

Minnesota Data Practices Act  
Corrections and Detention Data  
Minn. Stat. § 13.85 and 13.86

By

Richard Hodsdon  
Attorney at Law  
Box 825  
Stillwater, MN 55082  
651-491-5900 voice and fax  
rick.hodsdon@yahoo.com

2019

## **Data Practices Corrections and Detention Data**

- I. The primary corrections and detention data statute for data practices is Minn. Stat. § 13.85
  - a. There are additional statutes relative to corrections data that include investigative detention data under Minn. Stat. § 13.86.
    1. Investigative detention data is generally designed to address security and related aspects of a correctional facility.
    2. Under Minn. Stat. § 13.86, subd. 2 such information is classified as confidential.
- II. Minn. Stat. § 13.851 lists several additional statutes that relate or can relate to corrections and detention data such as predatory offender data, which are generally classified as non-public
- III. The primary text of Minn. Stat. § 13.85 reads:
  - a. Subdivision 1. Definition. As used in this section, “corrections and detention data” means data on individuals created, collected, used or maintained because of their lawful confinement or detainment in state reformatories, prisons and correctional facilities, municipal or county jails, lock ups, work houses, work farms and all other correctional and detention facilities.
  - b. Subd. 2. Corrections and detention private data. Unless the data is summary data or arrest data, or a statute specifically provides a different classification, corrections, and detention data on individuals are classified as private pursuant to section 13.02, subdivision 12, to the extent that the release of data would either (a) disclose medical, psychological, or financial information, or personal information not related to their lawful confinement or detention or (b) endangers an individual’s life.
  - c. Subd. 3. Corrections and detention confidential data. Corrections and detention data are confidential, pursuant to section 13.02, subdivision 3, to the extent that release of the data would: (a) endanger an individual’s life, (b) endanger the effectiveness of an investigation authorized by statute and relating to the enforcement of rules or law, (c) identify a confidential informant, or (d) clearly endanger the security of any institution or its population.
  - d. Subd. 4. Corrections and detention public data. After any presentation to a court, any data made private or confidential by this section shall be public to the extent reflected in court records.

e. Subd. 5. Corrections and detention public benefit data. The responsible authority or its designee of any agency that maintains corrections and detention data may release private or law enforcement purposes, or to the victim of a criminal act where the data is necessary for the victim to assert the victim's legal right to restitution.

#### IV. Scope of Corrections and Detention Data

- a. Under subdivision 1, corrections and detention data is data on individuals created, collected, used or maintained because of lawful confinement in any correctional or detention facility.
- b. An interesting anomaly exists in the statute by the term "lawful confinement". Presumably this means if the confinement is not lawful than it is not corrections and detention data. If it is not corrections and detention data the default classification takes over and therefore all data about an individual unlawfully confined would become classified as public data, giving the victim of false imprisonment fewer privacy rights than a person lawfully arrested and confined.
- c. As is true with all data practices data, the presumption is that all data is public data. Subdivision 2 of delineates a total of five categories of data that are classified as private as they relate to a correctional facility inmate.

#### V. Under the statute data is classified as private if it would endanger an individual's life.

- a. This does not have to be an individual who is in the correctional facility but could apply to anyone.
- b. The holder of the data is the entity that makes this decision. The Commissioner of Administration seems generally willing to defer to the facility in this decision. Opinion 98-032.

#### VI. Medical Data.

- a. Inmate Medical Data is Private.
- b. Medical data under this provision includes not only data that is generated in-house, such as by one of their correctional healthcare providers, but also medical data provided by third parties and booking data related to medical issues.
- c. The Minnesota Medical Records Act may also come into play if the correctional facility has in house medical staff covered by that Act.

- d. Many counties in Minnesota have set up its status as a hybrid entity under HIPAA so as to include the jail medical division as a HIPAA covered entity because of electronic medical records. Many jails are not covered entities for HIPAA purposes because they do not transmit medical records in an electronic format. This is changing as more counties move to electronic medical records systems if they use in house staff for medical care. If they contract with outside providers they can remain outside of HIPAA.
- e. There sometimes exists a tension between jail medical staff and custody staff over disclosure of medical data to non-medical personnel and balancing inmate privacy versus security needs. Consider the use of medical or nursing orders as a resolution of this conflict.

VII. Data that would disclose psychological information is classified as private

- a. The definition of psychological data includes chemical and mental health data.
- b. The data includes data not only that is generated by third parties but also disclosed by prisoners themselves.
- c. By statute all jails must use a psychological screening tool at intake. As early as the booking intake process private psychological data will be generated concerning each prisoner.

VIII. Financial information is classified as private data

- a. Financial information typically includes records of funds in an inmate canteen account, records of income and expenses for individuals on work release, or any other aspect that relates to financial issues involving inmates.
- b. Most jails include non-jail records that have a financial component such as child support obligations to be financial data.

IX. The most nebulous and difficult definition of private corrections and detention data is the provision that classifies as “personal information not related to lawful confinement or detainment”.

- a. The statute does not define this provision, but several Commissioners of Administration Opinions have done so.
- b. Each facility should come up with a consistent definition of what data it typically possesses concerning an inmate that meets this classification.

- c. While there is no universal agreement in that regard, attached to these materials is a list of data most frequently encountered in a correctional facility and a compilation of what appears to be common treatment of such data.
  - d. This list can be used as a starting point for consultation with appropriate county attorney's offices to develop an entity specific determination of what data will be treated as private personal data under the statute.
- X. Subdivision 3 defines certain data to be confidential data
  - a. It essentially is the same as investigative detention data in that it relates to information that would endanger an individual's life, endanger the effectiveness of an investigation, identify a confidential informant or endangered the security of any institution or its population.
  - b. An example of data not on individuals that would meet the definition of such confidential data is photographic depictions of the secure perimeter of a correction facility. Opinion 01-048.
- XI. Subdivision 4 of the statute creates some administrative difficulties for the correction administrator
  - a. It provides that after presentation to a court any data made private or confidential by Minn. Stat. § 13.85 it becomes public to the extent reflected in the court records.
  - b. This creates an administrative difficulty because the corrections administrator typically will not know the full extent of that that was revealed in a court proceeding.
  - c. This is a presentation to any court and therefore presentation of the evidence in a civil or criminal case would meet that criteria, although by use of the term "court" presumably it is not intended to apply to arbitrations, administrative hearings or other such proceedings.
- XII. Subdivision 5 is intended to facilitate the use of corrections and detention data for appropriate law enforcement purposes.
  - a. It allows a correctional facility to release private or confidential data to any law enforcement agency if necessary for law enforcement purposes.
  - b. Law enforcement purposes are potentially broader than purpose of a criminal investigation. Examples of these broader purposes could be service of forfeiture pleadings, service of domestic abuse orders for protection or potentially criminal justice employment.

- XIII. Subdivision 5 permits disclosure of data to the extent necessary to the victim of the criminal act to assist the victim in asserting their legal right to restitution
- a. This provision is not frequently used but would permit a victim to obtain such data as where an offender works or other financial information that would assist in execution of civil process or collection of orders and judgments of restitution.
  - b. The agency should proceed cautiously in the scope of any disclosure under this provision to ensure that it does not provide too much data to the victim. For example psychological and medical information would rarely be subject to disclosure under this provision.
- XIV. There are relevant provisions that are not found in corrections and detention data but often relate to a correctional facility; for example under Minn. Stat. § 13.82, subd. 26 a booking photograph of an adult is generally classified as public data

## DATA PRACTICES RIGHTS ADVISORY

At this time you are being booked into the \_\_\_\_\_ County Jail. As part of that process you are asked to provide certain data that will be recorded in jail records. Some of the data provided is classified by law as public data. Some of the data is classified as *private* or *confidential*.

This data is being requested of you for the purpose of collecting data relevant to your booking and confinement in this facility. The data is used for a variety of purposes, including your identification, programming, delivery of medical and other services and to provide for your care and the safety and security of this facility and others. Included in the data I will be collecting is medical data. That data is used to determine if there are any medical or health issues that our facility needs to be aware of and that are relevant to your safety, health and well-being.

We are legally required to collect the data we ask you to provide. You may or may not be required to provide this data, depending on the reason for your booking in the jail and subsequent efforts to collect data from you. If you are being booked into the jail pursuant to an order of the court, the court has ordered you to be booked and to provide this data.

If you refuse to provide this data, it may interfere with the ability of the facility to provide proper programming for you, interfere with our ability to properly identify you and, therefore, interfere with our programming ability to provide you with a safe and secure environment while you are in this facility. It may also delay your release from custody. Your decision not to provide the data may be brought to the attention of the court and other legal authorities who may take further action against you.

The data that you provide that is classified as *private* or *confidential* data may be provided to members of the staff of this facility for meeting their responsibilities. As permitted or required by state and federal law, the data may be shared with other law enforcement investigative agencies, prosecuting authorities, and the courts. Social security that may be shared with the Social Security Administration. Medical data may be shared with medical care providers and their agents to the extent necessary to provide the proper medical care and treatment to you. Private data also may be provided to you, your authorized representative and other individuals and entities that are entitled to access to these records pursuant to state or federal law or court order.

**SHERIFF'S CORRECTION AND DETENTION DATA  
ADULT DATA SUBJECTS  
Based Upon MINN. STAT. § 13.85 and  
Commissioner of Administration Opinions  
04-023, 02-052, 00-024, 01-048, 00-024, 99-047, 96-029, 95-004 and 94-031**

Prepared and Updated by Richard Hodsdon  
2019

<u>Data</u>	<u>Probable Classification</u>
Name	Public
Date of Birth	Public
Address of Inmate	Public
Booking Number/Inmate Number	Public
Height and Weight	Public
Eye Color	Public
Offense Booked	Public
Admission/Release Dates	Public
Bail Amount and Method of Bail	Public
Presiding Judge	Public
Work Release Status and Dates	Public
Work Release Employer and Work Schedule	Public
Prior Offenses Inmate Booked For	Public
Next of Kin/Emergency Contact	Private
Scars, Marks and Tattoos	Public
Victim Name and Address	Public or Private, depending upon offense and victim status
Jail Disciplinary Records	Public
Inmate's Attorney	Public
Booking "Mug" Photograph	Public

Other Photographs	Public
Inmate Visiting Records	Private
Inmate's Canteen Purchase Records	Private
Inmate Financial Account	Private
Inmate Medical/Dental File	Private
Inmate Insurance Data	Private
Inmate Mental Health Records	Private
Inmate Medication Log	Private
Conditions of Court-Ordered Release	Public
Criminal Sentence Imposed	Public
Any Data Presented in Court	Public
Data That Would Endanger a Person's Life	Private or Confidential
Data That Would Endanger an Investigation	Confidential (while pending)
Identity of a Confidential Informant	Confidential
Data That Clearly Endangers Security of the Facility or Population	Confidential
Data That Victims Use for Exercise of Restitution Rights	Even if non-public, may be disclosed to assist in restitution recovery.
Data to Law Enforcement	Private or confidential data may be disclosed for law enforcement purposes to law enforcement agencies, such as police, sheriffs, enforcement agencies
Video Tape of Jail Booking Area	Protected (Non-Public) – ( Security Data)
Statistical Reports Which Do Not Identify Inmates	Public
Social Security Number	Private

Warrant Data

Confidential until defendant taken into custody, but may be released if it serves a public purpose.