

Could Utah's rollback of public-records access happen in Minnesota?

The Utah legislature has approved — and last week the governor signed — significant changes to that state's open-records law. Within a span of days, House Bill 477 went from its first reading to passage by both bodies of the state legislature. The bill contained significant changes to Utah's Government Records Access and Management Act (GRAMA), exempting many types of records from public access, and raising fees for record searches.

Rep. John Dougall was quoted in Utah's Herald Journal as saying that the changes defended "the taxpayer from paying for the cost of voluminous fishing expeditions that consume thousands and tens of thousands of dollars." In other press reports, Dougall characterized Utah's open-records laws as infringing upon the privacy of elected officials.

Utah legislators cited the cost of compliance as a major factor driving their revisions. HB 477 added charges for "overhead costs" to the administrative fees that requesters already pay. HB 477 also expanded the types of records exempt from disclosure under GRAMA. Entire categories of electronic records — such as text messaging — were granted non-public status. In comparison, Minnesota's government-records law does not differentiate between records based on media type or platform.

Signed — with delayed implementation

In the closing days of the Utah legislative session, Gov. Gary Herbert signed the bill after the legislature agreed to delay its implementation until summer. Herbert characterized his action as buying time for GRAMA issues to be revisited during a special session.

"We've been placed in a poor bargaining position," says Brigham Young University journalism professor Joel Campbell, a vocal critic of HB 477. Campbell notes that while the governor claims to want a "fresh start," GRAMA changes will go into effect on July 1 if no progress is made.

Such a change seen as unlikely here

The rapid changes made to GRAMA have caused a nationwide stir in open-

data circles — the Society of Professional Journalists on Wednesday gave the Utah legislature and the governor its first "Black Hole Award" — and have raised questions around the nation about the durability of open-records laws.

In Minnesota, both state officials and open-government advocates consider it unlikely that sweeping, Utah-style changes could take place any time soon.

Laurie Beyer-Kropuenske heads the state of Minnesota's Information Policy and Analysis Division (IPAD). She believes that Minnesota's attitudes toward government information are distinctive, and provide a hedge against major changes. "Accessibility is firmly ingrained in Minnesota's culture," she says.

"We've had our law for 30-plus years," says activist Rich Neumeister of Minnesota's Data Practices Act. He credits it with nurturing a robust, open-government attitude in the state.

To underscore his point, Neumeister notes that several recent attempts to exempt government records from disclosure failed to pass into law. For instance, in 2009, then-Sen. Mee Moua introduced a bill that would have allowed city governments to shield preliminary drafts of budgets from the public. While the bill initially had the support of the League of Minnesota Cities and St. Paul Mayor Chris Coleman, Moua's proposal ran into resistance, and she ultimately dropped the bill.

Political context makes a difference

One factor that drove Utah's open-records changes appeared to be legislator discomfort with the GRAMA law. Utah press reports contained numerous quotes from representatives who stated that they were uneasy with the public's ability to access data on legislators. Professor Campbell contends that such concerns led legislators to move quickly, in order to modify a law that they did not like.

Such political calculations would be far different in Minnesota, however, since the state's Data Practices Act is aimed primarily at the executive branch, and exempts legislators from most disclosures.

Cost pressures on government transparency

In today's era of financial duress, cost considerations are likely to impact government transparency initiatives, either directly or indirectly.

Minnesota's tight fiscal situation has put pressure on virtually every state agency, including the Department of Administration, which houses IPAD. For several decades, IPAD has served as a central interface between the public, government agencies, and data accessibility issues.

IPAD's core missions involve preparing legal opinions for the commissioner of administration on data issues, and processing appeals regarding the accuracy of government data. IPAD also provides other services, such as outreach and training on government-records laws. The division will host one such course on law enforcement records in May.

Gov. Mark Dayton's proposed budget includes a small reduction in the IPAD operating budget — from \$948,000 to \$946,000 for the upcoming biennium. Budget targets recently released by the Senate leadership do not include details relating to the Department of Administration or its sub-units. Budgetary reductions could impact nonessential functions such as trainings, but Beyer-Kropuenske notes that IPAD seminar costs are often offset by registration fees.

Costs of compliance

Utah legislators cited the cost of compliance as a major factor in their revision of the state's open records laws. Could such cost factors eventually force changes to the Minnesota Data Practices Act?

Neumeister says that Minnesota state law has long required government agencies to maintain their records in a way that allows for easy access and retrieval by the public. He states that he hears complaints from government personnel about burdensome data requests, but says that the bulk of these complaints are from local governmental units that have not — in his view — organized their records to facilitate easy access.

Beyer-Kropuenske notes that she also hears occasional complaints from government staffers about labor-intensive data requests. Most of these complaints focus on the time it takes to separate public from nonpublic data in e-mail releases, she says. Such data separation can be a cost-driver, and she occasionally hears requests for legislative action on the matter.

The 'criminal intelligence' bill

One proposed set of changes to the Minnesota Data Practices Act has not resurfaced at the Capitol yet this year. These changes deal with "criminal intelligence data" held by Minnesota law-enforcement agencies.

In 2009, former State Sen. Don Betzolt introduced SF 1113 — colloquially referred to as the "criminal intelligence" bill. In its original form, the bill would have exempted certain classes of information from disclosure under the Minnesota Data Practices Act. In particular, incident data such as police calls could be exempted if a law-enforcement agency believed that such data might be related to an emerging pattern of terrorist activity. Proponents of the change state that exempting the data would prevent terrorists from learning about law-enforcement awareness of their activities.

During the 2010 legislative session, controversies raised by the bill spurred the creation of a working group to deliberate over outstanding issues. The "SF 2725" group issued its recommendations and reports in January of this year, and further legislative action awaits.

Will open-records changes arrive during the 2011 Session?

So far, few proposed changes to the Minnesota Data Practices Act have emerged during this year's session. "There have been a few technical adjustments discussed," says Beyer-Kropuenske, "but these primarily deal with the numbering and organizing of state statutes." She notes that no large, substantive changes have yet been proposed.

Could such proposals be waiting in the wings?

"It's still too early to tell," says Neumeister. "This year, the regular process is upside down — it's budget first, and policy later. However, things could still come up fast toward the end of the session."

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