

INFORMATION MEMO

Management of Personnel Files

Various state and federal laws require employers to keep certain information, or data, about employees. Find out what records should be in a personnel file, and which should be in other special types of files. Learn which personnel information is public and which is protected.

RELEVANT LINKS:

[Minn. Stat. § 13.43, subd. 1.](#)

[Minn. Stat. ch. 13.](#)
See also, Section III,
*Minnesota Government Data
Practices Act.*

[Krout v. City of Greenfield,](#)
A11-1200, April 16, 2012.
DPO [03-011](#).

DPO [01-055](#).

I. Personnel data

Personnel data are information about an individual collected and maintained because the person has or had an employment relationship with the city. This definition also includes individuals who voluntarily perform services for the city or act as an independent contractor for the city.

Various state and federal laws require employers to keep certain data about employees. Guidance on the management of government data is found in Minnesota's Government Data Practices Act (MGDPA).

A frequent question arises whether elected officials are employees covered by MGDPA. Unfortunately, the MGDPA does not specifically address the employment of city officials. However, the Commissioner of the Department of Administration has suggested the answer depends on how the city treats its elected officials. If elected and/or appointed officials are considered city employees, data related to their employment is treated as any other personnel data. However, if elected and/or appointed officials are not considered city employees, any data collected would fall under the general "public" presumption. As the case to the left confirms, cities appear to have some discretion in designating their officials as employees. It is a good practice to include this determination within the city's written personnel policies.

II. Personnel records

The MGDPA does not address the physical location where cities must maintain data, nor the type of filing system entities must use to organize the data. Those decisions are left to the discretion of the city. However, the MGDPA does require entities to "keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use." Recommended personnel file contents include employment-related information such as the employee's completed employment application, job description, offer/acceptance letter, employee handbook and policy acknowledgments, completed performance evaluations, training documentation, letters of commendation and disciplinary documentation.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

See section II F *I-9 File*.

See section II J *Workers' Compensation Files*.

LMC Information Memo,
[Paycheck](#).

[Minn. Stat. § 181.032.](#)

[Minn. Stat. § 177.30.](#)

Certain records should NOT be retained in employee personnel files: medical records, health insurance information, I-9 Forms, Child Support Obligation records, workers' compensation information, investigations or any other record, which by its presence in the personnel file, may raise an inference of discrimination.

All originals should be maintained by the human resources department or another responsible department.

While each city can determine how to set up their personnel files, some find it helpful to include a hanging file folder per employee and within that hanging file folder, include separate file folders labeled, for example, payroll, training, medical, performance evaluations, benefits, medical and a file folder containing employment documents like those listed in A below. Regardless of the system used, the files should be stored in a secured (locked) cabinet.

A. Personnel files

Examples of documents commonly found in a personnel file include:

- Employment application
- Resume
- Veteran's preference verification
- Supplemental application
- Work samples submitted with application
- Reference check results
- Miscellaneous materials submitted with application
- Written offer of employment stating position, start date and starting salary. Effective July 1, 2019, all employers are required at the start of employment to provide written notice of several pieces of information including rate of pay, allowances, paid leave, employee's employment status, a list of deductions, days in the pay period, and the legal name, address and telephone number of the employer to an employee. Refer to the Paychecks Memo linked to the left for additional details.
- Performance evaluations and other performance documentation
- Training record (workshops, conferences, classes, etc.)
- Payroll and financial files –In accordance with Minn. Stat. §177.30, employers are required to retain certain documents in a manner that allows the employer to comply with the Department of Labor and Industry's demand for review within 72 hours
- Employee acknowledgements for receipt of city policies.
- Notices of change in status: pay, address, phone number, position, full-time/part-time, change in departments, etc.
- If under 18 – verification of age (copy of birth certificate, age certificate, or driver's license)

RELEVANT LINKS:

2023 Minn. Laws ch. 53, art. 12, § 6 to be codified at Minn. Stat. § 181.9447.

U.S. Dep't of Labor, Wage and Hour Div., Fact Sheet #21: [Recordkeeping Requirements under the Fair Labor Standards Act \(FLSA\)](#).

B. Special file

Records relating to an investigation are an example of what might be retained in a special file.

C. Fingerprints retained as part of a criminal history check

The Bureau of Criminal Apprehension (BCA) recommends these private files, along with the police background investigations conducted by the police department, be retained by the police department in a secured (locked) cabinet, and not included in personnel files. This direction is due to the criminal information derived from the BCA's system accessed by the city's police department. While the criminal history data is to be maintained by the police department, only a *summary* of the criminal history record is provided to the hiring authority or other decision maker.

D. Medical and benefits file

While an employee's supervisor may have reason to access a personnel file for performance reasons, a file containing medical and benefits information should be stored separately from performance information, and therefore not generally accessible to an employee's supervisor. Examples of records found in a separate medical and benefits file include:

- benefit enrollment forms (health, dental, life, long term disability, etc.,
- COBRA/MN Continuation Notification Forms
- Mn Earned Sick and Safe Time (ESST) records to facilitate the administration of the leave (medical certifications and the like)
- emergency contacts
- pension / retirement information
- workers' compensation claim information
- any information of a medical nature such as physicians' notes, prescription information, etc.
- leave slips indicating any medical reason for which leave was used
- notices given under requirements of the Family and Medical Leave Act
- notices given under requirements of the Americans with Disabilities Act.

E. Payroll and financial file

Again, in order to limit the access to private personnel data, a separate payroll file is recommended. The payroll file enables finance personnel and city auditors, for example, as well as Department of Labor Agents, in the event of an audit, access to payroll records without accessing employee information not within their purview.

RELEVANT LINKS:

U.S Wage and Hour
Division: [Reg. Part 516:](#)
[Records to be kept by
Employer.](#)

[2023 Minn. Laws ch. 53, art.
12, § 6 to be codified at
Minn. Stat. § 181.9447.](#)

[HR Reference Manual,
Chapter 5.](#)

[Minn. Stat. § 177.30.](#)

[MN Dep't of Labor and
Industry: Wage Theft Law.](#)

The Fair Labor Standards Act requires payroll records to be preserved for at least three years. Examples of records found in a payroll and financial file include:

- W-4 Form
- forms authorizing various payroll deductions
- leave records
- attendance records
- MN Earned Sick and Safe time (ESST) records. A 2023 MN law change, effective January 1, 2024, requires an employer to retain accurate records about hours worked and the accrual and use of earned sick and safe time and allows an employee to view their records
- timesheets.

For employers completing Public Service Loan Forgiveness (PSLF) Employment Certification forms on qualifying employees as part of the PSLF program, the Office of Higher Education has recommended jurisdictions retain copies of the paperwork for the full 10 years of the program. For additional information on PSLF, please refer to the Benefits Chapter of the HR Reference Manual, linked to the left.

Minn. Stat. § 177.30, requires employers to retain documentation of the following items:

- The name, address, and occupation of each employee
- The rate of pay, and the amount paid each pay period to each employee, including for all employees paid at piece rate, the number of pieces completed at each piece rate
- A list of the personnel policies provided to the employee, including the date the policies were given to the employee and a brief description of the policies
- The start-of-employment “Wage Theft” written notice provided to the new hire and signed by the employee. An employer must provide the employee a written change to the information contained in this notice prior to the date the changes take effect.
- The hours worked for each day and each workweek by an employee, including for all employees paid at a piece rate, the number of pieces completed at each piece rate.

These records are required to be retained in a manner that they can be available for inspection by the Department of Labor and Industry upon demand within 72 hours.

RELEVANT LINKS:

U.S. Dep't of Homeland Security: [Form I-9](#).

U.S. Citizenship and Immigration Services, [Storing Form I-9](#).

Dep't of Homeland Security: [Inspections](#).

[49 C.F.R. § 40](#).

LMC information memo, [Drug and Alcohol Testing Toolkit for the City Workplace](#).

[49 C.F.R. § 382.401](#).

F. I-9 file

The United States Citizenship and Immigrations Services (USCIS) announced July 21, 2023, a new Form I-9 is available and cities may begin using this form as of August 1, 2023. Cities can continue to use the older Form -9 I-9 (Rev. 10/21/19) through October 31, 2023, but after that date employers will be subject to penalties if they use the older form. As cities will recall, the Form I-9 is used to verify identity and employment authorization for employees hired after November 6, 1986, to work in the United States. Officials from the Department of Homeland Security, employees from the Immigrant and Employee Rights Section (IER) and the Department of Justice and employees from the Department of Labor (DOL) may ask to inspect these forms. I-9s retained separately from the personnel files can limit an agent's access to additional private employee data.

G. DOT drug and alcohol testing records

Employers covered under DOT drug & alcohol testing regulations must maintain records of their testing program consistent with 49 CFR Part 40 and other industry specific regulations. Most cities follow the Federal Motor Carrier Safety Administration (FMCSA)-Motor Carrier rules for their Commercial Driver's License (CDL) drivers who perform safety-sensitive functions such as operating commercial motor vehicles on public roads. The FMCSA requires the following retention periods:

- 1 Year: Negative drug test results and alcohol test results less than 0.04.
- 2 Years: Records related to the alcohol and drug collection process.
- 3 Years
 - Previous employer records.
 - FMCSA Clearinghouse completed Limited Query Consents-The employer conducting the search must retain the consent for three years from the date of the last query.
- 5 Years:
 - Employee evaluation and referrals to SAPs.
 - Follow-up tests and follow-up schedules.
 - Refusals to test.
 - Alcohol test results 0.04 or higher.
 - Verified positive drug test results.
 - EBT calibration documentation.
- Indefinite period: Education and Training records, plus two years after ceasing to perform functions.

It's important to note that Department of Transportation (DOT) guidance requires employers to retain paper records. The DOT in its guidance states, an employer may also keep electronic records for their own purposes, but requires that paper records also be retained.

RELEVANT LINKS:

LMC information memo,
[Drug and Alcohol Testing
Toolkit for the City
Workplace.](#)

MCFOA, [General Records
Retention Schedule for
Minnesota Cities.](#)

[Minn. Stat. § 268.186.](#)

[Unemployment Insurance
MN: Employee Handbook,
Record Keeping and Audits.](#)

MCFOA, [General Records
Retention Schedule for
Minnesota Cities.](#)

MCFOA, [General Records
Retention Schedule for
Minnesota Cities.](#)

DOT drug and alcohol testing records retained separately from the personnel files can limit a Federal Motor Carrier Safety Administration Agent's access to additional private employee data.

H. Non-DOT drug and alcohol testing records

Minnesota's 1987 Drug and Alcohol Testing in the Workplace Act (DATWA) applies to all employers, including cities, with one or more employee.

DATWA does not require drug and alcohol testing, but for cities choosing to test, the law governs drug and alcohol testing of employees in the workplace, outlining specifically when, where, and under what circumstances an employer can test non-DOT employees for alcohol or drugs.

DATWA does not specifically address retention periods, so a city will want to refer to its record retention schedule. Just like DOT drug and alcohol testing records, non-DOT records should be maintained in a separate medical file and not in the employee's general personnel file.

I. Unemployment Records

Minnesota Department of Economic Security field auditors are allowed by law to examine employer records for the purposes of inspection, audit, and verification at any reasonable time and as often as necessary. With that requirement, cities will want to consider placing these documents in a secured location away from the personnel file to avoid MDES field auditors viewing non-related, private data within an employee's personnel file.

Any employer that refuses to allow an audit of their records by the UI Program may be assessed an administrative penalty of \$500. Records must be kept for a minimum of four years.

J. Workers' Compensation files

While it is clear this information should not be kept in an employee's personnel file, the decision on whether to retain workers' compensation information in a separate file or include it within an employee's medical file may depend on who administers the city's workers' compensation claims. If HR handles workers' compensation responsibilities, it may make sense to retain the documents under the employee's medical file. Regardless of where the files are kept, they should be kept locked with access only by employees with a business reason for such access.

Cities will also want to be mindful that under the MCFOA City Record Retention Schedule; employee exposure files need to be retained for a period of 30 years after an employee's termination or retirement.

RELEVANT LINKS:

2019 Minn. Laws 1st Spec. Sess. Ch. 7, Art. 3, § 11 amending Minn. Stat. § 177.30.

Minn. Stat. § 13.03 subd. 2. LMC information memo, *Data Practices: Analyze, Classify, Respond*.

Minn. Stat. § 13.03.

DPO: [Sample Data Access Policy for Members of the Public](#).

Minn. Stat. § 13.04.

DPO: [Sample Data Access Policy for Data Subjects](#).

DPO: [Copy Costs](#).

With that lengthy retention period, some cities may find it easier to keep employees WC files in a separate area as a helpful reminder to staff of the longer retention period.

K. Employee acknowledgements for receipt of city policies

Effective July 1, 2019, employers are required to retain a list of personnel policies provided to employees, including the date the policies were given to the employee and a brief description of the policies.

These records are required to be retained in a manner that they can be available for inspection by the Department of Labor and Industry upon demand within 72 hours.

III. Minnesota record laws

A. Government Data Practices Act

Minnesota law requires every city to establish procedures to ensure requests for government data are received and complied with in an appropriate and prompt manner.

1. Access by the public

Upon request, a person must be permitted to inspect and copy public government data at reasonable times and places, and upon request, must be informed of the data's meaning.

The city may require the requester to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and the cost for making, certifying, and compiling the information, but may not charge for separating public from not public data. If a person requests access for the purpose of inspection only, the city may not assess a fee.

2. Access by subjects of data

Upon request, an individual must be informed if he or she is the subject of stored data and the classification of any such data. The data subject is entitled to review information about him or herself once every six months. Copies of the data must be provided upon request by the data subject. The exception would be any data classified as confidential, such as possible complaint data that may name another employee. A city may require the requester to pay the actual costs of making, certifying and compiling copies, however, if the number of pages is under 100 the most a city can charge is \$0.25 per copy.

RELEVANT LINKS:

2023 Minn. Laws ch. 53, art. 12, § 6 to be codified at Minn. Stat. § 181.9447.

Minn. R. § 1205.0400 subp. 3.
DPO 99-019.

Minn. Stat. § 138.17.
Handbook, *Records Management*.
Records Management.
Preserving and Disposing of Government Records.
Records Retention Schedules.

MCFOA: [Record Retention Schedules](#).

Minn. Stat. § 13.43, subd. 2(a). LMC information memo, *Data Practices: Analyze, Classify, Respond*.

Often, cities do not charge employees for copies of their own files but do have authority to do so. Requests made pursuant to this law must be complied with immediately. If that is not possible, compliance must be within ten days of the date of the request (excluding Saturdays, Sundays, and legal holidays).

With a 2023 MN law change with respect to Earned Sick and Safe Time (ESST), effective January 1, 2024, employees may request the city to destroy or return records under MN's ESST that are older than three years prior to the current calendar year.

3. Access by those on a need to know basis

The City Council may review the records if their "work assignments reasonably require access." However, individual councilmembers would not have the ability to review personnel records unless authorized by the Council.

B. Records retention schedule

The purpose of a records retention schedule is to have a plan for managing governmental records and obtaining authority to dispose of records according to state law. If a city has not already adopted another schedule, the State's Retention Schedule for Human Resources should be followed. Many cities have adopted General Records Retention Schedule for Cities found on the Minnesota Clerks and Finance Officers Association website to the left.

Sometimes cities will have employees who worked for several departments and different positions over their career with the city. While it can be a best practice to retain one personnel file in a single location, there very well may be good efficiency reasons to retain separate department files while the employee is employed for those different departments. If the city opts for separate departmental locations, keep in mind, for data practices requests specifically, all those files may need to be consulted, depending on the data request.

For these situations, some cities find it most helpful then to retain one single file containing all the respective separate departmental files until the employee is no longer working for the city in any capacity in order to determine retention periods for the data.

IV. Access to personnel data

Certain personnel data on current and former employees of a political subdivision is public:

RELEVANT LINKS:

[Minn. Stat. § 13.43, subd. 2 \(8\).](#)

[Minn. Stat. § 13.43, subd. 2 \(4\).](#)

[Minn. Stat. § 13.43, subd. 2 \(8\)\(b\).](#)

- Name.
- Employee identification number (which must not be the employee's social security number).
- Actual gross salary.
- Salary range.
- Terms and conditions of employment relationship.
- Contract fees.
- Actual gross pension.
- The value and nature of employer-paid fringe benefits.
- The basis for and the amount of any added compensation (including expense reimbursement) in addition to salary.
- Job title and bargaining unit.
- Job description.
- Education and training background.
- Previous work experience.
- Date of first and last day of employment.
- Work location –includes work e-mail.
- Work telephone number.
- Badge number.
- Work-related continuing education.
- Honors and awards received.

Other data are also public, including the following items.

A. Payroll information

Payroll time sheets or comparable data used to account for employee's work time for payroll purposes is public.

Such data cannot reveal the employee's reasons for using sick or other medical leave or other data which are not public.

B. Complaints or charges

The existence and status of any complaints or charges against the employee are public information, regardless of whether the complaint or charge resulted in disciplinary action.

C. Disciplinary action

Final disposition of any disciplinary action, together with the specific reasons for the action and any data documenting the basis for the action, excluding data that would identify confidential sources who are employees of the public body, are public.

RELEVANT LINKS:

[Minn. Stat. § 13.43, subd. 2 \(8\)\(b\).](#)

[Minn. Stat. § 13.43, subd. 2\(a\)\(6\).](#)
[Minn. Stat. § 123B.143, subd. 2\(a\).](#)

[Minn. Stat. § 13.43, subd. 3.](#)
[DPO 10-006.](#)

[Minn. Stat. § 13.43, subd. 3.](#)

[Minn. Stat. § 13.43, subds. 5 – 9.](#)

[Minn. Stat. § 13.43, subd. 10.](#)

Disciplinary actions are not considered “final” for a union employee until a decision is rendered by an arbitrator or until the employee fails to elect arbitration in a timely manner as provided under the union contract. If an arbitrator does not uphold the discipline, all data concerning the disciplinary action remains private.

D. Buyout agreement

The terms of an agreement settling any dispute arising out of an employment relationship are public, as further detailed in state law. The “complete” terms of any settlement agreement (including buyout agreements) except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money. Best practice suggests working with the city attorney on settlement agreements

E. Applicant data

Names of applicants are public data when they are certified as eligible for appointment to a vacancy or when applicants are considered by the appointing authority to be finalists for a position in public employment.

A finalist is an individual who is selected to be interviewed by the appointing authority prior to selection. If applicants do not meet one of these criteria their names remain private.

The following data on applicants for employment is public:

- veteran status,
- relevant test scores,
- job history,
- education and training,
- rank on an eligible list,
- work availability.

V. Special rules about personnel data

Access to data about undercover law enforcement officers, access to personnel data by labor organizations and certain other personnel data on employee assistance, harassment and peer counseling debriefing data follow special rules outlined in state law.

Cities are prohibited from entering into an agreement with any current or former employee to limit access to or disclosure of public personnel data or to limit the discussion of information or opinions related to personnel data. An agreement that does this is void and unenforceable.

RELEVANT LINKS:

[Minn. Stat. § 13.43, subd. 11.](#)

[Minn. Stat. § 626.87.](#)

[Minn. Stat. § 181.967.](#)

Human Resources and
Benefits Department.
800.925.1122
651.281.1200
HRbenefits@lmc.org

A city may withhold or limit release of data on an employee or others to protect them from harm. However, a city may release this data to the person who may be harmed, their attorney, a court or in other specific situations.

State law requires that a private employer share "employment information" on a current or former employee with a law enforcement agency investigating hiring that person as a police officer or any other capacity with law enforcement. This means private employers must share written information in connection with job applications, performance evaluations, attendance records, disciplinary actions, and eligibility for rehire.

Minnesota law permits public employers to disclose certain private data if the current or former employee gives written consent to the release of the private data. This includes:

1. Written employee evaluations conducted before the employee's separation from the employer, and the employee's written response, if any, contained in the employee's personnel record.
2. Written reasons for separation from employment.

VI. Further assistance

The League's Human Resources Department is available to help you with your questions on personnel file management and access to personnel records.