Legislative Commission on Data Practices
Proposed Recommendations
January 22, 2018

This report contains recommendations from the Legislative Commission on Data Practices based on the commission meetings held between August 2017 and December 2017. Specifically, this report addresses the following three topics: Minnesota Statute § 626A.42, subdivision 4, disclosure of tracking warrants; Minnesota Statute § 13.824 automated license plate readers; and Minnesota Statute § 13.43, additions to personnel data classified as public.

626A.42, Subdivision 4, the Disclosure of Location Tracking Warrants

Minnesota statute § 626A.42 subdivision 4, requires courts to unseal the location tracking warrants for mobile devices after 90 days and to provide notice to the person(s) named in the warrant. However, the November 15, 2016 Judicial Branch report, required under § 626A.42 subdivision 5(b), indicated that tracking warrants were not being captioned as § 626A.42 warrants. As a result, the warrants were issued, but were not identified as reportable under § 626A.42, and were never made public as required. Part of the problem may originate from confusion between a § 626A.42 warrant for "electronic device location information" and § 626A.37 warrant for a "mobile tracking device." Unlike a § 626A.42 warrant, which must be unsealed after 90 days, a § 626A.37 warrant may remain sealed until otherwise ordered by the court. In order to clarify any ambiguity between § 626A.42 and § 626A.37, and ensure that tracking warrants are properly issued under Minnesota statute § 626A.42, the Commission recommends the amendments proposed in H.F. 2309:

1. Amend § 626A.08, subdivision 2, (which concerns the sealing and disclosure of a warrant for wire, electronic, or oral communications) to clearly distinguish the procedures for location tracking warrants issued under § 626A.42.
2. Amend § 626A.37, subdivision 4, (which concerns sealing of a warrant for a mobile tracking device) to clearly distinguish the procedures for location tracking warrants issued under § 626A.42.

13.824, Automated License Plate Readers

Minnesota statute § 13.824 became effective August 1, 2015. It outlines the policies, procedures, and statutory requirements for the use of automated license plate readers. Under subdivision 6, law enforcement agencies are required to perform independent biennial audits and submit audit reports to the Legislative Commission on Data Practices, among others. The Legislative Commission on Data Practices began receiving audit reports in 2017. However, the audit reports received were vastly different in content and quality. Based on these inconsistencies, the Commission has identified several changes to the language of § 13.824, which are necessary in order to clarify the current law and enhance the quality and consistency of audit reports received. The Commission recommends the following changes. For subdivision 6:

1. Clarify what constitutes an "independent" audit to prohibit a law enforcement agency from auditing itself, or being audited by another division of its political subdivision.
2. Clarify applicable deadlines for completing the biennial audit.
3. Clarify what must be included in an audit report; include relevant information contained in the log-of-use required under subdivision 5.
4. Remove "summarizing" in paragraph (c), and replace it with "detailing" or similar language emphasizing the comprehensive nature of the audit report.

For subdivision 8:

1. Clarify when a law enforcement agency must notify the Bureau of Criminal Apprehension that it has begun using an ALPR.
2. Add a requirement that the BCA publish the date each agency gave notice that it has begun using an ALPR.

13.43, Additions to Personnel Data Classified as Public

Under the Minnesota Data Practices Act government data is public unless classified otherwise. However, for personnel data under Minnesota statute § 13.43, this default rule is flipped, making personnel data private unless expressly classified otherwise. A conflict among Chapter 13 statutes came to light in the KSTP TV v. Metropolitan Council case, in which KSTP argued they have a right under § 13.03, to access a particular recording from a Metro Transit bus. However, Metro Transit argued that, because the recording was used in determining whether to discipline a Metro Transit bus driver, the recordings were private personnel data under § 13.43. In order to make recordings of government personnel public unless they are specifically classified as private under other applicable law the Commission recommends the amendment proposed in H.F. 1316:

1. Add a paragraph in § 13.43, subdivision 2, classifying as public data a recording of government personnel, unless the recording is classified as not public under another statute.