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**REPORT OF THE
INFORMATION POLICY TASK FORCE
TO THE MINNESOTA LEGISLATURE ****

**PREPARED AND PUBLISHED BY THE
INFORMATION POLICY TASK FORCE**

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Chapter 202, Article 2, Section 56.**

****Excerpts from Executive Summary and Draft Legislation-Privatization
Recommendation****

I. Executive Summary

The Information Policy Task Force was created by legislation enacted in 1997. The Task Force, composed of eight citizen and four legislative members, was given a very broad charge to study and make recommendations concerning: the content and organization of data practices and related statutes; issues related to surveillance and other forms of information technology, including the impact of technology on data practices and privacy; procedures for developing and implementing a coherent and coordinated approach to information policy; approaches to information policy in other states and foreign jurisdictions; and, other information policy issues as identified by the Task Force.

The Task Force began meeting in October, 1997. Over these last several months, the Task Force has heard presentations on a number of issues; reviewed existing information policy principles drawn from certain Minnesota Statutes; concluded that some principles should be discarded and new principles articulated, heard public comment on its work; received and reviewed written submissions; and prepared a number of recommendations, including draft legislation to carry out those recommendations. Early on the Task Force decided that, whenever possible, recommendations and other actions taken by the Task Force would be done by evolving a consensus of the Task Force membership. Many of the Task Force's recommendations are the product of this consensus process. However, there were occasions when disagreement among Task Force members about the content of a principle or the statement of a recommendation was put to a vote of the members present. Most votes taken by the Task Force were close votes.

The full text of this Report: details the composition of and activities of the Task Force; articulates an updated set of information policy principles; makes a series of detailed recommendations; provides legislation to carry out those recommendations; analyzes the budgetary implications of recommendations with fiscal impact; and, includes written submissions presented by persons who appeared before the Task Force or who reacted to drafts of the Task Force's Report.

The recommendations of the Task Force are as follows:

- Recommendation 1:** Minnesota Statutes Section 15.17 should be amended to reflect the reality that important government records are increasingly kept in media which are not paper.
- Recommendation 2:** More education and assistance should be provided to government entities so that entities can effectively deal with the proper disposition of government records. There is a particular and growing need to assist entities at all levels of government with the proper disposition of computerized records. The Department of Administration and the State Archives Department of the Minnesota Historical Society should work, in conjunction with

Force also heard that the availability of an action for damages often caused government entities to be reluctant to release public data to the public and that the possibility of having to pay damages was a major cause of the "when in doubt, don't give it out" phenomenon that often drives government decision making.

After some discussion about making somewhat drastic changes to the remedies provision of the Data Practices Act, the Task Force agreed that the Act should only be amended to provide for alternative dispute resolution processes.



Recommendation 22: The Data Practices Act should be amended to require government entities, which contract out any of their functions to private sector persons, to include in those contractual provisions language that will ensure that the private sector persons administer data created, collected, received, stored, or maintained because of the contract in compliance with the Data Practices Act.

Rationale: The discussion of the underlying principle which produced this recommendation evidenced contrasting and strong points of view held by Task Force members. A number of members were concerned that increased privatization of a variety of government functions put those functions, and accountability for them, outside public purview because private entities are not subject to the Data Practices Act in most instances. There was some feeling that the availability of privatization sometimes made it easy for government entities to contract out functions to avoid public scrutiny. In contrast to that position, other Task Force members pointed out that contracting out government functions was an acceptable way of doing government business. They also pointed out that in some instances, contracting out and other activities that lead to the privatization of government functions makes up for the lack of resources available to government entities. Contracting with private sector persons allows government entities to acquire the capability and benefits of using technology when the money for technology innovation would not be otherwise available.

Recommendation 23: The Legislature, or some other body created by it, should study in greater depth a number of issues that the Task Force did not have time to fully consider. Those issues include:

- A. Practical and other issues associated with implementation of the nonvisual access

this Chapter. No later than January 15, 2000, the responsible authority or other appropriate authority in every government entity shall report, in a form to be prescribed by the commissioner, about the individual designated to be the data practices compliance officer. Whenever the government entity makes a change in the individual assigned to the position of data practices compliance officer, it shall report that change to the commissioner. Each biennial budget session, the commissioner shall report to the appropriate finance committees of the legislature, on the progress of government entities in assuring compliance with this requirement.

(Recommendation # 17.)

* Minnesota Statutes Section 13.05, 1998, is amended by adding a subdivision to read as follows:

Subd. 14. Privatization. In any instance in which a government entity determines to outsource any of its functions to a private person, the government entity shall include in the outsourcing contract, contractual terms that make it clear that all of the data created collected, received, stored, used, maintained or disseminated by the private person, in performing the outsourced functions, shall be subject to the requirements of this chapter and that the private person must act in conformity with those requirements as if it were a government entity.

(Recommendation #22)