

MNCOGI SUGGESTED CHANGES TO HF 342, 1st ENGROSSMENT

Prepared by Matt Ehling, MNCOGI board member

House Civil Law Committee

March 15, 2019

Dear members of the House Civil Law Committee,

The Minnesota Coalition on Government Information has several suggested changes to the data provisions of HF 342.

MNCOGI evaluates all bills that come before the legislature in terms of their impact on the transparency of government operations. We see several areas where the data provisions of HF 342 should be modified to ensure greater government transparency:

1. Lines 11.27 - 11.30 of the 1st Engrossment: The bill provides (in lines 11.11 - 11.26) that the council may have access to “not public” data such as police investigative data and medical records, but further specifies in lines 11.27-11.30 that *all* data that is acquired by the council becomes “protected nonpublic” or “confidential.” This would include any “public” data acquired by the council as well. This language should be modified to ensure that “public” data acquired by the council maintains its “public” classification, while “not public” data maintains its original classification, per Minn. Stat. 13.03 subd. 4(c);
2. Lines 11.30 - 11.31 of the 1st Engrossment: Strike the sentence “The data are not subject to subpoena or discovery.”;
3. Lines 11.31 - 12.5 of the 1st Engrossment: Strike these lines, as issues dealing with “not public” data would be covered by the changes made in Item 1 (above) and the disclosure of “public” data (the “conclusions of the council”) would be covered by the changes made in Item 5 (below);
4. Lines 12.6 - 12.8 of the 1st Engrossment: Strike these lines, as a complete statutory bar to discussing events that transpired at a meeting of a government entity would raise substantial transparency and accountability issues;
5. Lines 12.8 - 12.11 of the 1st Engrossment: Strike these lines, and re-phrase to specify that the “proceedings and records” of the council are classified as “public” with the exception of data contained within them that is classified as “not public.”
6. Lines 12.16- 12.18 of the 1st Engrossment: Strike these lines.

MNCOGI's suggested changes to the data provisions of HF 342 are incorporated into the bill text below.

Thank you for your attention to this matter.

Sincerely,

Matt Ehling
MNCOGI board member

Subd. 5. **Data considerations for case review.** (a) Members of the African American and Disproportionality Child Welfare Oversight Council have access to the following data for specific case review under this subdivision:

- (1) police investigative data;
- (2) autopsy records and coroner or medical examiner investigative data;
- (3) hospital, public health, or other medical records of the African American or other disproportionately represented child;
- (4) hospital and other medical records of the African American or other disproportionately represented child's parent that relate to prenatal care;
- (5) records created by social service agencies that provided services to the African American or other disproportionately represented child or family; and
- (6) personnel data related to an employee's performance in discharging child protection responsibilities.

A state agency, statewide system, or political subdivision shall provide the data upon request of the commissioner. Not public data may be shared with members of the council in connection with an individual case.

(b) ~~Notwithstanding the data's classification in the possession of any other agency, Not public data acquired by the African American and Disproportionality Child Welfare Oversight Council in the exercise of its duties are protected nonpublic or confidential data as defined in section 13.02, maintain its original classification,~~ but may be disclosed as necessary to carry out the purposes of the council. ~~The data are not subject to subpoena or discovery. The commissioner may disclose conclusions of the council, but may not disclose data on individuals that were classified as confidential or private data on individuals in the possession of the state agency, statewide system, or political subdivision from which the data were received, except that the commissioner may disclose local social service agency data as provided in section 626.556, subdivision 11d, on individual cases involving a fatality or near fatality of a person served by the local social service agency prior to the date of death.~~

(c) ~~A person attending an African American and Disproportionality Child Welfare Oversight Council meeting may not disclose what transpired at the meeting, except to carry out the purposes of the council. Those portions of the proceedings and records of the council that do not contain not public data are protected nonpublic public data as defined in section 13.02, subdivision 13, and are not subject to discovery or introduction into evidence in a civil or criminal action against a professional, the state, or a county agency arising out of the matters the panel is reviewing. Information, documents, and records otherwise available from other sources are not immune from discovery or use in a civil or criminal action solely because they were presented during proceedings of the council. A person who presented information before the council or who is a member of the council is not prevented from testifying about matters within the person's knowledge. However, in a civil or criminal proceeding, a person must not be questioned about the person's presentation of information to the council or opinions formed by the person as a result of the council meetings.~~