

Information Policy
Analysis Division

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August 20, 2013

April Todd-Malmlov
Executive Director
MNsure
81 Seventh Street East, Suite 300
St. Paul, MN 55101-2211

Re: Application for Temporary Classification of Data

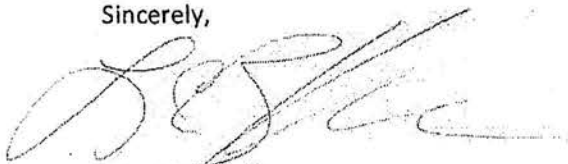
Dear Ms. Todd-Malmlov:

This letter is in response to MNsure's application for temporary data classification, dated July 8, 2013 and supplementary information, dated July 22, 2013. The Commissioner has disapproved MNsure's request to classify certain marketing theme data as nonpublic.

The Commissioner concluded that the application failed to meet the requirements in Minnesota Statutes, section 13.06, subdivision 3. Based on the reasons detailed in the attached FINDINGS OF FACT AND CONCLUSIONS, and pursuant to Minnesota Statutes, section 13.06, subdivision 5, the data become public on September 9, 2013. The statute provides that you may submit one amended application which sets forth additional information relating to the original proposed classification.

If you have any questions, please feel free to contact Stacie Christensen by phone at 651.201.2500 or via email stacie.christensen@state.mn.us.

Sincerely,



Laurie Beyer-Kropuenske
DIRECTOR, COMMUNITY SERVICES DIVISIONS
DEPARTMENT OF ADMINISTRATION

C: Krista Fink, MNsure Privacy and Security Manager

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION**

FINDINGS OF FACT AND CONCLUSIONS

REGARDING: Application for Temporary Classification of data pursuant to Minnesota Statutes, section 13.06, subdivision 3, submitted by:

MNsure

The Commissioner of Administration has examined the above application together with all comments received, and makes the following:

FINDINGS OF FACT

1. The application was filed pursuant to Minnesota Statutes, section 13.06, and was received by the Department of Administration on July 9, 2013. Supplemental information was received on July 22, 2013.
2. The application was filed on forms provided by the Department of Administration.
3. The application requested the classification of nonpublic for data related to marketing theme data, which MNsure defined as “unique, creative and proprietary marketing themes for its public outreach campaigns such as tagline, colors, characters, and images.” The application specifically excluded “costs or contracts with vendors related to the creation of the marketing strategy, advertising expenses and sources, or the expense of any marketing materials purchased for the campaign.” The application included a redacted copy of a “State Fair Concept” document that MNsure provided as an example of marketing theme data.
4. The Commissioner provided public notice online on July 23, 2013, with intent to approve or disapprove the application from MNsure seeking temporary classification of certain marketing theme data as nonpublic.
5. The applicant met the first criteria set forth in Minnesota Statutes, section 13.06, subdivision 3, by clearly establishing that no statute currently exists which either allows or forbids classification of marketing theme data as not public.
6. The applicant did not meet the criteria set forth in Minnesota Statutes, section 13.06, subdivision 3, by establishing one or more of the following: (1) that data similar to that for which the temporary classification is sought have been classified as not public by other government entities; or (2) public access to the data would render unworkable a program authorized by law.
7. The applicant did not meet the criteria set forth in Minnesota Statutes, section 13.06, subdivision 3, to clearly establish that a compelling need exists for immediate temporary

classification, which if not granted could adversely affect the health, safety, or welfare of the public, or the data subject's well-being or reputation.

8. The Commissioner has reviewed comments submitted by:

Minnesota State Representative Peggy Scott
Matt Ehling on behalf of the Minnesota Coalition on Government Information
(MNCOGI)

The Commissioner considered these comments in making his decision.

Based upon the foregoing findings of fact, the Commissioner makes the following:

CONCLUSIONS

1. Based upon the application and the statutory requirements, the Commissioner concludes that the applicant has not met the criteria set forth at Minnesota Statutes, section 13.06, subdivision 3, for the data described in item 2 below.
2. For the reasons set forth below, the following data are disapproved by the Commissioner as nonpublic:

Marketing theme data created by MNsure, including unique, creative and proprietary marketing themes for its public outreach campaigns such as tagline, colors, characters, and images.
3. It is the Commissioner's belief that the proper classification of these data is public.

The Commissioner's detailed reasons for disapproving the application are as follows:

- I. The application does not establish that data similar to that for which the temporary classification is sought have been classified as not public by other government entities.**

MNsure identifies four statutes in support of its argument that marketing theme data are similar to data classified as not public, as required in Minnesota Statutes, section 13.06, subdivision 3.

- MNsure cites Minnesota Statutes, section 13.3215, subdivision 1(c), in its application. However, that paragraph defines data; it does not classify data as not public. The classifications of data described in section 13.3215, relate to claims experience data and investment data, rather than marketing data.
- MNsure cites Minnesota Statutes, section 13.591, subdivision 5, which relates to business data and "internal competitive response" data. This section classifies data about a bid or proposal submitted by a government entity in response to a competitive bidding process, rather than marketing data. MNsure argues that the change in classification from

nonpublic to public upon completion of the selection or evaluation process in section 13.591, is similar to the proposed change in classification of MNSure marketing data. A change in the classification is similar; however, MNSure provides a date specific to an individual marketing event as the change in the classification (“Nonpublic Classification Expires 8-22-13) rather than a specified occurrence (i.e., completion of the selection or evaluation process). This is not an entirely similar comparison because MNSure’s change of classification will be different (and unknown until provided) for each marketing event; whereas, a time certain classification change is always known, regardless of the specific event for bid or proposal data.

- MNSure cites Minnesota Statutes, section 13.55, subdivision 4, which relates to convention center data, and defines a “nonprofit organization” as an organization “with which the city of St. Paul contracts to market and promote the city as a tourist or convention center.” The data classified in this subdivision relate to responding to a request for proposal or request for bid, and similar to section 13.591, contains an event certain for the change of data classification. As described above, MNSure has not provided an entirely similar change comparison.
- MNSure cites Minnesota Statutes, section 13.605, subdivision 1(b), which classifies legislative budget proposals as not public until after a budget is presented to the legislature. As described above, MNSure has not provided a similar change comparison.

The Commissioner concludes that MNSure did not establish that data similar to that for which the temporary classification is sought have been classified as not public by other government entities under Minnesota Statutes, section 13.06, subdivision 3.

II. The application does not establish that public access to the data would render unworkable a program authorized by law.

MNSure’s application argues that an untimely release of the marketing theme would render the MNSure program, and its role in carrying out the authority of the Federal Patient Protection and Affordable Care Act and the MNSure Act, unworkable, and uses the State Fair Concept marketing document as an example. However, MNSure fails to provide any details, specific examples, or rationale for how the MNSure program would become unworkable if marketing theme data are prematurely released to the public. The Commissioner concludes that MNSure did not establish that public access to the data would render unworkable a program authorized by law, pursuant to Minnesota Statutes, section. 13.06, subdivision 3.

III. The application does not clearly establish that a compelling need exists for immediate temporary classification, which if not granted could adversely affect the health, safety, or welfare of the public, or the data subject's well-being or reputation.

MNSure’s application argues that a compelling need exists for immediate temporary classification because there is “widespread misinformation regarding the Affordable Care Act, MNSure, and health insurance exchanges being disseminated at this time and continuing into the

next four months until enrollment begins.” MNsure is concerned that “entities may seek to unlawfully charge consumers for information or enrollment that is provided at no cost through the exchange.” The application seeks a nonpublic classification in an effort to “prevent improper alignment with MNsure by unaffiliated groups, waste of public funds and resources, and the spread of misinformation to the public.”

While MNsure’s application raises various, general concerns about releasing the data, it does not provide any specific examples or details for how classifying certain marketing data as not public will adversely affect the health, safety, or welfare of the public or a data subject’s well-being or reputation. For instance, MNsure provided the Commissioner with a redacted copy of the State Fair Concept marketing document, but did not give any details or examples of how releasing the document without redactions would adversely affect the health, safety, or welfare of the public.

The Commissioner notes that MNsure’s publically available marketing data may be subject to federal copyright laws.

The Commissioner concludes that the application does not clearly establish that a compelling need exists for immediate temporary classification, which if not granted could adversely affect the health, safety, or welfare of the public, or the data subject’s well-being or reputation, as required under Minnesota Statutes, section 13.06, subdivision 3.

By:

Date: August 20, 2013

A handwritten signature in cursive script that reads "Spencer Conk". The signature is written in black ink and is positioned above the printed name and title.

Spencer Conk
Commissioner