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June 1, 2011

Ms. Laurie Beyer-Kropuenske  
Director  
Department of Administration  
Information Policy Analysis Division  
200 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155

VIA FACSIMILE & U.S. MAIL

RE: *Response to Advisory Opinion Request*  
Our File No. 4001(1)-0598

Dear Ms. Beyer-Kropuenske:

This firm represents the City of Red Wing (hereinafter "City") in regards to the advisory opinion request of Kent Laugen regarding the City's determination about a data practices issue. Mr. Laugen seeks an opinion regarding the City's determination that appraisal data is protected, non-public data. The following constitutes the City's response, pursuant to Minn. Stat. §13.072, to the request for an advisory opinion your office received from Mr. Laugen. Based on your May 16, 2011 letter, the question currently before your office is as follows:

Did the City of Red Wing comply with Minnesota Statutes, Chapter 13, in its redaction of certain data in the appraisal of Minnesota National Golf Links?

The City asserts that it has at all times complied with the requirements of Minnesota Statutes, Chapter 13, including the spirit and goals thereof. The following background information is relevant to this determination.

## Background Information

The City owns the Mississippi National Golf Links (“Mississippi National”) and leases it to Wendell Pittinger (“Lessee”), as it has done for several years. The City has contemplated selling the property as a cost-cutting measure. In order to assist in determining an appropriate value of the property for purposes of selling the property, the City and Lessee jointly obtained an appraisal of the property in September 2010. The City and Lessee split the cost of the appraisal evenly.

On March 14, 2011, Erik Fridell submitted an Information Disclosure Request to the City for “Appraisal of Mississippi National Golf Course with Wendell Pittenger’s business data redacted.” The City released a redacted version of the appraisal on April 1, 2011. Following further discussions and consideration by the City relating to the potential sale of Mississippi National, the City opted to release a second redacted version of the appraisal on April 11, 2011. The second redacted version of the appraisal contained the same redactions as the original version except for the total appraised value of the property.

## Legal Analysis

The Minnesota Government Data Practices Act specifically classifies appraised values of real property that are made for a government entity for the purpose of selling or acquiring land as confidential data on individuals or protected nonpublic data. Minn. Stat. § 13.44, subd. 3(a). “Protected nonpublic data” is defined as data not on individuals which is made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data. Minn. Stat. § 13.02, subd. 13. The appraisal of Mississippi National was obtained for the purpose of selling property, and thus, the appraised value of the property is classified as protected nonpublic data.

Despite the fact that the City and Lessee jointly sought (and paid for) the appraisal, Mr. Laugen asserts that the appraisal was not prepared on the City’s behalf. Mr. Laugen asserts that the appraisal was ordered by Associated Bank solely for financing purposes related to outstanding revenue bonds. While it may be true that Associated Bank utilized the appraisal report for its own financing purposes, that does not alter the fact that the City contracted for the appraisal of the property for the purpose of determining the property’s value for sale. As part of its budget for the past couple of years, the City has been considering cost-cutting and revenue-producing measures, including the potential sale of Mississippi National. The appraisal of the property was undertaken in furtherance of that purpose. Associated Bank’s use of the appraisal report for its own purposes does not prevent the City from commissioning the appraisal for purposes of selling the property. Because the appraisal was made for the City for the purpose of selling land, the appraised values are protected nonpublic data.

Mr. Laugen also appears to assert that all of the data in the appraisal report should be public because it has been exchanged among the City, the Lessee, and Associated Bank. There is no such exception in the Property Data section of the Minnesota Government Data Practices Act. The statute expressly provides for the circumstances under which the data becomes public. The nonpublic data becomes public upon the occurrence of any of the following:

- (1) The data are submitted to a court-appointed condemnation commissioner;
- (2) The data are presented in court in condemnation proceedings; or
- (3) The negotiating parties enter into an agreement for the purchase and sale of the property.

Minn. Stat. § 13.44, subd. 3(c). None of the above events have occurred, and thus, the appraisal values remain nonpublic.

In order for the exchange of the appraisal with a lessee or owner to alter the classification of the data, the statute would have to specifically include such language. Indeed, a prior version of Minnesota Statutes Section 13.44 contained an additional occurrence to trigger the change in classification of appraisal values from nonpublic to public. Prior to 2005, protected nonpublic data under this section became public upon the negotiating parties exchanging appraisals. See 2005 1<sup>st</sup> Special Session Minn. Ch. 6, Art. 3, § 1. However, that provision was removed from the statute by the Legislature. As a result, Mr. Laugen's assertion that the appraisal data should be public because it was exchanged by the City and Lessee is unpersuasive.

Notwithstanding the City's release of the total appraisal value of the property in order to allow the public to more fully participate in the consideration of the City's potential sale of Mississippi National, the remaining redacted data in the appraisal report is classified as nonpublic data pursuant to Minnesota Statutes Section 13.44, subd. 3(a). The redacted data consists solely of appraised values and the calculations used to arrive at the appraised values.

The City is committed to upholding both its obligation to share public information as well as its duty to protect non-public data from disclosure. The City understands that meeting both obligations can sometimes require that it make difficult decisions. In this case, the City is not attempting to hide anything. The redacted data pertains to the value of the Mississippi National property, and consists largely of revenue and expense calculations relating to the Lessee's operation of the Mississippi National. Lessee provided this information to the appraiser for purposes of obtaining an accurate appraisal to determine an appropriate sales price for the property. The public does not have an interest in obtaining the Lessee's business data. In fact, Mr. Fridell's original request for data acknowledged as much as he specifically limited his request in the following manner: "with Wendell Pittenger's business data redacted."

Ms. Laurie Beyer-Kropuenske  
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Under these circumstances, the City has responded appropriately by redacting such information from the appraisal report. The City complied with the Minnesota Government Data Practices Act in all respects and requests that the advisory opinion answers Mr. Laugen's question in the affirmative.

Please contact my office if you have questions or wish additional information.

Very truly yours,

Eric J. Quiring

cc: Ms. Kay Kuhlmann, City of Red Wing (via U.S. mail)

RRM: #152322