

Tennessean Warnings: Requirements and Remedies

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The Minnesota Government Data Practices Act requires that a governmental entity provide a special notice to persons who supply private or public information about themselves to the governmental entity. Minn. Stat. § 13.04, subd. 2 (2010). This special notice is referred to as a Tennessean Warning.

The Tennessean Warning requires that persons who provide private or confidential data about themselves must be informed of:

- (a) the purpose and intended use of the requested data within the collecting state agency, political subdivision, or statewide system;
- (b) whether the individual may refuse or is legally required to supply the requested data;
- (c) any known consequence arising from supplying or refusing to supply private or confidential data; and
- (d) the identity of other persons or entities authorized by state or federal law to receive the data. (Minn. Stat. § 13.04, subd. 2.)

When Must a Tennessean Warning Be Given?

A. Data must be private or confidential

data: A Tennessean Warning only needs to be given when a person is providing private or confidential data about herself or himself. *Id.*; see also *Washington v. Indep. Sch. Dist.* No. 625, 590 N.W.2d 655, 660 (Minn. Ct. App. 1999),

review denied (Minn. June 16, 1999). In *Washington*, the court of appeals held that a discharged teacher was not entitled to a Tennessean Warning when the teacher was interviewed about an incident involving his alleged improper conduct because the information obtained during the interview was not private or confidential. Similarly, in *Edina Education Association v. Board of Education*, the court of appeals held that a Tennessean Warning was not required when the Board's attorney interviewed the subject of a grievance about the facts that gave rise to the grievance because the School District was not gathering information about the subject. 562 N.W.2d 306, 311 (Minn. Ct. App. 1997). Rather, it was gathering information about "an incident within the course and scope of [the subject's] employment." *Id.*

B. Third persons: A Tennessean Warning only needs to be given when the individual is being asked to provide data about herself or himself. Minn. Stat. § 13.04, subd. 2. If the data is about a third person, a Tennessean Warning is not necessary. See *id.*

C. Voluntary information: Further, if a person voluntarily provides private or confidential data about herself or himself, a Tennessean Warning is not necessary. See *id.*; see also *In re Larson*, No. C6-97-2215, 1998 Minn. App. LEXIS

529, at *3-*7 (Minn. Ct. App. May 12, 1998) (holding that the district court did abuse its discretion when it allowed testimony to be used against a subject absent a Tennessen Warning because the subject provided his therapist the information during voluntary therapy sessions that had limited confidentiality).

D. Criminal investigative data: A Tennessen Warning is not required when a person is asked to supply a law enforcement officer with “criminal investigative data” as defined in Minn. Stat. § 13.82, subd. 7. Under this provision, if a law enforcement officer requests criminal investigative data for an “active” case, a Tennessen Warning is not necessary.

What Happens If a Tennessen Warning Is Not Properly Given?

If a governmental entity does not provide a Tennessen Warning when one should have been given, the governmental entity cannot use or store the information received for any purpose. Minn. Stat. § 13.04, subd. 2. The district court could exclude otherwise admissible evidence if that evidence were obtained without providing a Tennessen Warning. See Minn. Stat. § 13.08, subd. 2 (stating that the district court “may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate this chapter”); see also *Edina Educ. Ass’n*, 562 N.W.2d at 309, 311-12 (reversing the district court’s injunction preventing the use of the information that the school district’s attorney obtained because the information was not private or confidential).

Further Consideration

Although there is no legal requirement under the *Edina Education* case that a public entity provide a Tennessen Warning to employees for investigations, discipline or routine matters, MCIT recommends that members consider the merits of doing so, particularly for formal investigations.

In some cases, it may be the employer’s only opportunity to inform the employee about the importance and consequences of sharing the data. Also, doing so may alleviate a legal fight later regarding the use of the data.

—By Jennifer Wolf, MCIT Staff Counsel for Risk Control

Because failing to properly provide Tennessen Warnings could lead to the suppression of evidence for litigation, they should be given to preserve the governmental entity’s right to use that information as evidence in a court proceeding. Further, it is best to have multiple Tennessen Warnings that are tailored to address the governmental entity’s specific scope and needs for the requested data.

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