MINNESOTA COALITION
ON GOVERNMENT INFORMATION

MNCOGI Legislative Issues

2015 Legislative Session

MNCOGI – advocating for government data access and accountability

During its 2015 session, the Minnesota Legislature will consider many proposals related to the use of data by the government - including its law enforcement, human services, and other sectors. MNCOGI believes that the creation of government information policy needs to be grounded in principles of transparency and accountability.

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 publics right to know.

MNCOGI board members*

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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 2015 legislative issues: executive summary

License plate reader (LPR) data:

Police LPR devices collect millions of images of automobile license plates on an annual basis. MNCOGI believes that all collected LPR data should be classified not public data until law enforcement personnel separate hit data (relating to ongoing investigations, open warrants, etc.) from non-hit data. Within a very short time period after capture, police should destroy all non-hit data. This approach will keep data collection and maintenance focused on immediate law enforcement purposes, instead of creating a broad, invasive database of citizen movements for later review. The public should also have access to information about the use and location of LPR systems, in order to facilitate oversight.

Health Maintenance Organization (HMO) data:

The public should have access to business data held by HMOs that relate to how those organizations spend public monies administering the states public health care programs. The data should include HMO administrative expenses and provider payment rates.

Body camera data:

If police agencies use body cameras, video collection should be narrow and limited, instead of ongoing and unconstrained. To the greatest extent possible, the resulting footage should be public data, in order to allow the public to evaluate body camera use and police conduct. The legislature has the ability to limit data collection - or to otherwise regulate body cameras - to the extent that it sees fit.

Drone and surveillance data:

If government agencies use drones, data collection by those devices should be narrow and limited, and subject to appropriate regulations and restrictions. The legislature should institute reporting requirements to ensure that the public understands the scope and scale of drone use by the government. The same should be true of any other emerging surveillance technology.

Legislative Commission on Data Practices:

MNCOGI feels that the Legislative Commission on Data Practices has made a major contribution to improving the quality of the dialog around data policy issues at the capitol. MNCOGI urges the legislature to continue to support the commission, and to extend additional resources as needed.

MNCOGI 2015 legislative issues

LPR (License Plate Recognition) Data

Background: Minnesota law enforcement agencies are collecting and retaining millions of license plate image scans each year, as well as vehicle location data tied to those plate images. Once captured, LPR scans are checked against a BCA database that includes warrant information, stolen vehicle information, and FBI data. An LPR system alerts its user if a captured license plate scan correlates to any information contained within the BCA database. Such hit data can provide useful leads for a variety of investigative purposes.

Due to the indiscriminate nature of their operation, LPR systems also generate a substantial amount of "non hit" scans that are not related to any immediate law enforcement purpose. For instance, out of the 3,750,877 LPR scans collected by the Minneapolis Police Department in 2011, only 25,543 were hits.

There is currently no state standard for the retention of LPR data - either hit or non-hit. Saint Paul currently retains all LPR data for 90 days, while the State Patrol retains its data only for 48 hours. Since the issuance of a 2012 temporary classification, all LPR data pertaining to license numbers captured, image scans, and location metadata have been classified as "private" or "nonpublic" data. On August 1 of 2015, the temporary classification will expire, converting all currently "not public" data to a "public" status.

Issues: Privacy concerns have been raised about LPR collection and retention schemes, given the fact that the license plate scans are correlated to location information, and thus can provide a history of the movements of vehicles owned by particular individuals. The aggregation of such information can vest the government with a sophisticated record of individual travel patterns.

In 2012, a series of stories published by the Star Tribune newspaper raised other privacy concerns about the then-public status of individual-level LPR plate images and metadata. Given the competing interests at play, how should the legislature classify this category of government data, and otherwise regulate LPR data?

MNCOGI position: MNCOGI believes that all LPR data should be initially classified as not public data. A retention scheme should be instituted, under which "non-hit LPR data is quickly purged during its brief, initial status as not public data. Law enforcement should then be able to maintain the remaining hit data for its investigative purposes.

MNCOGI also believes that information about the function, use, and scale of LPR systems should be public, in order to facilitate effective public oversight of law enforcement use of LPR systems.

In 2012, MNCOGI endorsed H.F. 474, a House bill that contained many of the features described above. While H.F. 474 was passed by the House, the Senate passed a related LPR bill that contained a 90-day retention period. Neither became law.

In December of 2014, the Legislative Commission on Data Practices endorsed the approach to LPR regulation taken in H.F. 474. Two bills that mirror H.F. 474 have been introduced during the 2015 session - S.F. 31, and H.F. 154. Most recently, the Senate Judiciary Committee sent another LPR bill - S.F. 86 to the Senate floor. The bill contains a 90-day

retention period, which differs from MNCOGI's endorsed retention period. However, S.F. 86 also contains several provisions regarding LPR transparency that were added as a result of MNCOGI testimony and other feedback.

HMO data on public health care programs

Background: For the past several decades, Minnesota has chosen non-profit HMOs to administer many aspects of its public health care programs. Such programs utilize a combination of state and federal dollars. Participating HMOs receive blocks of money from the state, and then pay subcontract providers for services rendered to public program enrollees. Prior to the decades of the 1980s/1990s, the administration of these programs was largely conducted by the state, rather than by private entities.

Minnesota's public health care programs use large amounts of taxpayer funds - amounts running into the billions of dollars on a biannual basis. The state has a significant interest in ensuring that such programs are well run, and that they maximize the use of taxpayer dollars to the benefit of program enrollees and the state, generally.

The state currently conducts program oversight in a variety of ways. For instance, there are ongoing state reviews of HMO solvency, and the Legislative Auditor has recently used a third party firm to conduct public program audits. However - as in other areas of government operation - public access to program data is the final benchmark for true oversight, as the public itself is paying for the programs, and it should be able to review them in detail.

Key oversight-related information includes amounts paid to providers, and specific HMO administrative expenses related to public programs. Together, these can be used to understand how much money is being spent on patient care, and how much is being utilized by the HMO system in terms of financial reserves, administrative costs, etc.

At present, such data is only available to the public in summary form. The summaries cannot be verified by checking the underlying raw data, as that data is closed off to requests from the public, the press, and even legislators. Detailed administrative cost and provider payment information is classified as "not public" data when it is provided to DHS by participating HMOs. Similarly, the HMOs contend that they are not required to divulge public health care cost details to the public, due to the terms of their contracts with DHS. In both cases, the public is precluded from accessing the detailed data needed to truly oversee public programs.

MNCOGI position: MNCOGI urges the legislature to ensure that HMO data pertinent to the oversight of public health care programs is available as public data, including administrative expenses and provider payment rates. Minnesota statutes governing this data should be modified to enable such public access.

Body camera data

Background: Mobile body cam systems are compact, camera/recording or camera/transmission devices that can be attached to clothing, glasses, or other worn garments or accessories.

Police in several Minnesota municipalities - including Duluth - have adopted such devices for use by their police departments. At present, the city of Minneapolis is in the midst of a pilot program to help develop protocols for larger-scale implementation.

Body cameras are largely being adopted to enable the collection of video documentation to help resolve disputes over police conduct and/or use of force incidents. As with squad car dash cameras, they also serve ancillary purposes, such as supplementing evidence-gathering in the field.

Body cam video holds the possibility of clarifying questions about police use of force incidents, creating accountability for the public. Body cam data may also help to prevent unfounded claims of police misconduct from being sustained. At the same time, the mobility and pervasiveness of the video recording offered by body cams raises questions around privacy that complicate the discussion over body cam operation and data classification.

At present, information gathered by police body cams is generally treated as presumptively public data under Chapter 13, with certain exceptions. One exception to this public presumption involves the use of body cam data in active criminal investigations. When such an investigation is opened, body cam data pertinent to the matter can be maintained as not public data for the duration of the active investigation, after which it reverts to its former, public status. This is similar to the way that squad car video is currently treated.

MNCOGI position: MNCOGI believes that body cam video should continue to be presumptively public, with arrest video being public "at all times." A public classification for body cam data offers oversight benefits to the public. Public availability of the data serves the classic oversight purpose of documenting the conduct of public officials for later review.

A continued public presumption for body cam data would still permit investigative data to be converted to a temporary, "not public" status for the duration of an investigation. Maintaining the current public presumption would also not interfere with existing data regulations that specifically protect the identities of undercover officers and victims of sexual assault.

MNCOGI further also believes that privacy should be addressed through the regulation of video collection. While body cam data could play a potentially positive oversight role, it could also greatly expand the ability of police to create a long-term surveillance record of a community, raising privacy and accountability concerns. Much like license plate reader (LPR) technology, long-term retention of indiscriminate body cam data could vest the government with an archive of the movements and associations or individuals, or even the interiors layouts of locations that police visit for calls for service and other incidents.

Continuous, indiscriminate recording could also raise questions about whether individuals who might require police attention for welfare checks or similar services would be reluctant to call, due to hesitations about having their interactions recorded.

MNCOGI believes that these matters would be best addressed through the regulation of camera use, rather than by creating multiple categories of private body cam data.

Departmental rules, municipal ordinances, and state laws could be written to address when, where, or how body cam data could be collected in order to address questions of privacy.   Regulation of body camera use in private homes should be part of this discussion. Such regulations would help to ensure that body camera technology is used for a narrow, oversight purpose, without expanding into a more broad-based video surveillance platform.

Drone and other surveillance data

Background: Unmanned aerial vehicles (drones) are gradually coming into use by law enforcement agencies across the nation. So far, police drone use in Minnesota appears to have been limited to instances in which the BCA has helped

local police utilize federal drones to search for marijuana fields. As FAA regulations evolve, and drone technology becomes smaller and cheaper, drones may find their way into more Minnesota police departments where they will pose entirely new and very consequential questions. How will government agencies employ this technology? And how will the public oversee the government's drone operations?

MNCOGI position: In 2014, MNCOGI provided testimony in support of HF 2553, a bill that sought to regulate law enforcement use of drone technology. Given the potentially invasive nature of such technology, MNCOGI supported that bill's efforts to establish reporting requirements for the use of drones by police agencies. It is MNCOGI's position that the public should have access to a great deal of information about the implementation and use of government operated drones, so that effective oversight and accountability can be established.   MNCOGI also supports robust reporting requirements and "public" classifications for all other current (and future) law enforcement surveillance technologies.

Given recent moves by the Federal Aviation Administration (FAA) to establish rules for the private use of drones in U.S. airspace, MNCOGI would also ask the legislature to ensure that any proposed state efforts to regulate private drones incorporate appropriate reporting provisions, given the many unresolved questions about privacy and safety that attend the use of this technology. Appropriate reporting requirements will aid lawmakers and the public in further examining the impacts of this major technological change.

Legislative Commission on Data Practices and Data Privacy

Background: During the 2014 legislative session, former Representative Mary Liz Holberg brought forward a bill to establish a legislative commission to study issues related to data practices and data privacy. Rep. Holberg's animating concept was that the legislature needed to build expertise in these fast-developing fields - expertise that was hard to cultivate during the regular crush of legislative business. With information policy having an ever-broader impact on Minnesotans, Rep. Holberg hoped that a commission might spur more meaningful legislative proposals. MNCOGI also supported the creation of such a commission.

The commission was established during the 2014 session, and held its first hearings during the end of that year. Its hearings have been detailed, and it has helped to bring greater depth to the entire legislature's discussion of data issues, given its mixed composition of both Senate and House members.

MNCOGI position: MNCOGI believes that the commission is an extremely useful body that the legislature should continue to support with appropriate, modest resources. Currently, the commission does not have paid staff, and it could benefit from the addition of one paid staffer to enable more comprehensive operations, including research related to emerging technology and policy issues.