



MNCOGI legislative issues

2014 legislative session

MNCOGI – advocating for government data access and accountability

During its 2014 session, the Minnesota Legislature will consider many proposals related to the modification of the Minnesota Government Data Practices Act (MGDPA) – the law that governs public access to data held by Minnesota's governmental institutions.

MNCOGI believes that the Data Practices Act should remain a robust tool for public accountability by continuing to ensure public access to a host of government data.

About MNCOGI

MNCOGI is a network of individuals and organizations committed to open access to public information in print, electronic, and digital forms. Its members include librarians, lawyers, community activists, computer professionals, educators, journalists, and other citizens who care about openness in government, information access, and the public's right to know.

MNCOGI board members*

Gary Hill (Former KSTP journalist, former MN Senate leadership communications director) – Chair

Helen Burke (Government Documents Coordinator, Hennepin County Library) – Treasurer

Art Hughes (Freelance journalist) – Secretary

John Borger (Partner, Faegre Baker Daniels, LLP)

Bill Bushey (Co-founder of Open Twin Cities)

Hal Davis (Public Safety Team Leader, Pioneer Press)

Duchesne Drew (Managing editor, Operations, Star Tribune)

Matt Ehling (Public Record Media) – Chair of Legislative Issues Committee

Don Gemberling (Former director of IPAD, retired)

Nancy Herther (Librarian, University of Minnesota)

Jane Kirtley (Director, Silha Center, University of Minnesota)

James Shiffer (Watchdog and data editor, Star Tribune)

Amy Springer (Government Information Librarian, University of Minnesota)

Sharon Schmickle (Freelance journalist)

(*Affiliations listed for identification purposes only.)

MNCOGI legislative principles

The MNCOGI board endorses the following principles to guide the creation of legislation related to government information:

- Properly created/received/collected/maintained government data is and should remain presumptively public and easily accessible to all.
- MNCOGI will not support any change in the classification of any existing public government data unless the change:
 - Serves a compelling public interest
 - Is narrowly tailored to serve that public interest while retaining as much public access as possible consistent with that interest.
 - Will be effective in actually serving the asserted public interest.
- MNCOGI will seek to encourage the enforcement of existing open government laws, and to encourage the modification of enforcement mechanisms so as to provide increased compliance with open government laws.

MNCOGI 2014 legislative issues

Data Practices Legislative Commission

- **MNCOGI position:** Given the importance and complexity of data-related issues, the Minnesota Legislature should create a Legislative Commission on Data Practices. A commission would allow the Legislature more time to study data issues (both access and privacy issues), bring recommendations, and craft bills that could be acted upon during the regular session. The additional time afforded by the commission would allow the Legislature to take a “long view” of such matters, and aim for continuity in data policy.

LPR (License Plate Recognition) Data

- **MNCOGI position:** To ensure effective oversight, provisions should be included within state law to ensure public access to data about the scope, nature, and use of LPR technology by Minnesota government entities. MNCOGI also believes that a reasonable formula for dealing with data collected by LPR scanners is as follows:

All data collected by LPR scanners should be classified as “not public” data for a very short period of time after collection. A retention scheme should be instituted under which “non-hit” LPR data would be quickly purged during its brief, initial status as “not public” data. The remaining “hit” data that pertains to specific individuals or vehicles should be maintained as “not public” criminal investigative data until the closure of a criminal investigation.

Private contract, sub-contract data

- **MNCOGI position:** In light of the Supreme Court’s opinion in the *Helmberger v. Johnson Controls* case, the Minnesota Legislature should support changes to Minnesota law that would ensure that data about privatized government functions continues to be available for public review.

Booking photograph data

- **MNCOGI position:** Minnesota law should not be altered to treat requesters of booking photographs differently from other public data requesters. Two bills introduced during the 2014 session seek to institute certain requirements related to booking photographs. One of the bills (HF 1940) mandates that requesters submit statements regarding their intended uses of the photographs, as well as the locations where the photographs will be published. The addition of such requirements would

weaken the overall framework of the MGDPA by introducing - for the first time - mandates requiring certain requesters to specify their intended uses of government data.

HF 1940 also seeks to institute a variety of penalties for failing to comply with some of its provisions. For instance, the bill requires that persons who receive booking photographs from other parties file use-related disclosures with police agencies, or else become liable for damages. Such an approach raises significant First Amendment issues.

Prosecutors specified in “Criminal Investigative Data”

- **MNCOGI position:** Prosecutors should be added to the itemized list of persons and/or entities that can receive and maintain “criminal investigative data” under Minn. Stat. 13.82. Such a change would codify a long-standing practice recognized by IPAD advisory opinions.

Affirmative right to record open meetings

- **MNCOGI position:** Minnesota law should be altered in order to codify an affirmative right to record any proceedings that are subject to Minnesota’s Open Meeting law. Such a change would codify a long-standing Attorney General opinion on the subject,

Police “body cam” data

- **MNCOGI position:** Several municipal police departments have either obtained - or are in the process of obtaining - “body cam” video recorders for patrol officers to wear. These mobile devices record daily police interactions in order to create a record for use in criminal or civil court proceedings. MNCOGI believes that the data created by police body cams should be classified as public “incident” data, similar to the way in which squad car video is considered to be presumptively public government data. In both cases, the public classification of the data ensures a measure of public review of police activities.

Mass surveillance data

- **MNCOGI position:** Given recent advances in technology, government entities may increasingly be able to engage in the mass collection of data about individuals that was formerly beyond the reach of large-scale capture. Such data could include, for instance, ongoing, “real-time” information about the locations and movements of thousands of individuals. The legislature should evaluate such technologies on an ongoing basis, and ensure statutory access to information about the nature, scale, and legal underpinnings of such technologies.

Other MNCOGI activity (2013-2014)

MNCOGI has actively participated in the review and creation of data policy during the interim period between legislative sessions:

Opposition to MNSure temporary classification

- In July of 2013, MNSure submitted an application for a temporary classification of government data. MNSure's application sought a "not public" classification for its "marketing theme" data during the period before the release of its marketing campaigns. MNCOGI submitted comments in opposition. MNCOGI's opposition was predicated on various technical matters, as well as on the belief that there was not a sufficient public policy rationale for removing the data from public view. MNSure's application for a temporary classification of government data was denied in August of 2013.

Opposition to "general interest" test for data requests

- In January of 2014, the School Board for District 833 set out its priorities for the 2014 legislative session. These priorities included modifying the MGDPA so that government entities would only be required to respond to requests that were of "general interest to the public." MNCOGI and the Minnesota chapter of the Society for Professional Journalists (SPJ) opposed the change. Such opposition was based upon concerns that the proposed change would reverse the existing, non-discriminatory nature of data access under the MGDPA, and allow government entities to "play favorites" with data requesters. School District 833 ultimately withdrew its data proposal from its 2014 legislative agenda.

"Traveling" law enforcement data discussion

- In the summer of 2013, the Minnesota Chiefs of Police Association (MCPA) approached MNCOGI about working on a bill to classify law enforcement data that "traveled" from non-Minnesota law enforcement entities to agencies within Minnesota. Minnesota law does not currently contain such a classification, and certain law enforcement agencies have raised concerns about data sharing in such an environment. MNCOGI drafted a version of a bill for review and circulation. While MNCOGI and the broader law enforcement coalition were unable to come to an agreement on an approach to the issue, both MNCOGI and the MCPA have expressed a belief that further review and discussion of the matter is warranted.
