as defined in section 13.02, subdivision 12, and the grantee shall *maintain* the data in accordance with the provisions of chapter 13. (Emphasis added.)

Section 611A.37, authorizes the Office of Justice Programs in the Department of Public Safety to issue grants to shelter facilities that serve victims of domestic violence. Subdivision 3 of that section provides:

> Personal history information collected, used, or maintained by a designated shelter facility from which the identity or location of any battered woman may be determined is private data on individuals, as defined in section 13.02, subdivision 12, and the facility shall *maintain* the data in accordance with the provisions of chapter 13. (Emphasis added.)

Private data are, "data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data." (See Minnesota Statutes, section 13.02, subdivision 12.) Data on individuals must be kept accurate, complete, current and secure (see, Minnesota Statutes, section 13.04.). Employees within an organization or program administering private data, whose work assignments reasonably require access to the data, may have access to it. (See Minnesota Rules, part 1205, subpart 2.) In order for a program to share private data with

a third party, there must be a law that allows or requires sharing, a court order or the program can obtain the informed consent of the subject.

State law also protects domestic abuse advocates from being compelled to disclose information about their clients without a court order. (See Minnesota Statutes, section 595.02, subd. 1(*l*). The federal Violence Against Women Act also requires federal grantee programs to protect personally identifying information and personal information about victims of domestic violence and as well as other victims. (See 34 U.S.C. 12291(a)(20) and (b)(2).) There are additional protections in other federal laws, as well. (E.g., Victims of Crime Act, 42 U.S.C. 10604(d) and the Family Violence Prevention and Service Act, 42 U.S.C. 10402(a)(2)(E).)

Thus, domestic violence programs that are not government entities or government contractors, while not generally subject to Chapter 13 – like the program at issue in Chief Johnson's opinion request – must still *maintain* victim location data (amongst other personally identifying information) as private within the definition as provided in, section 13.02, subd 12, if they are state or federal grantees. Private data cannot be shared outside of the program or agency without consent, court order, or statutory authorization.

The City did not provide any legal provisions or offer any arguments which would allow or require private domestic violence programs to supply identification or location data about their clients to law enforcement. While this may have a somewhat unusual practical result, as highlighted in Chief Johnson's opinion request (i.e., an officer may deliver a victim of domestic violence to a shelter, return a short time later to ask her additional questions, and the program staff are legally restricted from confirming the victim's presence at the program/shelter), it is the result the law requires.

The Minnesota Justice Collaborative on Domestic Violence's *Guidelines for Domestic Violence Agencies*, which Chief Johnson submitted with his opinion request, provides additional guidance to law enforcement and program staff on responding to these types of inquiries.

Opinion:

Based on the facts and information provided, the Commissioner's opinion on the issue is as follows:

> Location data maintained by a nonprofit domestic violence advocacy organization that would reveal where a victim of violence is residing must be maintained as private data and cannot be disclosed without statutory authorization, consent, or a court order.

Matthew Massman
Commissioner

September 28, 2017