

Criminal intelligence traveling data discussion
Minutes of October 1, 2013 meeting

The meeting convened at approximately 9:00am at the League of Minnesota Cities.

The participants included David Pecchia (Minnesota Chiefs of Police Association), Kathryn Hahne (Faegre Baker Daniels), Don Gemberling and Matt Ehling (Minnesota Coalition on Government Information.)

Matt Ehling noted that he and Kathryn Hahne had discussed keeping minutes of the meeting that could be disseminated afterward. Matt Ehling volunteered to take minutes.

Kathryn Hahne noted that the Minnesota Chiefs of Police Association (MCPA) wanted to meet with representatives of the Minnesota Coalition on Government Information (MNCOGI) to start a discussion about how to handle “traveling” criminal intelligence data, and to seek suggestions on language that might form the basis of a bill. She noted that Rep. Paymar had suggested meeting with MNCOGI as well.

Kathryn Hahne stated that the MCPA sought to craft a narrow bill related to data from outside of Minnesota, and was setting aside any broader data discussions for the time being.

David Pecchia noted that state and federal law enforcement agencies had raised concerns about sharing their criminal intelligence data with Minnesota agencies, since they believed that such data would become public when transferred to Minnesota agencies. He cited examples involving FBI data related to individuals who had attended Al-Shabbab training camps, as well as an example where the FBI did not feel that it could communicate specifically about a situation that occurred in Plymouth, due to concerns that data on a particular individual would become public.

Matt Ehling asked if the criminal intelligence data at issue primarily involved names of individuals suspected of criminal involvement.

David Pecchia responded that the data could include the names of individuals, organizations, or sometimes locations, but that it largely centered around individuals. He noted that lots of the data involved gang activity, and other complex, organized criminal activities.

Don Gemberling reflected on federal concerns over data sharing with Minnesota agencies. He stated that he believed that under the Data Practices Act (DPA) and the existing Department of Administration rules implementing the DPA, federal law was given deference, and effectively pre-empted state law regarding the treatment of federal data.

Kathryn Hahne asked if courts had tested this treatment of data, to which Don Gemberling replied no. Kathryn Hahne stated that MCPA might want to get an IPAD

opinion that addressed the issue of federal data sharing, in light of the discussion. Don Gemberling stated that they could also seek an Attorney General's opinion, which would have the force of a court decision after two years, if it was uncontested. Kathryn Hahne noted that as a municipal component, a police department could seek such an opinion.

Kathryn Hahne noted that notwithstanding federal data, state-to-state data sharing was still an issue. She stated that police received out-of-state law enforcement data on a regular basis, and she believed that it was in the public interest to find a way to classify it so that it was useful to Minnesota law enforcement. She also stated that she believed that there was a near consensus that some of that data should be "not public."

David Pecchia asked the MNCOGI representatives if the group could bring forward some proposed language to discuss. He reiterated that MCPA only wished to focus on data coming from other states into Minnesota.

Don Gemberling noted that dealing with out of state traveling data would be more manageable than what had been attempted in the past, such as attempts to develop a comprehensive criminal intelligence schema to cover data produced in Minnesota. He referenced the difficulties that occurred during the SF 2757 working group discussions, and the unwillingness of many on both sides to reach a compromise position at that time.

Matt Ehling noted that he recognized that MCPA had brought forward a much more limited bill during the 2013 session. He further noted that MNCOGI's problem with it centered on the fact that the language would have maintained data from out of state outside of the DPA. Kathryn Hahne noted that the DPA already had some similar exceptions.

Don Gemberling noted that historically, the issue had been difficult to deal with due to political considerations. He reiterated that the scope of the current discussion was manageable, and that there was a sub-set of traveling data that almost everyone would agree could be rightly classified as "not public."

Kathryn Hahne stated that she would look to MNCOGI to bring forward some language.

Matt Ehling stated that he believed the scope of the discussion was reasonable. He noted that going forward, MNCOGI wanted the process to be transparent to other parties that were not at the table, and to eventually expand those who were at the table to ensure that the process was seen as credible by all interested parties.

Kathryn Hahne and Don Gemberling discussed how to involve minority communities in the discussion. Don suggested that Nekima Levy-Pounds should be high on the list of individuals to contact.

Kathryn Hahne asked about what elements MNCOGI might seek, including whether MNCOGI would seek audits of traveling data. Don Gemberling noted that independent audits would be helpful.

Kathryn Hahne weighed whether a fiscal note to underwrite auditing would pose a potential problem for the eventual legislation.

Matt Ehling asked David Pecchia whether law enforcement would be amendable to audits being conducted by a non-law enforcement entity, such as the legislative auditor. David Pecchia said that he believed that such an arrangement could be workable, and further noted that the MCPA had worked with the legislative auditor in the past.

Kathryn Hahne stated that in regard to a fiscal note, there could be a way to craft a bill that placed an audit date in the next biennium, due to the upcoming legislative calendar.

Don asked whether the current data discussion should involve data from Canda. David Pecchia noted that most of that type of data came from task forces staffed by federal agents. He suggested that the current discussion be kept around state level data.

Matt Ehling discussed a work timeline, and noted that any language that MNCOGI would propose would first need to be run by the MNCOGI board.

Kathryn Hahne noted that going forward, MCPA would be comfortable with involving other parties in the discussions.

David Pecchia stated that he would reach out to Rich Neumeister. Matt Ehling also volunteered to contact him.

Kathryn Hahne returned to the subject of the work timeline, and suggested that MNCOGI deliver draft language in early November, with the aim of having a final bill by January. The MNCOGI representatives agreed to the timeline.

Matt Ehling thanked MCPA for contacting MNCOGI, and noted that he would disseminate minutes to each party to approve later in the day.

The meeting adjourned at approximately 9:45am.