



MetroGIS: Free & Open Access to Data RESEARCH & REFERENCE DOCUMENTS

Submitted to the [MetroGIS Policy Board](#) on **October 23, 2013**

Compiled and edited by:
MetroGIS Data Producers Work Group

*Randy Knippel
Dakota County GIS Manager
Chair, MetroGIS Data Producers Work Group
14955 Galaxie Ave
Apple Valley, MN 55124
952.891.7080
randy.knippel@co.dakota.mn.us*

*Geoff Maas, GISP
MetroGIS Coordinator
390 Robert Street North
St Paul, MN 55101
651.602.1638
www.metrogis.org
geoffrey.maas@metc.state.mn.us*

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Introduction: This publication contains five (5) discrete documents assembled for the purpose of informing the members of the **MetroGIS Policy Board and Coordinating Committee** and other interested parties on the debate and discussion of increasing access to publicly-produced data in Minnesota.

Questions or comments about this document and its contents may be directed to:

Geoff Maas, MetroGIS Coordinator
geoffrey.maas@metc.state.mn.us
651.602.1638



**DOCUMENT 1
RESEARCH ON “FREE & OPEN ACCESS TO DATA”**

MAKING PUBLIC GIS DATA FREE & OPEN: BENEFITS & CHALLENGES

**A SUMMARY ‘WHITE PAPER’ ON EXISTING PRACTICES & CONDITIONS
IN THE MINNEAPOLIS-ST PAUL METROPOLITAN REGION**

**Originally submitted to the MetroGIS Policy Board on April 24, 2013
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***Compiled and edited by:*
MetroGIS Data Producers Work Group**

*Randy Knippel
Dakota County GIS Manager
Chair, MetroGIS Data Producers Work Group
14955 Galaxie Ave
Apple Valley, MN 55124
952.891.7080
randy.knippel@co.dakota.mn.us*

*Geoff Maas, GISP
MetroGIS Coordinator
390 Robert Street North
St Paul, MN 55101
651.602.1638
www.metrogis.org
geoffrey.maas@metc.state.mn.us*

Introduction: This document was prepared by the members of the MetroGIS Data Producers Work Group at the request of the MetroGIS Policy Board. Its purpose is to serve as a general reference on the benefits and challenges of making publicly-produced geospatial data available and to inform the discussion on policy directions which serve that aim.

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PART I: A Summary of Existing Conditions Regarding the Availability of Publicly Produced Data in Minnesota

GIS data development by governmental agencies in Minnesota began over 20 years ago. For many counties, this started with development of a parcel database. Minnesota data practices law allows governmental entities to charge fees for data, and in cases where there is commercial value and the data required a significant public investment, the fees can include a portion of the cost to develop those data, on top of the usual direct costs associated with performing the service.

Charging fees in this way had potential to offset some or all of the data development costs. This model was applied in a variety of ways by different counties and to a variety of other GIS data including, street centerlines, aerial photography, planimetry, and topography. The associated revenue was applied in various ways, in some cases tied exclusively to data maintenance, and in other cases tied to staff and programmatic costs.

Over time, this practice has been challenged locally and on a national level, which has led to a gradual shift away from the practice to more open and free distribution of standardized data sets. This new practice is employed by the federal government and the State of Minnesota.

Minnesota is fortunate to have a wealth of geospatial data publicly available from a variety of levels of government; this situation can be attributed to:

- The general acknowledgement that geospatial data is a ‘public good’ and that making this data widely available for public purposes ***enhances civic life, creates opportunities for research and understanding, and facilitates private enterprise activity;***
- The willingness of public agencies in Minnesota to make their data, their staff, their research and their other resources available ***beyond their immediate internal business needs to enhance the greater good of their organization, other government agencies, and the general public;***
- Public agencies derive many benefits from the use, analysis, reference and display of geospatial data; benefits can be categorized in terms of:
 - Cost savings (*more efficient organizational operation*);
 - Revenue enhancement (*more efficient means to collect taxes or revenue from regulatory enforcement*);
 - More efficient delivery of services to the public;
 - More efficient means of conducting agency business;
 - Improved analytical and decision making capabilities;
 - Enhanced ability to communicate and quantify the work of departments and agencies to both the public and to policy makers;
- The existence of organizations such as the Minnesota Geospatial Information Office and MetroGIS which have ***specific directives to facilitate and contribute resources to maintain and promote geospatial data sharing activity;***

Despite this progressive and encouraging atmosphere, there are numerous ways in which larger public good could be achieved, public agency staff time better spent, and new efficiencies could be maximized with the wider availability of additional publicly produced data including the parcel data.

PART II: High Level Ideals on the Benefits of Shared Public Data

While direct financial benefits of data sharing are difficult to quantify, there are many less tangible but very valuable benefits to this practice. Four broad categories of benefits are listed below, along with specific examples of each benefit.

(1) Improves the function of a democratic society;

- Ease of access to all forms of data ensures the transparency of government and public process;
- Informed citizenry and accountable government form the cornerstone of a functioning participatory democracy;
- Fosters the building of relationships between organizations, both public and private;
- Improved emergency planning preparation resulting in increased public safety;

(2) Facilitates the expansion of functional uses of the data and enhances the value of the data itself;

- Eases and speeds the development of data-based services, tools, and applications for a variety of private enterprises and public purposes;
- Promotes innovation and entrepreneurship;
- Promotes and facilitates the planning, development and maintenance of the physical infrastructure;
- Promotes and facilitates the understanding and preservation of the natural environment;
- Increases the number of individuals who find and report potential errors found in the shared data set;

(3) Creates opportunities to realize cost savings for organizations;

- Reduces or eliminates duplication of effort in regards to data development;
- Partnerships with other organizations result in cost savings on acquisition of new data and the maintenance of existing data;
- Allows organizations to more effectively deploy their resources, providing better services at a reduced cost;

(4) Provides for improved analytical and decision making capabilities;

- Allows organizations to leverage shared data to drive core business decisions;
- Promotes better and more consistent cross-jurisdictional and cross-organizational analysis and decision making;
- Promotes use of data from authoritative government sources rather than other public services like Google, Bing, and Yahoo, while encouraging those services to use the authoritative data;
- Makes analysis results available to a wide audience allowing for more rigorous testing of the results and data, which can create increased confidence in the analysis and data used;

PART III: Challenges to Making More Data Available to Public

There are a number of challenges frequently cited regarding making data freely and openly available. However, these challenges typically have mitigating practices or conditions which limit the risk or difficulty posed by the issue. Common challenges are listed below along with further definitions of the issue or potentially mitigating factors relevant to the challenge.

(1) Impacts a governmental agency’s ability to engage in cost recovery for the development of their data;

Some specific business units depend on revenue generated from fees collected from the distribution of data to offset costs. The amount of revenue generated and dependence on this varies by county, largely based on historical responsibilities for the development and maintenance of those data. Available information on recent data sales for the Metro Area counties is included in the chart below.

Figure 1: Overview of Data Sales (2012) for the Seven Metropolitan Counties

COUNTY	2012 Data Sales				Revenue from GIS Sales Contribute to:		
	Vector	Raster	License Agreements	3-Year Average	GIS Operating Budget	Data Acquisition Budget	Non-GIS Department
Anoka	\$2,152	\$50	\$8,750	\$12,500	Yes	No	Yes
Carver	\$2,117	\$0	\$534	\$3,403	No	No	No
Dakota	\$3,700	\$0	\$6,300	\$15,000	No	Yes	No
Hennepin	**	**	\$29,577	\$29,000	Yes	No	No
Ramsey	\$5,159		\$0	\$6,918	No	No	Yes
Scott	**	**	\$4,708	\$4,000	Yes	No	No
Washington	\$3,000	\$7,900	*	*	Yes	Yes	Yes

*Numbers Not Available
 **All Sales Come From License Agreement

- Data acquisition and maintenance costs may exceed what can be justified by a single business process; however, the associated business unit may be in the best position to incur those costs for the benefit of the entire organization, other government agencies, and the public.

- Without fees for data, alternative means of funding activities or products would need to be developed. These may include proactive collaborative relationships to distribute acquisition and maintenance costs among interested parties or reallocation of county levy dollars.
- Organizations need to evaluate their associated costs from a broad perspective with the added understanding of the public benefits realized.
- Data fees limit the use of data to only those who can justify or afford the expense.

(2) Creates liability issues due to errors, omissions, and misuse;

- Legal disclaimer against misuse mitigates this challenge; increased use of the data helps discover and resolve errors and omissions.
- Use of licensing agreements, by some organizations, to explicitly cover potential liability issues.

(3) Results in a loss of control over data for the originating entity;

- When data is openly and freely distributed, organizations have no control over how that data will be used. Here are some potential issues:
 - Parcel data can be searched by owner name;
 - Repackaging data and reselling it for a profit;
 - Analysis that conflicts with popular or political interests;
 - Potential for use of data in analysis for which that data is inappropriate due to the data's origin, contents, accuracy, scale issues, etc...
- However, few, if any, counties have methods of preventing many of the above activities once data is purchased under the current system;

(4) Creates Data Practices Act issues with compliance and privacy;

- Impediments to sharing can be based on an actual or perceived need to maintain the confidentiality of all or some of the data, such as personal names or valuations;

(5) Fails to provide a clear, direct benefit to the data provider;

- Benefits to the data producers for sharing data are typically indirect, thus many organizations do not see a benefit to freely sharing their data and information;

(6) Lacks identified standards for access, sharing and integration of GIS data;

- Need to identify and agree on common geospatial services and data transfer standards to minimize costs and facilitate data sharing;

Challenges as Addressed by NSGIC: Addressing the Three Myths of Making Data Public

The **National States Geographic Information Council (NSGIC)** is a national organization committed to efficient and effective government through the prudent adoption of geospatial information technologies. Members of NSGIC include senior state geographic information system (GIS) managers and coordinators as well as representatives from federal agencies, local government, the private sector, academia and other professional organizations.

One of the primary goals of the National States Geographic Information Council (NSGIC) is to:
“...make all non-sensitive geospatial data, produced or maintained using taxpayer funds, a part of the public record.”

NSGIC published a document titled “Geospatial Data Sharing, Guidelines for Best Practices” that identified a set of three myths which presently serve as challenges to reach that aim and articulates responses to them:

Myth Number One:

“Organizations can pay for GIS operations through geospatial data charges”

The Reality:

The overhead costs associated with receiving and managing payments, bundling and delivering data and the follow up support to consumers can be significant. Even if adequately monetized and factored in the charge, these costs represent staff hours that could and should be utilized more efficiently to conduct core agency business.

Perhaps more significant is the loss of the following data sharing benefits:

- Improved data quality as it is vetted, corrected and improved by the user community;
- Greater opportunities to leverage resources by partnering or building upon related data;
- Reduced duplication of effort and competition for scarce funds;
- Increased numbers of complementary data resources that may support your mission;
- Respect for your organization as a valued data producer;
- Helping prevent the creation of duplicative datasets;

Myth Number Two:

“Data cannot be shared in the interest of homeland security and personal privacy”

The Reality:

Critical infrastructure, though important to protect, is generally visible and easily identified and located. Imagery can't be “put back in the can” after being publicly available. Personal information maintained by the government about individual health, economics, education, etc. are required to be generalized and grouped so that information about specific individuals cannot be derived. In most cases, the public is not protected by limiting access to information that is visible, previously available, or significantly generalized.

If data are deemed too sensitive for public access, agencies can still produce and publish information about the data (i.e. metadata). Metadata describes the data without revealing sensitive information. If the metadata is published, scientists, doctors, and other appropriate users of the data can discover its existence and follow the procedures designated in the metadata to request access to and use of the data.

To aid agencies in assessing data sharing risks, the Federal Geographic Data Committee (FGDC) Homeland Security Working Group developed a decision tree that can be used to balance security risks with the benefits of data sharing. The FGDC Guidelines for Providing Appropriate Access to Geospatial Data in Response to Security concerns explains the importance of maintaining a free flow of government information and provides a detailed method for applying the risk assessment decision tree.

Myth Number Three:

“If we share our data, others may misuse it or blame us for mistakes”

The Reality:

Since public data are created to support public business needs and endeavors, data sharing is an exercise in **accountability**, not a **liability concern**. Governments are protected from liability for reasonable data errors. The value of data sharing to both the provider and the consumer far outweigh any risk.

Good data documentation and well drafted disclaimers and agreements will work to minimize data misuse and abuse. When data consumer are provided with metadata that fully describes the data’s intended purpose, completeness, accuracy, resolution, currency and use limitations, the opportunity for misapplication is minimized and the **burden of appropriate use is shifted to the consumer**. If geospatial staff work with their legal advisors to develop effective documentation, their geospatial product deliveries can clearly articulate responsibilities and liabilities for both the data provide and the consumer from the start. **Such documentation need not be lengthy, complex or overly legalistic.**

Data consumers can be required to assent to a warrant waiver before being granted access to the data. Assent may be as simple as checking an acceptance box on a website. In other cases, a data provider may wish to consider the use of a more detailed agreement that clearly articulates the intended purpose and limitation of the data and the data consumer’s waiver of all warranties in connection therewith. Such agreements can be used to limit liability, thereby increasing an agency’s wiliness to make the data more easily available.

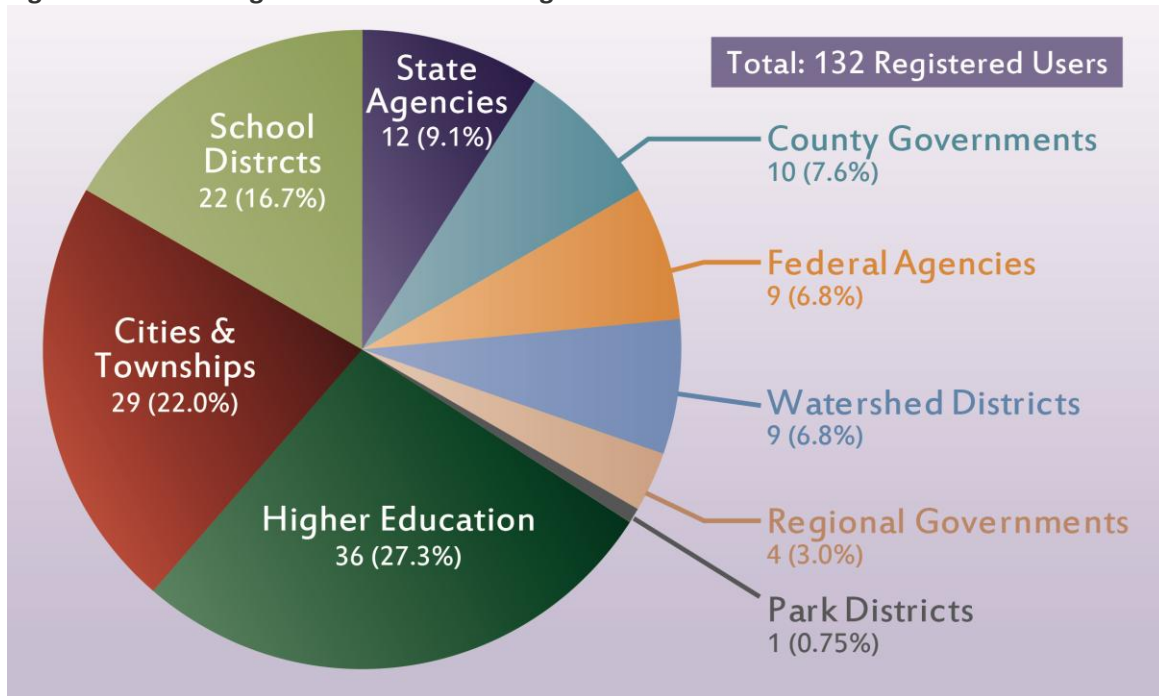
Appropriate metadata, disclaimers and agreements used as data management best practices will inform the consumer of any data limitations.

PART IV: Existing Users of the Regional Parcel Dataset and Examples of its Present Limitations

The Regional Parcel Dataset that is collected, prepared and developed by the Seven Metropolitan Counties and distributed under the aegis of MetroGIS is a resource with tremendous value for a diverse user audience. At present, the MetroGIS collaborative facilitates a legal agreement among the Seven Metropolitan Counties and the Metropolitan Council to make the data available to requestors defined as 'governmental interests'. 'Governmental Interests' are defined as *all local, regional, state and federal governmental jurisdictions including their respective political subdivisions in the United States*.

As of this writing, there are 132 registered users of the Regional Parcel Dataset, these include a variety of government and academic interests:

Figure 2: Current Registered Users of the Regional Parcel Database



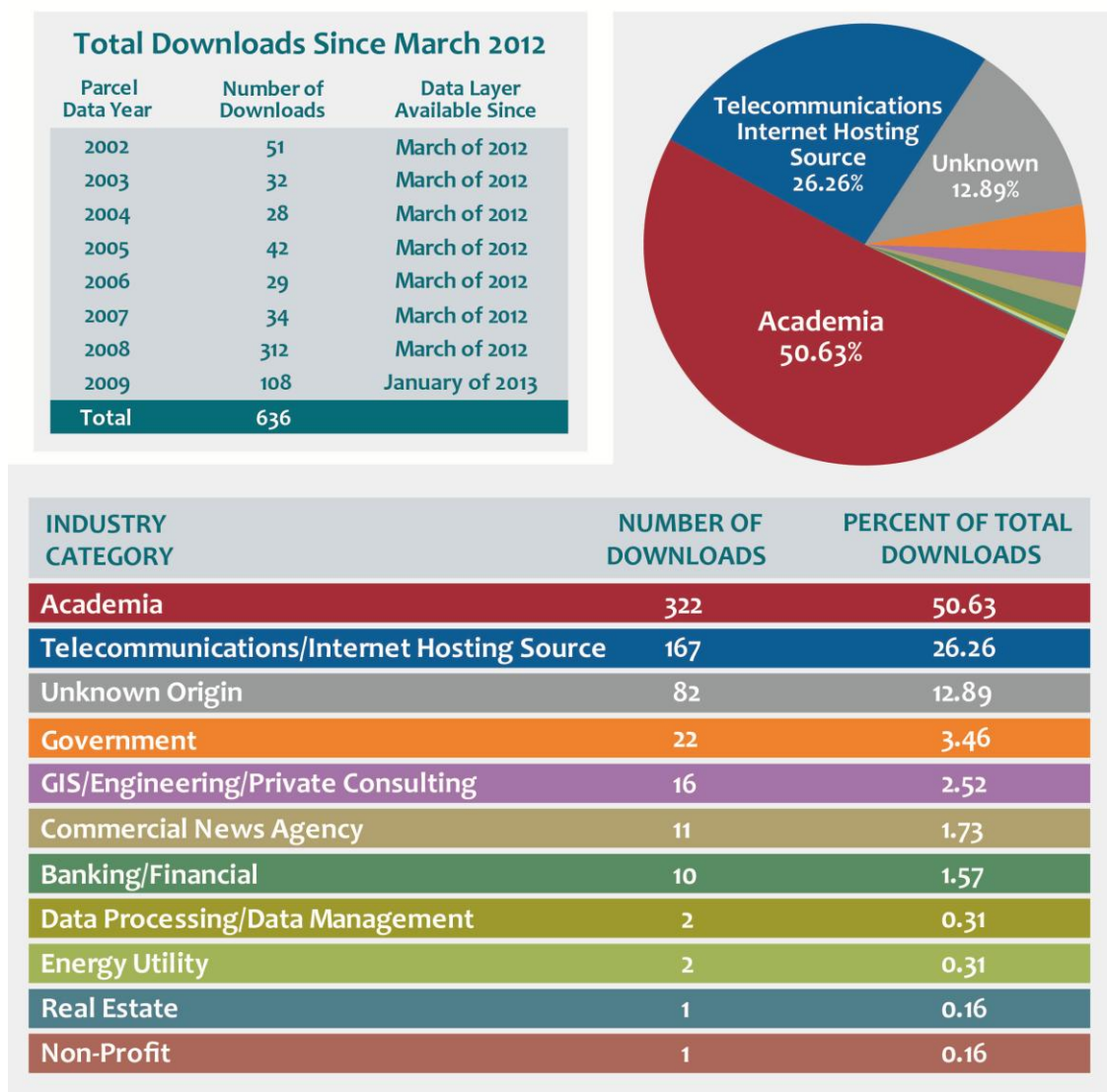
While the availability of the parcel data enhances government and academic usage and access of the parcel data, obstacles remain both for approved users and user communities directly involved in geospatial activities serving the public good. The present Regional Parcel Data Legal Agreement language hinders the flexibility of some approved users from fully utilizing the data to its potential (case example is found on page 16 in the Appendix), does not make the highest and best use of staff time in determining who does and does not qualify to gain access to the data (Appendix, p. 18) and prohibits the distribution of the data non-profits and community groups engaged in activities for the public good (Appendix, p. 19).

PART V: Results of Availability of the Three-Year Old (and Older) Parcel Data via MetroGIS DataFinder

“Old” parcel data downloads as a ‘test bed’ example of demand for data:

In January 2012, the Seven Metropolitan Counties agreed to make their old parcel data (aged three years old and older) publicly available without contract or fee. This data was aggregated and published for public download in March 2012 from the MetroGIS DataFinder website. The following tables summarize the industry categories that have downloaded the historic parcel data to date and provides some insight to the range of demand for parcel data.

Figure 3. “Old” Parcel Data Downloads from MetroGIS DataFinder since March 2012
Three-Year-Old and Older Parcel Data: 2002-2009



Calculated from MetroGIS DataFinder reverse proxy server, March 2013

Figure 4: “Old” Parcel Data Downloads by Year and Industry Category

Industry Category	Year of Parcel Data + Number of Downloads								Total By Industry
	2002	2003	2004	2005	2006	2007	2008	2009	
Academia	31	23	20	35	21	24	105	63	322
Banking/Financial	2	1	1	1	1	1	3	0	10
Commercial News Agency	0	0	0	0	0	0	11	0	11
Data Processing/Data Mgmt.	0	0	0	0	0	0	2	0	2
Energy/Utility	0	0	0	0	0	0	2	0	2
GIS/Engineering/Consulting	0	0	0	0	0	0	11	5	16
Government	5	1	1	1	1	2	9	2	22
Non-Profit	0	0	0	0	0	0	1	0	1
Real Estate	0	0	0	0	0	0	1	0	1
Telecommunications/Hosting	9	7	4	4	4	6	113	20	167
Unknown	4	0	2	1	2	1	54	18	82
Total By Year	51	32	28	42	29	34	312	108	636

Calculated from MetroGIS DataFinder reverse proxy server, March 2013

In sum, the data from Figures 4 and 5 indicate:

- The majority of historical downloads from 2002-2007 were from academia;
- The majority of downloads in 2008 were non-academia;
- The number of downloads of 2009 data (through March 26, 2013) are already significantly higher than all the previous historic years; with potential to exceed the 2008 downloads;
- Almost half of all downloads are non-academic and appear to be primarily interested in the most current data they can get;

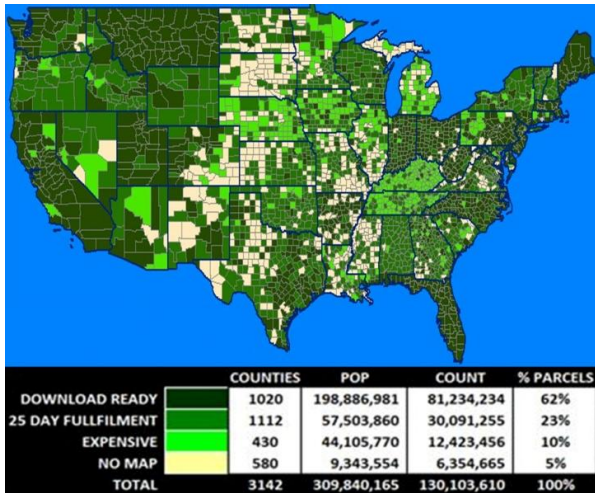
This data begs the question: *Are people downloading three year old data and using it as the most current source of parcel data because it's all they can afford, or can't otherwise justify the cost of obtaining current parcel data?*

PART VI: National Context

At the national level, the Federal Geographic Data Committee (FGDC) in the development of the National Spatial Data Infrastructure (NSDI) emphasizes the importance of local data, including parcel data. The recognition that many of ***the best datasets originate at the local level*** is the foundational underlying assumption—these data having tremendous utility for conducting and enhancing the work of state, regional, federal and other public agencies. The trend has been to continually identify gaps in the data of higher orders of government and develop collaborate means for filling those gaps to streamline the process of improved data capture.

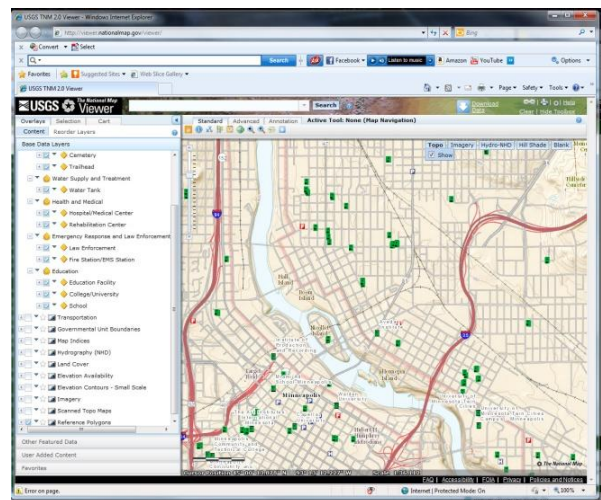
The map at right illustrates the general availability of parcel data throughout the 48 contiguous states. As clearly shown, Minnesota contains a patchwork of all four categories of availability from 'no map data' up to 'download ready' data suggesting a variation in policy and practice regarding data.

Figure 5: National Parcel Map Data, March 2013



The second map (lower right) is a sample image from the U.S. Geological Survey National Map Viewer, which provides access to all eight primary data themes of the U.S. National Map, a key example that services of this kind offered nationally are better enhanced with the inclusion of data from the authoritative (local) source.

Figure 6: USGS National Map Example



In Minnesota in 2008, the FDGC funded (via Cooperative Agreements Program Grant) the Minnesota Structures Collaborative project to develop the partnerships and technical capacity for the collection and maintenance of a structures inventory. Key uses of this data include the improved ability for emergency services response and efficient decision making when multiple jurisdictions the same core data.

In sum, continued work and practice reveals that the increased ability for regional, state and federal entities to consume locally produced authoritative data maximizes efficiencies and results, ultimately, in better government.

Questions for consideration:

Are the policies and practices presently in place regarding data availability serving the best and highest aims?

Are there other advantages we are not aware of or benefiting from that we could be capturing by making our data more readily available and consumable?

PART VII: Conclusions

(1) Counties make a considerable investment of public funds in GIS Data;

The creation and maintenance of GIS data is often an expensive process, but one that is also essential to many functions of County Government. For this reason, counties implemented methods to recover costs incurred in GIS data development and distribution. However, even with the current fee structures, County Government has made, and continues to make, a significant investment in GIS data.

(2) Public Capacity to leverage this investment is growing;

Since the current data distribution policies were developed there have been significant increases in computing technology in general, GIS technology in particular, and the technical capabilities of the general public. In addition, there are many more tools for analyzing and displaying GIS data, including multiple free options. These changes combine to create a much greater capacity to use GIS data by corporate, government, and non-profit entities, as well as private citizens.

(3) Free and open data access is a key factor in leveraging this investment;

Decisions will be made by public and private entities based on the data available at the time the decision needs to be made. In as much as the cost of GIS data limits availability, particularly for smaller organizations or private citizens, it limits their capacity to make the best decision. In addition, since the value of data is derived from its use, the County limits the return on the public dollars it invested in the GIS data.

(4) Challenges can be overcome, but not without organization-wide commitment;

Open and free access to data requires a realization of the broad benefits of this activity, and a commitment from the County to actively address the associated challenges. Several of the challenges may be mitigated through procedures already familiar to the counties: data disclaimers, appropriate data practices measures, etc. Other challenges are simply accepted as part of providing a better service, such as the realization that costs incurred by a particular business unit may not be directly repaid to that unit. Replacing the revenues collected by the sale of GIS data, regardless of where that revenue ended up, is one of the more difficult challenges to address. Counties that desire benefits accrued to their citizens, businesses, schools, and other institutions through free and open access to data must be willing to make decisions regarding how to fill the gap in funding that this loss of revenue creates.

(5) Government GIS data should be available to everyone, not just those who can afford it or only for the large projects with sufficient return-on-investment to justify it;

Data fees limit potential uses of the data.



DOCUMENT 1: APPENDIX

Detailed Summaries: Examples of Existing Restrictions Affecting Use and Distribution of the MetroGIS Regional Parcel Dataset

Example 1: Applications Development Example

Metropolitan Council's Livable Communities Act Grant Program Web Application

In order to support the **Metropolitan Council's Livable Communities Act Grants Program** (<http://www.metrocouncil.org/services/livcomm.htm>) the Community Development Division of the Council asked Council GIS staff to **produce a web mapping application that would support grant applicants**. The web mapping application would provide the tools and information necessary to create maps required to be submitted with LCA Grant applications.

The main functions of the map are:

- To allow the user to sketch a project area on the map;
- Create printed maps of the project area to be submitted with the application;

One additional requirement was to **show the applicant a list of PIN numbers intersecting with the project area for the application**. The Council perceived that many applicants, which are largely cities and surrogates of cities, would track their project areas by parcels.

Showing a list of PIN numbers intersecting the project area would give the applicant a chance to confirm that their sketch matches their project area and move forward with the application, or go back and adjust the sketch.

A simple technical solution would be to create a web service that takes as input a sketch area and the parcel polygons, makes a geometric comparison of the sketch area with the parcel polygons and finally return a list of the intersecting parcel's PINs. This solution would have been pursued, **but for the restrictions to the Council's use of parcel information and distribution over the web:**

*"The Council, as a Licensed User, is granted the right to host Internet Mapping Applications that incorporate the Regional Parcel Dataset **so long as the Council restricts users of such Internet Mapping Applications to View Only Access.***

*"'View-Only Access' means a mechanism making geospatial data accessible by non licensees via an Internet Mapping Application **where such access does not permit the source data to be downloaded in its native format** (e.g. shapefile) but rather viewed online or downloaded only as an image for which there are no restrictions on its use."*

Given our existing technology and the parcel agreement language prohibiting downloading source data in its native format, we **determined that exposing the parcel geometry and PIN number to web requests would, in effect, make it available to be downloaded in its native format.**

Technical staff involved with the project considered four alternatives to meet the requirement:

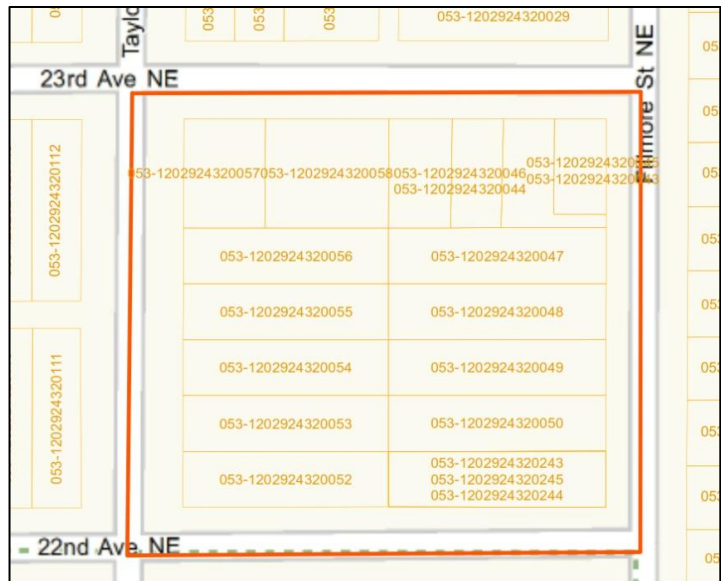
- (1) Deploying a secure parcel service and requiring applications to sign a parcel agreement;
This was never a realistic solution as it would be impractical to administer a user registration program specifically for this application.
- (2) Building a solution which hides the parcel information and performs the geometric comparison in a closed process;

Technical staff estimated this solution as 40+ hours of development time.

- (3) Using three year-old parcel data, which is not restricted from distribution;
This solution was not pursued as it may have led to confusion caused by differences between the applicant's current list of PINs and the list returned by the geometric comparison against three year old data.
- (4) Printing pin numbers on the map and relying on the applicant to make the geometric comparison visually, the geometry and PIN numbers can be viewed but cannot be downloaded;
This is the solution the Metropolitan Council GIS staff settled on and has implemented.

The implemented solution was satisfactory to the Community Development Division and is a comparatively inexpensive solution. ***However, it was time consuming to analyze the options with respect to the restrictions imposed by the parcel use agreement and arrive at this conclusion.***

Also, a workaround solution such as this, ***which were performed solely to meet the restrictions of the Regional Parcel Data Legal Agreement*** may lead to operational costs down the road during the grant awarding process.



If applicants using the on-line viewer and application misread the maps or are not thorough in their comparison, time consuming follow up conversations about the intention of their sketches are inevitable.

The example (*above right*) shows a resulting map of after using the web mapping application to delineate an area and determine which parcels are to be found in the area. The original parcel geometry or PIN numbers cannot be downloaded, however, both parcel boundaries and parcel identification numbers can be viewed.

Example 2: Distribution to Quasi-Governmental Agencies and Institutions Example: Federal Reserve Bank of Minneapolis Parcel Data Request of 2012

In June 2012, the Federal Reserve Bank of Minneapolis submitted a request to MetroGIS for access to the Regional Parcel Dataset. The Federal Reserve Bank of Minneapolis intended to use the data in its research, trend analysis and for enhancing its non-profit and local government assistance programs.

After review of the application, MetroGIS agreed that the purposes for which the Federal Reserve Bank of Minneapolis were intending to use the parcel data was within the ambit of the 'Governmental Interest' provisions of the Regional Parcel Dataset Agreement. There are clear benefits for the metropolitan region to enable the Federal Reserve Bank of Minneapolis to have access to the data and use it for its intended purposes.

However, since the Federal Reserve Bank of Minneapolis *is not legally a government agency*, (it is legally defined as a 'federal instrumentality'; a private concern acting in accord with a federal charter) MetroGIS could not legally release the data directly to the Bank under the current provisions of the Regional Parcel Dataset Agreement. In our research and analysis, the only means for MetroGIS to get the data to the Bank was to release it to the Federal Reserve Board in Washington D.C., which then enacted a Third Party Agreement with the Federal Reserve Bank of Minneapolis.

MetroGIS staff, as well as GIS staff and legal staff from the Metropolitan Council committed a combined total of **over 45 hours of staff time** to the review, research, correspond with the requestor and conduct follow up on how to handle this unique, quasi-governmental agency situation.

If the parcel data were freely available, this level of effort would not have been necessary.

Example 3: Distribution of Data to Non-Profits Engaged in Public Good

Examples of public purpose conducted and served by non-government agencies using GIS;

Introduction:

GIS use is becoming an increasingly common and powerful tool deployed by the non-profit sector and community action realm to address a variety of societal issues. Non-profit organizations are engaged in diverse fields such as social and environmental justice, community organizing/community action, environmental review and protection, fair and equitable housing, public health and legal advocacy for under-represented groups. Making use of GIS technology enables them to conduct their analysis, strengthen their message and sharpen their case for the betterment of society.

(A) Non-profit parcel data access example:

Non-profit entities in the Twin Cities are at present, unable to acquire the current Regional Parcel Dataset for free under the existing legal agreement facilitated by MetroGIS between the Seven Metropolitan Counties and the Metropolitan Council.

At present, if a non-profit wishes to acquire the data they must approach each of the county GIS departments individually and:

- Directly purchase the data (the price of which is generally cost prohibitive to the budgets of non-profits) or;
- Establish sponsorship of their use of the data by a government entity to qualify for a third party consulting license.
- Provide exhaustive documentation as to their intended use of the data, verify and document their status as a non-profit and to also verify their technical capacity and ability to safe-guard the data behind a firewall;

Additional requirements vary between agencies providing data, but may include:

- Controls on the subsequent range of uses and the sharing of the data;
- Controls on the display and publication of the data;

Finally, a parcel data acquisition from the county by the non-profit is a 'one time' event, and subsequent updates (for example, getting data for the next year to update a study or report) would require an additional round of application and submittal as well as additional county staff time for review and processing.

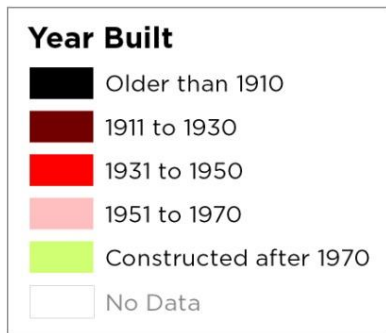
These controls were originally intended to curb and inhibit the liability to the county, however as discussed above, government agencies are protected from common errors which may occur in the data and clear disclaimer language can be agreed to by the non-profit prior to its receipt and usage of the data.

(B) Case of the parcel data used by the non-profit sector for public benefit

The following are two very simple examples of non-profit usage of the parcel data with clear public benefit.

Case 1: Lead Paint Abatement to Protect Children’s Health

Lead exposure is one of the most common preventable poisonings of children. Data from the Center for Disease Control (CDC) show that 6% of all children ages 1-2 years and 11% of black (non-Hispanic) children ages 1-5 years have blood lead levels in the toxic range.



Growing children are especially vulnerable because their rapidly developing nervous systems are particularly sensitive to the effects of lead. ***Housing built before 1970 has the greatest risks of containing lead-based paint.***

Parcel data (*containing year of construction*) used in concert with Census data (*containing demographic and economic data*) are an effective way of targeting neighborhoods, blocks and properties for programs involved in lead paint abatement and home improvement.



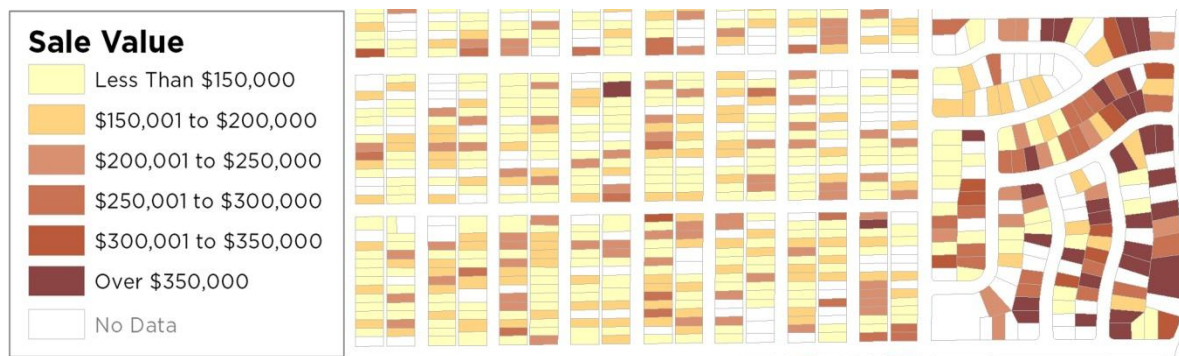
The map (above) clearly illustrates the distinction in age of housing between suburban Golden Valley (at left) and the older housing stock of North Minneapolis (at right).

Case 2: Housing Value Analysis for Affordable Housing

Without a diverse set of reasonable housing choices, an entire community suffers. Maintaining both the predictability and stability of the housing market keeps neighborhoods, families and the fabric of the city intact. 'Affordable housing' is generally defined as the cost of housing plus utilities that costs no more than 30% of a household's income. Determination of affordable housing, and the ability to target neighborhoods or portions of the city for the enhancement of existing housing stock or the development of new housing stock *is best facilitated by having the most current data.*

Businesses want to know that their workers will be able to afford to live near their workplace. Having a diverse inventory of housing options strengthens a city's competitive position in attracting and retaining businesses.

Neighborhoods benefit when fewer low-wage workers must commute longer distances to work; reduced travel time for workers equates to less traffic congestion and increasing time spend with families and in their community.



Schools benefit when in a stable community where children are able to remain at the same school and the school district can count on stable average daily attendance to plan and budget more effectively.

Environmental benefits result as many affordable home developments are more compact and use their lots more efficiently. When affordable housing is targeted for 'in-fill' locations the community also reduces vehicle miles traveled, greenhouse gas emissions and pressure on open space amenities.

Family and community ties strengthen from better housing choices being made available and developed. Parents, adult children and grandchildren who have options for living near one another can maintain stronger relationships and provide mutual support. When older adults can afford to remain near family, friends or in assisted living, there are more opportunities for socializing.

Economic benefits are also evident; when a family moves into an affordable home the savings realized can be spent on other basic necessities, goods and services, pumping more revenue into the local economy. In the Twin Cities metropolitan region, there are numerous non-profit and community organizations engaged in affordable housing development and maintenance, a few include: Habitat for Humanity, The Community Stabilization Project, The Housing Preservation Project, Metropolitan Interfaith Coalition on Affordable Housing (MICAH), ISIAH-Faith In Democracy, HousingLink and CommonBond Communities.



DOCUMENT 2 RESEARCH ON “FREE & OPEN ACCESS TO DATA”

EXISTING PRACTICE INTERVIEWS

INTERVIEWS WITH CITY & COUNTY GOVERNMENT GIS STAFF ON EXISTING FREE & OPEN DATA ACCESS PRACTICES

Submitted to the **MetroGIS Policy Board** on **October 23, 2013**

Compiled and edited by:

*Geoff Maas, GISP
MetroGIS Coordinator
390 Robert Street North
St Paul, Minnesota 55101*

*651.602.1638
geoffrey.maas@metc.state.mn.us*

www.metrogis.org

Interview with County Government GIS Staff on Existing Free & Open Data Practices

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Introduction. *As part of the on-going research on existing county government practices on free and open data in Minnesota, GIS professionals from several counties both in and outside of Minnesota were interviewed. These counties were selected **based on their existing practices of making their geospatial data—including parcel data—freely available to the public** without charge or licensure. This document is provided with the primary intention of being a reference resource for the MetroGIS Coordinating Committee and Policy Board to inform their discussion on the topic of Free and Open Data in the Seven Metropolitan Counties and the State of Minnesota. Sample disclaimer language in use by each county interviewed is also provided.*

For their time in sharing their insights and experience, sincere thanks are due to the interviewees: Beth Johnson, Mark Sloan, Jon Fiskness, Barbara Maginot, Eric Spangenberg and Barbara Bartlett.

Summary Statement. In reviewing the responses of the interviewees, several core trends emerge which foster making data freely available:

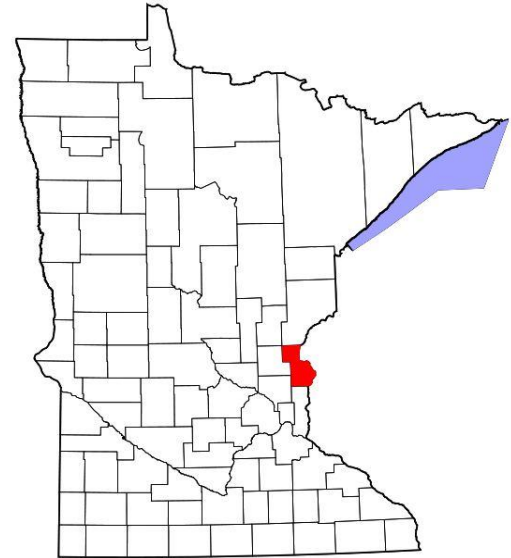
- Where present, state statutes providing for open data protect and support the efforts of counties and municipalities to share their data and provide the legal framework under which counties can operate freely to distribute their data;
- Where no state policy or statute language is available, disclaimer language—has to date—provided sufficient protection to the counties who provide their data freely;
- No county interviewed has been subject to legal action regarding any aspect of their data availability, practices or policies since making its data freely available;
- Recurring benefits mentioned by county staff of making their data freely available include: significantly reduced staff commitment for processing requests, the authoritative data being readily available, better inter-departmental and inter-governmental integration and a recognition of overall government transparency and efficiency;

CHISAGO COUNTY, MINNESOTA

CHISAGO COUNTY DISCLAIMER LANGUAGE: *Chisago County, Minnesota, makes no representation or warranties, express or implied, with respect to the use or reuse of the data provided herewith, regardless of its format or the means of its transmission. THE DATA IS PROVIDED "AS IS" WITH NO GUARANTEE OR REPRESENTATION ABOUT THE ACCURACY, CURRENCY, SUITABILITY, PERFORMANCE, MERCHANTABILITY, RELIABILITY, OR FITNESS OF THE DATA FOR ANY PARTICULAR PURPOSE. Chisago Co., MN, shall not be liable for any direct, indirect, special, incidental, compensatory or consequential damages or third party claims resulting from the use of this data, even if Chisago Co., MN, has been advised of the possibility of such potential loss or damage. This data may not be used in states that do not allow the exclusion or limitation of incidental or consequential damages.*

Chisago County GIS Manager: Beth Johnson (651.213.8213)

Interviewed via phone 8/20/2013 by G. Maas, MetroGIS Coordinator



Which county department are you a part of?

B. Johnson: *GIS is a part of the Chisago County IT department;*

How long have you made your parcel data freely available?

B. Johnson: *To my knowledge it has been freely available at least for the last five years (since 2008), perhaps as many as seven years (since 2006);*

What was the decision process to make the parcel data publicly available?

B. Johnson: *It was really driven by a question from one of our county administrators who realized that the cost of administering the licenses and fulfilling requests was greater than the revenue generated; we realized that we could just put the data up there for free with a disclaimer and save ourselves from staff having to handle licenses and so on;*

What were the perceived benefits of making your data publicly available?

B. Johnson: *Initially it was saving staff time and those associated costs with that, however, we realized we had no way to actually track how the data was being used or to enforce the license agreement. Also, having the data available simply eases public access.*

Have you encountered a significant loss of revenue from sales of the parcel data?

B. Johnson: *No, we actually save staff time and effort by just making it freely available for download through our viewer.*

Do you work directly with your county surveyors/survey department in preparing the data, or do you process it entirely in GIS after they have collected it?

B. Johnson: We have a bit of a 'back-and-forth' process between the departments; but we are usually able to perform a nightly merge with new data up on our viewer for download as soon as it is ready.

Do you perform any scrubbing or redacting of data prior to making it publicly available? (such as judges, members of law enforcement, crime victims, etc.)

B. Johnson: We do not actively remove any data here in the GIS department, this may happen at the Auditor's Office level, I don't know for sure;

Despite your clear and well articulated disclaimer language, has anyone ever sued the county over the parcel data?

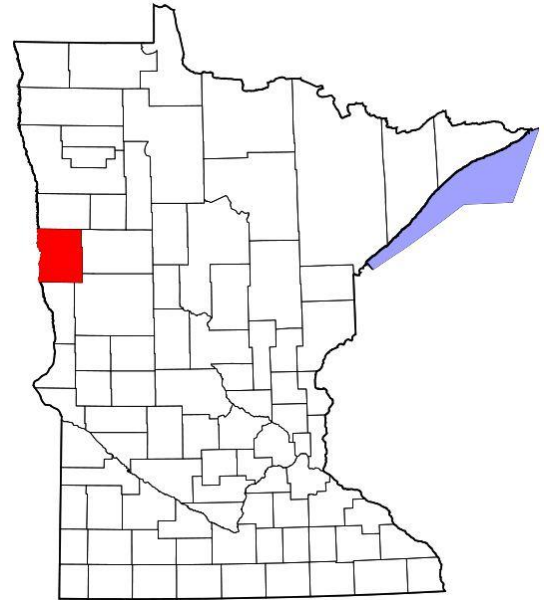
B. Johnson: No. We make very clear that this is not a legal survey document and shouldn't be used in the same way you would use an official plat.

When a resident contacts you with a discrepancy or error, what is the process of correction?

B. Johnson: Depending on where the point of contact is, they will usually contact the County Surveyor's office and the change will enter the system there. If they contact GIS, we would contact Survey; this is actually pretty rare for us.

CLAY COUNTY, MINNESOTA

CLAY COUNTY DISCLAIMER LANGUAGE: *The GIS material is made available as a public service. Maps and data are to be used for reference purposes only and Clay County, Minnesota, is not responsible for any inaccuracies herein contained. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided. GIS information is in the public domain and may be copied without permission; citation of the source is appreciated. The information contained on the cadastral maps is used to locate, identify and inventory parcels of land in Clay County for reference purposes only and is NOT to be construed or used as a "legal description." Map information is believed to be accurate but accuracy is not guaranteed. Any errors or omissions should be reported to Clay County GIS. In no event will Clay County be liable for any damages, including loss of data, lost profits, business interruption, loss of business information or other pecuniary loss that might arise from the use of maps or the information they contain.*



Clay County GIS Manager: Mark Sloan (218.299.5003)

Interviewed via phone 8/20/2013 by G. Maas, MetroGIS Coordinator

Which county department are you a part of?

M. Sloan: *We are part of Information Services and have been for the past 10 years, prior to that, we were in Central Administration.*

How long have you made your county's parcel data and other data freely available?

M. Sloan: *We have made our data publicly available since 1999 (14 years).*

What was the decision process to make the parcel data publicly available?

M. Sloan: *We create and maintain this data for county needs, but also with the recognition that this is a public service; that we develop and maintain this data on behalf of the citizens; the best way of doing that was to remove obstacles and make it free. Once we had our parcel viewer up and running, we also realized that making the background data itself available on an FTP site was simply good public service. It doesn't cost the county anything to give the data away.*

What were the perceived benefits of making your data publicly available?

M. Sloan: *One big benefit was the savings of staff time, but also the service aspect, making it easy for the data to be acquired.*

Have you encountered a significant loss of revenue from sales of the parcel data?

M. Sloan: *No, on the contrary, we've saved enormous amounts of staff time. Our staff is freed up from handling and processing requests for data by simply directing all comers to the downloadable data.*

Do you work directly with your county surveyors/survey department in preparing the data, or do you process it entirely in GIS after they have collected it?

M. Sloan: At this time we do not have a county surveyor in Clay County, the county will contract with a Registered Land Surveyor as needed.

Do you perform any scrubbing or redacting of data prior to making it publicly available? (such as judges, members of law enforcement, crime victims, etc.)

M. Sloan: No, we do not. The taxpayer name appears with the parcel. It is important to remind people that these are public documents; anyone can come to the courthouse and request access to them.

Despite your clear and well articulated disclaimer language, has anyone ever sued the county over the parcel data?

M. Sloan: No, we make clear that the GIS data is not a legal record; the GIS data is a representation of a legal record.

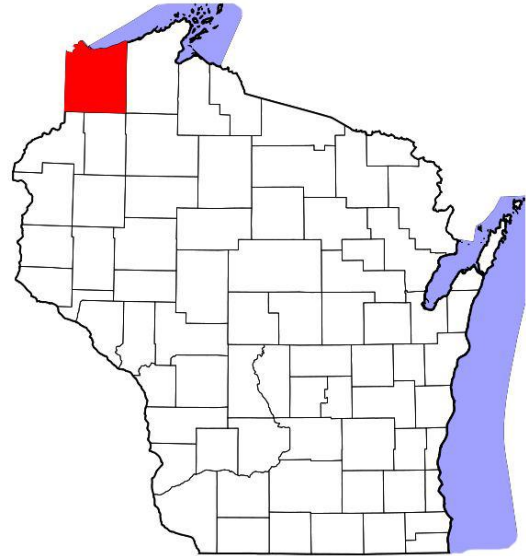
When a resident contacts you with a discrepancy or error, what is the process of correction?

M. Sloan: We would verify the known legal documents, surveys and deeds to confirm that we have accurate data and compare that to whatever information the taxpayer brings in.

DOUGLAS COUNTY, WISCONSIN

(Joint GIS data program with the City of Superior)

CITY OF SUPERIOR/DOUGLAS COUNTY DISCLAIMER: *The City of Superior/Douglas County prepares and uses this data for its own purposes. This data displays general boundaries and may not be appropriate for site specific uses. The City/County uses data believed to be accurate; however, a degree of error is inherent in all maps. This data is distributed "AS-IS" without warranties of any kind, either expressed or implied including, but not limited to, warranties of suitability to a particular purpose or use. Detailed on-the-ground surveys and historical analysis of sites may differ substantially from this data. The user of the provided information may find it desirable and beneficial to consult other sources and engage professionals to analyze, and provide advice relating to, the information made available by the City/County and other data sources.*



City of Superior GIS Coordinator: Jon Fiskness (715.395.7423)

Interviewed via phone 8/22/2013 by G. Maas, MetroGIS Coordinator

What kinds of policy decisions led up to the City of Superior and Douglas County working together on geospatial data?

J. Fiskness: *It really simply began with the city (of Superior) hiring the county's GIS person to work for them, who was my predecessor. Instead of losing that institutional knowledge, they worked toward combining the effort for both city and county; we now have a formal Joint Powers Agreement between the city and county to co-manage and co-fund the geospatial data; so far it has worked really well, both governments are pleased with how it works.*

How long have the city/county made their spatial data freely and publicly available?

J. Fiskness: *For about three years now; the data has been public since around 2010; it took about six months of pretty serious discussions and negotiations between city and county before they agreed to release it.*

What was the decision process to make the parcel data publicly available?

J. Fiskness: *The City of Superior began making the parcel data (within the city limits) freely available to the public. Douglas County—who creates the parcel data for the county, including those parcels inside the city—questioned this and protested this as at that time they were selling the entire county parcel dataset for \$5000.00. The city made the case that the city and county are merely stewards of the data, and that the public owns the data. As stewards, public agencies have the responsibility to make it available. With the support of the City of Superior's attorney, we were able to convince the county that making the data freely and publicly available better protects us from liability than charging for it or holding it back.*

What were the perceived benefits of making your data publicly available?

J. Fiskness: *Significant decreases in staff time for fulfilling requests and answering questions. In 2008, we were exceeding 200 hours a year on average of staff time to fulfilling data*

requests and processing paperwork, we are down to less than 12 hours a year now for that kind of activity. Also, we know there is an economic development advantage of making our data available. Enbridge (the Calgary, Alberta-based oil and natural gas pipeline company) has told us that we (Superior/Douglas County) have the best and most easily accessible GIS data of all the counties they work with in the United States. We have no problem with private businesses acquiring and using the data to turn a profit, that has a multiplier effect that is good for all of us.

Have you encountered a significant loss of revenue from sales of the parcel data?

J. Fiskness: Not really. Douglas County used to charge \$5000.00 for the entire data set, but only large entities such as Burlington Northern Railway and a few major utilities were interested and had the financial ability to purchase it. Since these major players didn't purchase it consistently every year, the sale of the parcel dataset could not be counted on as part of the county's budget.

Early on, the railroads or utilities would request only the parcels along one of their facilities; the charge for the staff time, processing and delivery of that data along a requested corridor would actually exceed the \$5000.00 for the entire county. Now that we have made the data publicly available, we don't hear from these folks at all, they just go help themselves.

I will mention that Douglas County still takes in around \$16,000 a year selling its (hard copy) plat book which we create and publish every other year.

Do you work directly with your county surveyors/survey department in preparing the data, or do you process it entirely in GIS after they have collected it?

J. Fiskness: We jointly manage the parcel data with the Douglas County surveyor's office, our county surveyor himself has become an enthusiastic user of GIS; we maintain an excellent relationship with the survey department and it makes our work flow much easier.

Do you perform any scrubbing or redacting of data prior to making it publicly available? (such as judges, members of law enforcement, crime victims, etc.)

J. Fiskness: No, we do not. Unless we are directed by (Wisconsin) state law to do so, we do not remove any data from the parcel dataset, this is data is part of the public record, it is our job to make it available.

Despite your clear and well articulated disclaimer language, has anyone ever sued the county over the parcel data?

J. Fiskness: No, never. Previously when we would custom process the data, fulfilling requests one way for an engineering company, another way for another requestor, etc. our attorney stated that we should just put the data out there with a disclaimer, let them do the processing so we don't get sued for not being consistent in our delivery. He said, "I don't want to end up in court for this, let's just put it out there...". By making our data freely and publicly available, we maintain transparency and a consistent practice that we believe actually protects us from liability.

VOLUSIA COUNTY, FLORIDA

VOLUSIA COUNTY DISCLAIMER STATEMENT: *Volusia County makes no warranty, explicit or implied, regarding the use of this information. Use at your own risk. This is not to be used in place of a survey.*

Volusia County GIS Project Leader:

Barbara Maginot (386.736.5973, x. 12442)

Interviewed via phone 8/23/2013 by G. Maas, MetroGIS Coordinator



Which county department are you a part of?

B. Maginot: *There are GIS staff placed in nearly all of the county departments, however, we fall under the umbrella of IT; we are part of the IT budget.*

How long have the county made their spatial data freely and publicly available?

B. Maginot: *Since the early 1990's at least, we used to sell it many years ago, but it took a lot of staff time to administer the sales.*

What was the decision process to make the parcel data publicly available?

B. Maginot: *We have the 'Sunshine Law' here in Florida which pretty much prohibits us from charging for or holding back any public data, and that has been interpreted to include GIS data. If taxpayer dollars have paid for it, it needs to be public. There was a case some years back where a private company sued a county that was charging them for data. That company was acquiring data from many counties and re-selling it. They found that counties couldn't charge for data, and to my knowledge all Florida counties all give their data away now under state law.*

(Note: Ms. Maginot is referring to the case [Microdecisions, Inc. v. Skinner, 2004](#))

What were the perceived benefits of making your data publicly available?

B. Maginot: *The big one is staff time for sure, we save the equivalent of at least 2 full time employees of not having to process data sales the way we did a long time ago. I know the real estate industry loves the fact that they can get what they need, parcel data with property and improvement values and so on. Also, we put up a lot of other data and private interests make use of. One example is fire hydrant data. Insurance companies were constantly asking things like 'how far is this structure from a fire hydrant' for their insurance rating scoring; now they can just grab the data and do that analysis themselves.*

Have you encountered a significant loss of revenue from sales of the parcel data?

B. Maginot: *No. We put this out there as part of what we are expected as a county government and do not receive money for it; it's all just public data. We can charge for time and materials if a resident or company wants us to produce a paper map, but never for the data itself.*

Do you work directly with your county surveyors/survey department in preparing the data, or do you process it entirely in GIS after they have collected it?

B. Maginot: It all comes through the Property Appraisal Department, county surveyors deal with the specifics of survey work, mostly roads and bridges and such. Property Appraisal drives the creation of the legal work and is the origin of the data.

Do you perform any scrubbing or redacting of data prior to making it publicly available? (such as judges, members of law enforcement, crime victims, etc.)

B. Maginot: My understanding is that this happens at the Property Appraiser level, prior to us in GIS receiving the data. We do not actively scrub or redact data in our GIS department at the county; this happens before it gets to us. Under Florida state law, there are exempted classes that are removed from public record.

(Note: Ms. Maginot is referring to the exemptions in Section 119 of the Florida State Statutes which lists classes exempted from public records)

Your county has minimal disclaimer language on its website; has anyone ever sued the county over the parcel data?

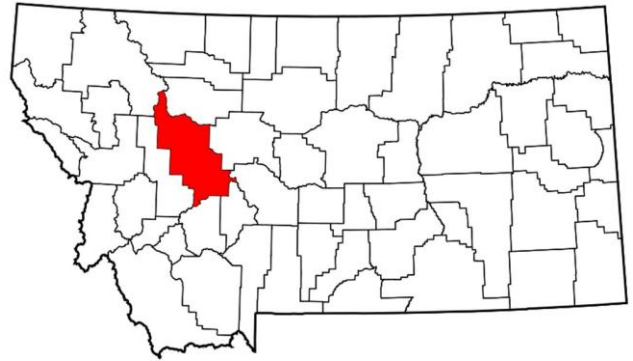
B. Maginot: Not to my knowledge, and it is very unlikely we would given the Sunshine Laws which cover open data availability in Florida.

When a resident contacts you with a discrepancy or error, what is the process of correction?

B. Maginot: Errors are routed to and handled by our Property Appraisal Department; they review plats and legal documents relating to real property and resolve any discrepancies that arise or are brought in by a property owner. In Volusia County and I suspect all of Florida, all those legal documents are public records as well.

LEWIS & CLARK COUNTY, MONTANA

LEWIS & CLARK COUNTY DISCLAIMER: *The data contain on this map are NOT the official records and may be inaccurate and incomplete. Original and official copies of deeds, surveys, plats and ownership information, are available at the Lewis & Clark County Clerk and Recorder Office. By using the GIS information, the user acknowledges and accepts full responsibility for verifying the correctness and the completeness of any of the information provided here.*



The City of Helena and Lewis & Clark County do not warrant, either explicit or implied, the completeness or accuracy of the information provided. Additionally, the city and county accept no liability of any kind, including but not limited to any losses or damages that may result from the wrongful reliance on this information, and the user also accepts full responsibility for any subsequent use or re-use of the data, and shall be solely responsible for results or any damages which may result from the use of any of these data. This map does not necessarily depict road ownership or maintenance, either public or private. Nor, does it necessarily depict all roadways in the county.

The data shown in this map were derived from various sources at different scales for a variety of purposes, and there is great variability in the spatial accuracy of the different datasets. Therefore, there may be some mis-alignment between data sets and layers.

Lewis & Clark County GIS Coordinator: Eric Spangenberg (406.447.8389)

Interviewed via phone 8/23/2013 by G. Maas, MetroGIS Coordinator

Which county department are you a part of?

E. Spangenberg: *We are part of the county's IT Office.*

How long have the county made their spatial data freely and publicly available?

E. Spangenberg: *It was prior to my becoming the county GIS Coordinator, but at least 10 years (since 2003) our parcel data has been available as a download.*

What was the decision process to make the parcel data publicly available?

E. Spangenberg: *It was likely driven by the Montana Open Records Law. Our state statutes mandate that public data created with public dollars be as fully accessible and available as possible.*

What were the perceived benefits of making your data publicly available?

E. Spangenberg: *Well, we are essentially mandated to do so and since we haven't sold data in so long, we don't miss the revenue, but I can say that it probably saves us a lot of staff time to just send folks to the website instead of handling requests. We have several large engineering firms here and when we acquire new LiDAR, aerial photography and such, we notify them and they send staff over with hard-drives and we just give it to them. This way we know they are working with the right data for contracts with the city or the county, we have no problem with them using the data for other clients. This openness is simply how we do business here, it makes everyone's life easier.*

Have you encountered a significant loss of revenue from sales of the parcel data?

***E. Spangenberg:** No, as we don't sell the data, it is not part of our budget. If we have to do any packaging or processing or custom map work, we are allowed to charge for that, but that is never more than say \$15-\$20 to burn a CD or DVD, we tend as much as possible to direct folks to the website and they get everything there.*

Do you work directly with your county surveyors/survey department in preparing the data, or do you process it entirely in GIS after they have collected it?

***E. Spangenberg:** Montana is different from states in the Midwest in that (except for four counties: Missoula, Yellowstone, Flathead and Gallatin) the state is centrally assessed. Parcel creation and maintenance are handled by the Montana Department of Revenue as part of the statewide cadastre. Our county survey department was rolled into the county's Clerk & Records Office years ago. We acquire our parcel data from the state's Department of Revenue.*

Do you perform any scrubbing or redacting of data prior to making it publicly available? (such as judges, members of law enforcement, crime victims, etc.)

***E. Spangenberg:** No, we do not scrub the data at the county level; if that is done it would be done at the Department of Revenue level. There was some discussion a few years back about removing judges and law enforcement and so on, however, nothing concrete ever materialized from it; at present we leave everything in.*

Your county has minimal disclaimer language on its website; has anyone ever sued the county over the parcel data?

***E. Spangenberg:** No, at least in my tenure here, we have never seen legal action against the county regarding the parcel data or any data; our disclaimer language and the state's Open Records Law have us covered.*

When a resident contacts you with a discrepancy or error, what is the process of correction?

***E. Spangenberg:** For us here in Lewis & Clark County, if someone reports an error or we find something, we report it up to staff at the state's Department of Revenue and they do the research and resolution on it. Any errors I have found and made them aware of have been resolved in the next iteration of the parcel data. The four exception counties (Missoula, Yellowstone, Flathead and Gallatin) may have some different in-house checking or method that I am not aware of.*

NEW YORK CITY

Comprised of the five counties of:

New York County (*Manhattan Borough*)

Kings County (*Brooklyn Borough*)

Queens County (*Queens Borough*)

Bronx County (*Bronx Borough*)

Richmond County (*Staten Island Borough*)

NEW YORK CITY PARCEL DATA DISCLAIMER:

Property Land Use Taxlot Output (PLUTO) and MapPLUTO are being provided by the Department of City Planning (DCP) on DCP's website for informational purposes only. DCP does not warranty the completeness, accuracy, content, or fitness for any particular purpose or use of PLUTO and MapPLUTO, nor are any such warranties to be implied or inferred with respect to PLUTO and MapPLUTO as furnished on the website. DCP and the City are not liable for any deficiencies in the completeness, accuracy, content, or fitness for any particular purpose or use of PLUTO and MapPLUTO, or applications utilizing PLUTO and MapPLUTO, provided by any third party.



New York City Department of City Planning

Program Manager: Barbara Bartlett (212.720.3505)

Interviewed via phone 9/17/2013 by G. Maas, MetroGIS Coordinator

Which department are you a part of?

B. Bartlett: We are part of the Department of City Planning;

How long has New York City made their spatial data and parcel freely available to the public?

B. Bartlett: Very recently; we just began freely releasing our data to the public in July 2013;

What was the decision process to make the parcel data publicly available?

B. Bartlett: It was a confluence of several factors. A key one was that our staff was responding to increasing numbers of FOIL (Freedom of Information Law) requests for the data; also we've had a push at the state level for policies on more open data in New York as a whole.

Some background on us here in New York City: We had digitized all the tax parcels, copyrighted the data, and sold them as a product to generate revenue for many years. The revenue generated was expected to offset the costs of producing and developing the digital data.

We worked closely with the City's Department of Finance to populate the taxlots with the assessment and tax data. When we sold the data, we charged licensing fees and required end users to sign license agreements and in some cases sub-license agreements if they were going to distribute it to any third party or additional users.

The closer we began to work with Department of Finance, the more we realized that this was public data and we couldn't maintain the controls under the copyright the way we had originally anticipated. We could maintain the copyright, but we still had to respond to FOIL requests.

(Editor's note: A key court case in New York, COUNTY OF SUFFOLK, NEW YORK v. FIRST AMERICAN REAL ESTATE SOLUTIONS [United States Court of Appeals, Second Circuit, 2001] found that public data producers in New York can maintain the copyright to their materials under New York law, however, retention of copyright does not absolve them of fulfilling Freedom of Information Law requests or preclude the data's acquisition, re-use or consumption by the public. Each state has different conditions for what kinds of copyright on data can be held and applied)

Additionally, we had practices like discounting the price of parcel data to other governments while still charging private companies a higher rate, and we found ourselves administering sub-license agreements (e.g. third-party agreements), where a private company such as ConEd (Consolidated Edison, a major utility supplying electricity to New York City) needed the data, and would need to allow their subcontractors to use it as well. We actually did sue someone back in the 1990s, they had purchased the data and were reselling it in violation of the license agreement they had signed. However, as it stands now, consumers may download and re-sell the data as we put it out there 'as is' with the disclaimer and no license agreement.

What were the perceived benefits of making your data publicly available?

B. Bartlett: The major benefit to us is the saving staff time, we are now just loading the data up on our website for all comers with no licenses to deal with or revenue to collect. Also, the consistency of practice, as we don't charge different rates to different consumers.

Have you encountered a significant loss of revenue from sales of the parcel data?

B. Bartlett: Yes, as we used to sell the data, we have had to negotiate with the City's Department of Finance to make up for the shortfall in our budget where the revenue used to come in from data sales, however, we now save significant staff time from no longer having to process the data sales and deal with license agreements, so the offset was reasonable. We indicated to them that we were working to provide a better service and remove obstacles to the data and comply with FOIL requirements, so it was less about revenue loss and more about efficiency.

Do you work directly with your county surveyors/survey department in preparing the data, or do you process it entirely in GIS after they have collected it?

B. Bartlett: The City's Department of Finance handles any work related to survey, we don't handle that here in Planning. I don't know if they have survey staff or contract with surveyors; my guess is that as New York City is so developed already, I don't know how much, if anything needs to be surveyed unless someone subdivides a lot; I really can't answer that question.

Do you perform any scrubbing or redacting of data prior to making it publicly available? (such as judges, members of law enforcement, crime victims, etc.)

***B. Bartlett:** No, we do not scrub or remove any data from the taxlot dataset, it is public data and we put it out there as it is.*

Your county has minimal disclaimer language on its website; has anyone ever sued the county over the parcel data?

***B. Bartlett:** No, so far we have not been sued or seen any legal action. We have only been making our data available since July (2013). It is highly doubtful that we would with the present policy climate for open data.*

When a resident contacts you with a discrepancy or error, what is the process of correction?

***B. Bartlett:** Any discrepancies brought by a property owner are routed through the City's Department of Finance, they handle any research or corrections in the data on their end of things in their database and that carries through to the data we publish on the website.*

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DOCUMENT 3
RESEARCH ON “FREE & OPEN ACCESS TO DATA”

PUBLIC DATA CASE LAW SUMMARIES

**SELECTED CASE LAW EXAMPLES FROM AROUND THE UNITED STATES
2001 – 2013**

Submitted to the **MetroGIS Policy Board** on **October 23, 2013**

Compiled and edited by:

*Geoff Maas, GISP
MetroGIS Coordinator
390 Robert Street North
St Paul, Minnesota 55101*

*651.602.1638
geoffrey.maas@metc.state.mn.us*

www.metrogis.org

Public Data Case Law Summaries

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Editors note: *The following seven case abstracts and ancillary material are intended to be **brief, informative, summary resources for the reference and usage of the members of the MetroGIS Policy Board and Coordinating Committee.** This document is not intended as, nor should be considered, an authoritative legal study or analysis of these cases. Direct quotes and original language from the referenced source material are reproduced herein for clarity and directness for the benefit of the intended audience; the editor claims no original authorship to the case review summary narratives presented.*

Parties interested in the full details of these cases are encouraged to seek out resources beyond this summary document. Source references are provided at the end of this document beginning on page 52.

Key lessons for Minnesota from the experiences and cases in other states:

In the case reviews presented in this report, the following concepts and trends can be seen, which are instructive to the discussion of the issue as it is explored and debated in Minnesota:

- In all cases, the public agencies (counties or municipalities) producing GIS data were enjoined in legal action for ***not making their data public*** rather than for making their data public and being taken to task for having it contain errors, exposing sensitive or protected populations or having unintended consequences for parties potentially represented in the data;
- In all cases where legal action was taken against a county or municipality to make its data publicly available, the county or municipality was ultimately directed to do so;
- Publicly-produced data in GIS file formats has been consistently defined as comprising a public record. The value of the data in ***GIS file formats enables the requestor to maximize its statistical, analytical and functional properties***. A public agency that provides the requested information in an analog (paper) or non-GIS software readable format (such as a PDF) significantly diminishes its functionality and usability to the requesting party;
- Publicly produced GIS data does not comprise a ‘trade secret’ and its release to public requestors does not jeopardize or diminish the security or integrity of the systems or agency from which it originates;
- Depending on a state’s statutes regarding copyright, a public agency may maintain a copyright to the data it produces, however, an agency maintaining a copyright to the data it produces does not absolve or relieve the agency from meeting its disclosure and data release requirements under Data Practices Requests or Freedom of Information Laws;
- Contracting with a private vendor for capture, storage and maintenance of public data (*and having that data accessible only through interaction with a contracted vendor*) does not relieve the public agency from fulfilling public data requests;
- Charging for or collecting fees for public data—while providing revenue to the agency or jurisdiction—***may not be fostering the highest public good from the investment in the data***. Large fees for access to data may exclude significant portions of the public from acquiring it. For example, a large, well-resourced real estate or utilities concern may be able to purchase entire county parcel datasets as part of its operating costs, but individual citizens or non-profits engaged in activity for the public good would be unable to afford the fees, resulting in a double standard.

**COUNTY OF SUFFOLK, NEW YORK v.
FIRST AMERICAN REAL ESTATE SOLUTIONS**
(United States Court of Appeals, Second Circuit, 2001)



Case Summary:

First American Real Estate Solutions originally requested tax maps and data from Suffolk County, New York. First American, a private real estate interest, would compile and re-sell public maps and data at a profit that it acquired in this fashion. Suffolk County sued First American under the Copyright Act of 1976 alleging that First American infringed upon its copyrights in its official tax maps by publishing and marketing those maps without Suffolk County's permission. First American moved to dismiss for failure to state a claim, arguing that New York State's Freedom of Information Law bars Suffolk County from asserting a copyright in its official tax maps.

The County's Claim:

*Suffolk County claims that its tax maps contain a substantial amount of original material, research, compilation and organization wholly original to the County and are **copyrightable subject matter under federal copyright law.***

Counter-claims asserted by First American Real Estate Solutions:

- 1) *The tax maps lack sufficient originality to qualify for copyright protection because **their content is dictated by state regulation;** (this was not upheld)*
- 2) *The tax maps are sufficiently analogous to judicial opinions and statutes **to be deemed in the public domain** from their inception and, hence, not entitled to copyright protection;*
- 3) *Freedom of Information Laws (FOIL) bars Suffolk County from owning a copyright in its tax maps. (this was not upheld)*

Key Finding:

*Public agency data producers in the State of New York **can maintain the copyright to their material** and **still be required to fulfill Freedom of Information Laws,** by providing their data to the public for re-use; holding copyright to the data and maps does not preclude its acquisition, re-use or consumption by the public.*

MICRODECISIONS, INC. v. SKINNER
(District Court of Appeals, Florida, Second District, 2004)

Case Summary:

Microdecisions Inc., a private company, compiles data for real estate in southern Florida and then sells the data via its website; its customers pay to retrieve plats, maps, property value data, etc.

Abe Skinner (appraiser for Collier County) claimed the County's data was copy written under federal law and refused to permit Microdecisions, Inc. unfettered use of the maps unless it agreed to a licensing agreement that required a royalty payment if the maps were used commercially.

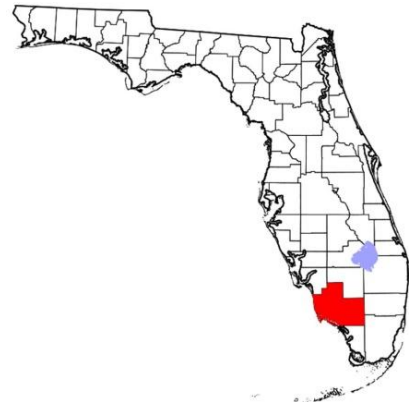
The case was before the Florida Second District Court of Appeal whether the Collier County Property Appraiser could require prospective commercial users of the records created by his office to first enter a licensing agreement; the court concluded he may not.

The County's Claim:

Collier County claims that its tax maps are public records that are copyrighted and require a commercial license and royalty payments if they are to be used by for-profit businesses.

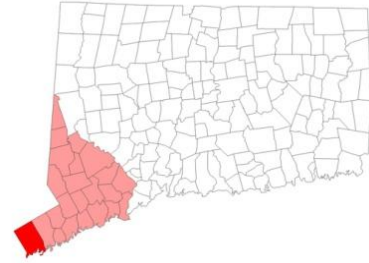
Key Finding:

Under the Florida State Constitution, Collier County (or any Florida county) has no right to claim copyrights to GIS data, which are public records, i.e. a county has no authority to assert copyright protection of GIS data or maps made from that data in light of State of Florida's open public records laws (a.k.a. the 'Sunshine Laws').



*Editor's note: Each state statute has its own interpretation of how its constituent agencies and jurisdictions can assert and protect the copyright of its created material. What is true in Florida and other states with 'open data laws' obviously does not apply in Minnesota. This topic is explored further in **Seago v. Horry County** (pp. 8 – 9) and please also refer to page 13;*

DIRECTOR, DEPARTMENT OF INFORMATION TECHNOLOGY OF THE TOWN OF GREENWICH v. FREEDOM OF INFORMATION COMMISSION
(Supreme Court of Connecticut, 2005)



Case Summary:

Town of Greenwich resident Steven Whitaker submitted a written request to the Town’s Board of Estimates and Taxation, asking for a copy of all GIS data including orthography, ArcInfo Coverages*, related GIS data and documentation created to support and define the ArcInfo coverages.

Whitaker was denied by the Town, citing Freedom Of Information Act (FOIA) General Statutes § 1-210 (b)(5)(a) concerning the exemption of the disclosure of **“trade secrets”** and FOIA General Statutes § 1-210 (b)(20) which exempts disclosure that would **“compromise security on an information technology system”**. Whitaker filed a complaint on this refusal to the FOIA Commission (Commission). The Commission hearing determined that neither FOIA Gen. Stat. § 1-210 (b)(5)(a) [*trade secret exemption*] nor FOIA Gen. Stat. § 1-210 (b)(20) [*system security*] applied; A final decision by the Commission ordered the Town to disclose the requested information to Whitaker, excluding any Social Security Numbers or medical information in the data (should it appear). Town appealed the Commission’s decision to the trial court. Trial court found the Town had failed to provide specific evidence that would demonstrate the application of (b)(5)(a) or (b)(20) and dismissed the appeal. Town then appealed to the Appellate Court claiming the trial court improperly determined the FOIA Commission was correct on the basis of ‘public safety’ in weighing the public interest, and that the ‘legislative history’ of the FOIA was intended to address exactly this kind of case. The Commission counters that the policy of the FOIA favors free access to government records and claimed that the trial court correctly balanced any possible safety risk against the public’s right to access the requested data. Further, the Commission argued that the right to information under FOIA P.A. 02-133 § 1 ***includes the right to access the data in the same computerized form that the government agency itself uses.***

The Town’s Claim:

The town’s GIS data is exempt from public disclosure because it contains ‘trade secrets’ and because ‘disclosure of the data would compromise the security of the information technology system’ on which it resides.

Key Finding:

Local government data does not comprise a ‘trade secret’, knowledge about the GIS data itself does not threaten the security of information systems on which it is maintained and is not a breach of public safety to make this data publicly available.

**An ESRI ArcInfo Coverage is a geo-relational data model that stores vector data; i.e., both the spatial (location) and the attribute (descriptive) data for geographic features;*

WIREDATA INC. v. VILLAGE OF SUSSEX (Supreme Court of Wisconsin, 2008)



Case Summary: The Village of Sussex contracted with Grotta Appraisals, LLC to conduct its assessments from January 2000 through December 2004 and store the data in a proprietary software and analysis package called MarketDrive. This MarketDrive software was developed and copy written by Assessment Technologies, LLC, who licenses copies of the software to appraisal businesses such as Grotta Appraisals, LLC.

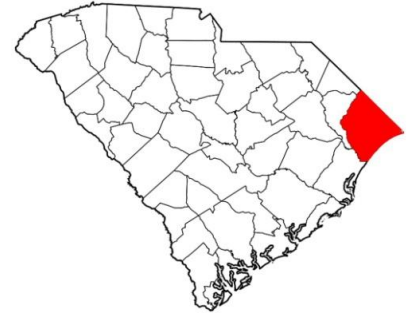
WIREDATA sought to obtain data regarding properties in the Village of Sussex for purposes of making the information available to real estate brokers. WIREDATA sent a letter to Sussex's counsel offering Wisconsin's Open Records Law as the legal basis for the request and for the potential mandamus action should Sussex deny its request. Sussex directed WIREDATA to Grotta Appraisals who in turn referred WIREDATA to Impact Consultants, Inc., the concern who programmed the MarketDrive software for Assessment Technologies LLC. A representative from Impact Consultants returned that the raw data used by MarketDrive cannot be copied and delivered because of the copyright and that significant costs would need to be incurred to make the data available. WIREDATA contacted Sussex's counsel declaring this response unacceptable as the costs were excessive. The Impact Consultant representative told Sussex's counsel that the WIREDATA request was not an 'open records request since Assessment Technologies is a private company, not a municipal government'. The Seventh Circuit Court held that:

- *The process of extracting the raw data WIREDATA sought from the MarketDrive software did not violate copyright law;*
- *That Assessment Technologies did not create the database it was seeking to sequester from WIREDATA, it only created the unpopulated database structure and the instructions for sorting the data into the database;*
- *That Assessment Technologies had no ownership or legal interest in the data collected by tax assessors, which the court emphasized were public domain and therefore no legal ground for making the acquisition of that data more costly for WIREDATA;*
- *That Assessment Technologies "is trying to use its copyright to sequester uncopywritable data, presumably in the hope of extracting a license fee from WIREDATA";*

The Village's Position: Sussex's counsel indicated that "[The Village of] Sussex is not involved and will not become involved in any aspect of this issue that might involve a business transaction or private interests of the parties, as [Sussex's] interest is only in ensuring that the public records laws are followed with regard to the public records request". The Village of Sussex was put in the **unenviable position of having access to its public data bound up in the technologies of its hired private contractors.**

Key Finding: Having private companies or contractors compiling, processing and/or being the sole point of access to public data for a public agency does not exempt that agency from its legal requirements of providing the data to fulfill public requests.

GEORGE H. SEAGO, III v. HORRY COUNTY
(Supreme Court of South Carolina, 2008)



Case Summary:

Seago and his company, Real Estate Information Services, Inc. collect GIS data from various governments in South Carolina and allow customers, including real estate developers, realtors, mortgage companies, appraisers, attorneys and others access to the information from the website for a fee.

Horry County’s GIS Department developed a digital database system of the entire county for an initial cost of \$7.5 million dollars, with an estimated \$1 million in annual update costs. To protect its investment and the integrity of the data from manipulation or alteration by subsequent users, Horry County applied for copyrights for its planimetric data layers and orthography.

Seago made an initial FOIA request for the orthophoto coverage so he could place the imagery on this web service for his customers. Seago was informed by Horry County that he could obtain a copy of the information for \$100, but would also need ***to sign a licensing agreement acknowledging the county’s copyright of the image and restricting further commercial use without the county’s prior written consent.*** Seago did not object to the fee, but refused to sign the licensing agreement.

Seago made a second FOIA request for the county’s planimetric, topographic and parcel data layers with the stipulation that ***he would only sign a licensing fee if Horry County could show its authority to copyright public information.*** Seago was informed that his request could not be processed at that time because the information he requested contained “copyrightable elements’ and the county retained copyright attorneys to research and copyright what was appropriate. Soon after, the Horry County Council held their first reading of a proposed ordinance to require a special fee schedule and licensing agreement for the public distribution of its GIS information.

Seago continued to receive letters from the Horry County Director of Public Information alternately informing him that:

- *His request could not be processed at that time;*
- *His request was for copyrightable information;*
- *The information he was requesting was not subject to FOIA because the county possessed no document that “provides the complex information you seek”;*
- *The county was attempting to pass its fee and licensing ordinance and could not process his request until their new ordinance was passed;*

Seago initiated a lawsuit for a FOIA violation against the county, to which he received a letter from the county stating that his FOIA requests would have been granted if only he had signed the licensing agreements.

Appellant’s Claim:

The restrictions required by the county on public use of its public documents constituted an *ultra vires* (beyond its power) act, and there is no FOIA exception for records containing copyrightable elements;

The County’s Counter-Claim:

The county maintained that use of its distributed data without a signed license agreement would constitute copyright infringement.

Key Findings/Decision:

Both parties argued the case in front of a federal magistrate, the district court adopted the magistrate’s recommendation that the case was strictly an application of state FOIA law and dismissed the matter. In state court, the parties agreed to refer the matter to the master-in-equity* and Horry County later dismissed its counter claims. In an amended order, the master-in-equity determined:

- The requested information constituted public record subject to disclosure under FOIA;
- Horry County could copyright its materials, and the copyright protections could be read harmoniously with FOIA;
- The right to *access* documents is separate and distinct from any right of *subsequent* distribution;
- FOIA is satisfied once *access* is granted to the information;
- Horry County could impose a licensing fee in excess of the cost of reproducing the data *“where...the data is being released for purposes that extend beyond initial access to a public record as allowed by FOIA”*.

Conclusions:

- Horry County is not prohibited from obtaining copyrights under South Carolina law on the County’s GIS data;
- Horry County could potentially use its copyright to protect the GIS data from subsequent commercial use without violating FOIA, however, it may not refuse to honor the initial FOIA request;
- The issue of whether the fees charged violate FOIA cannot be determined by the record as there is no evidence regarding what the actual copying costs would be; lacking this information, it cannot be determined whether the fees frustrate the purpose of FOIA.

**Note a “master-in-equity” facilitates litigation resolution for non-jury matters in some states including South Carolina.*

COUNTY OF SANTA CLARA v. SUPERIOR COURT OF SANTA CLARA CO., Respondent; CALIFORNIA FIRST AMENDMENT COALITION, Real Party in Interest.

(Court of Appeal, Sixth District, California, 2009)



Case Summary:

The California First Amendment Coalition (CFAC) sued Santa Clara County in order to obtain its GIS parcel data under the California Public Records Act. The CFAC won its case in trial court. Santa Clara County appealed that decision and the CFAC won again the Court of Appeal.

The County's Claim:

Prior to the request for data from CFAC, Santa Clara County sold its parcel dataset for around \$158,000; a price out of reach for most members of the public, agencies and organizations wishing to make use of it. In its appeal to the trial court's decision (which required the County to make its GIS parcel data available for no more than the cost of duplication) the County attempted several arguments to justify the amount it charged. Additionally, the County tried to defend the practice of withholding the data with the claim that its parcel data was:

- *Protected Critical Infrastructure Information (PCII) under the directives of the Department of Homeland Security; (not upheld)*
- *Exempt from disclosure under the California Public Records Act 'catch all' clause; (not upheld)*
- *Restricted from disclosure under California law which recognizes the copyright interests of data producers and that the County (the data producer) could demand fees in excess of reproduction costs. (not upheld)*
- *Under California State Statute 6254.9, the County's GIS basemap data can be considered 'software' making exempt from disclosure under the California Public Records Act; (this was dropped as an assertion by the County and not addressed in depth in the Court of Appeal opinion after it was shot down by the trial court)*

Key Findings:

The decision of the court determined that the County's GIS parcel data was not protected by the Homeland Security Act; that the County could not prove the public interest was better served by not allowing access to the data (the public interest in disclosure outweighs the public interest in non-disclosure), and that there is "no statutory basis either for copyrighting the GIS basemap or for conditioning its release on a licensing agreement" and that "end user restrictions are incompatible with the purposes and operations of the California Public Records Act".

Since this decision in 2009, seven (7) California counties changed their data access policies significantly lowering their fee or no longer charging a fee. Forty-seven (47) of California's fifty-eight (58) counties provide GIS-formatted parcel base maps as public records.

**SIERRA CLUB v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent
COUNTY OF ORANGE, Real Party in Interest
(Supreme Court of California, 2013)**



Case Summary:

The core issue of the case was if Orange County’s GIS parcel data was subject to disclosure in a GIS file format at the actual cost of duplication under the California Public Records Act.

In 2007, the Sierra Club requested a copy of the Orange County Landbase (its GIS parcel dataset) pursuant to the state’s Public Records Act. This began a lengthy exchange between the Sierra Club and Orange County on the public record status of the county’s GIS data.

The County offered to provide its records in Adobe PDF (Portable Document Format) electronic format or as printed copies, with the position that the Public Records Act did not require the County to disclose the records in a GIS file format and it would provide the records in GIS format only if the Sierra Club paid a licensing fee and agreed to the license’s restrictions on disclosure and distribution.

The Sierra Club sought a writ of mandate from the superior court to compel the County to:

- *Provide the Landbase data in a GIS file format as a public record;*
- *Provide the data for a fee covering only the cost of duplication, and;*
- *Provide the data with no requirement that the Sierra Club comply with the licensing agreement.*

The County uses the term ‘Landbase’ internally to refer to its entire mapping system—both the data and the software that runs it—and the County confirmed that ‘Landbase’ when used externally, refers only to the parcel map data held in GIS file format. Both the Sierra Club and the County agreed that the ‘Landbase’ in the format the Sierra Club had requested did not contain “programs, routines, or symbolic languages’ that control the function of computer hardware and directs its operation”.

The superior court issued an order denying the Sierra Club’s petition for a writ of mandate, finding that the County ‘offered persuasive testimony and evidence that the term ‘GIS’ refers to “an integrated collection of computer software and data used to view and manage about geographic places, analyze spatial relationships and model spatial processes”’.

On appeal, the Court of Appeal affirmed determining that the legislative history of Section 6254.9 (California Statutes) supported the County’s position that GIS formatted files fall within

the meaning of ‘computer mapping system’ and that the County met its burden to prove that the Orange County Landbase was not a public record subject to disclosure.

Of note: The initial phases of the case at the trial, appellate and superior court level (which decided against the Sierra Club and against the release of the data in GIS compatible formats) were the result of protracted and nuanced discussions about the intended legislative definitions of ‘computer software’ and ‘computer mapping systems’ and the applicability of those decisions to the current issues versus when they were originally conceived in the 1980s.

The California Supreme Court disagreed with the decisions of the lower courts, resulting in a reversal of their decisions and a final decision in favor of the Sierra Club.

The County’s Claim:

Orange County contended that its GIS parcel data is covered by the State’s exclusion of ‘computer software’ (a term that in California Statutes includes ‘computer mapping systems’).

Key Findings:

Despite the initial findings of the trial and superior courts, the Supreme Court of California reversed and ruled for the Sierra Club, citing:

- *The 2000 legislative amendments to the Public Records Act specifically declaring that electronic data maintained by a state or local agency generally constitute a ‘public record’ subject to disclosure;*
- *California voters adoption in 2004 of Proposition 59, an initiative measure that amended the state constitution to provide a constitutional right of access to public records and declare that a California statute “shall be broadly construed if it further the people’s right of access, and narrowly construed if it limits the right of access”;*
- *The 2005 opinion of the California Attorney General concluding that parcel map data maintained in electronic format by a county assessor constitutes a public record subject to disclosure under the Public Records Act, and;*
- *Contrary to Orange County’s legal position, fully 47 of California’s 58 counties already voluntarily provide access to their GIS databases under the Public Records Act in part in reliance on the Attorney General’s 2005 legal opinion)*

Federal Copyright

Can states and their subdivisions obtain a copyright?

Although the federal government does not possess a statutory right to obtain copyright protection for its works (17 U.S.C. § 105) ***the Copyright Act is silent as to the rights of states or their subdivisions.***

Nor is there an indication in the statute that copyright ownership is limited to private persons. See 17 U.S.C. § 101 ('Copyright owner' with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right."); *id.* § 102 (noting simply that copyright protection subsists "*in original works of authorship...*").

By specifying a limitation on ownership solely against the federal government, ***the Copyright Act implies that states and their subdivisions are not excluded from protection under the Act.*** See *Bldg. Officials & Code Adm. v. Code Tech., Inc.*, 628 F.2d 730, 735-36 (1st Cir.1980) ("***Works of state governments are therefore left available for copyright protection by the state or the individual author....***"); *Nat'l Conf. of Bar Exam'rs v. Multistate Legal Studies, Inc.*, 495 F. Supp. 34, 35 (N.D.Ill.1980), *aff'd*, 692 F.2d 478 (7th Cir.1982); 1 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 5.06[A], at 5-81 n.1 (2001); *cf.* *Real Estate Data, Inc. v. Sidwell Co.*, 809 F.2d 366, 371 (7th Cir.1987) (indicating that, under the Copyright Act of 1909 "work-for-hire" doctrine, the county, which contracted for the production of tax maps, was presumed to be the copyright owner (rather than the creator of the maps).

Source: Leagle™ (http://www.leagle.com/decision/2001440261F3d179_1430)

References:

COUNTY OF SUFFOLK, NEW YORK v. FIRST AMERICAN REAL ESTATE SOLUTIONS;

State of New York Department of State Committee on Open Government

<http://docs.dos.ny.gov/coog/ftext/f15695.htm>

Reporters Committee for Freedom of The Press

<http://www.rcfp.org/browse-media-law-resources/news/court-rules-copyright-maps-does-not-offend-open-records-law>

Leagle™

http://www.leagle.com/decision/2001440261F3d179_1430

University of Maine: Spatial Science and Engineering

[http://www.spatial.maine.edu/~onsrud/Cases/HTML_\(II\)_County_of_Suffolk_Link.htm](http://www.spatial.maine.edu/~onsrud/Cases/HTML_(II)_County_of_Suffolk_Link.htm)

MICRODECISIONS, INC. v. SKINNER;

District Court of Appeal of Florida, Second District via *Google Scholar*

MICRODECISIONS, INC, Appellant, v. Abe SKINNER, as Collier County Property Appraiser, Appellee, No. 2D03-3346;

http://scholar.google.com/scholar_case?case=14794839515464311974&q=MICRO+DECISIONS,+INC.+v.+SKINNER&hl=en&as_sdt=2,24&as_vis=1

Case Brief Provided by Florida Department of Revenue

MICRODECISIONS, INC. v. SKINNER, 889 So.2d 871, 2004 Copr. L. Dec. P 28,910, 73 U.S.P.Q.2d 1533, 29 Fla. L. Weekly D2685 (Fla.App. 2 Dist. 2004)

DIRECTOR, DEPARTMENT OF INFORMATION TECHNOLOGY OF THE TOWN OF GREENWICH v. FREEDOM OF INFORMATION COMMISSION;

Leagle™

http://www.leagle.com/decision/20051659874A2d785_11644

FindLaw

<http://caselaw.findlaw.com/ct-supreme-court/1445320.html>

WIREDATA INC. v. VILLAGE OF SUSSEX;

Wisconsin Court of Appeals Case Number 2005AP1473 via *Google Scholar*

WIREDATA, Inc. v. Village of Sussex, 751 NW 2d 736; Wis: Supreme Court 2008

http://scholar.google.com/scholar_case?case=14262346118795183776&hl=en&as_sdt=2&as_vis=1&oi=scholar

GEORGE H. SEAGO, III v. HORRY COUNTY;

South Carolina Judicial Department: 26505; Seago v. Horry County
<http://www.judicial.state.sc.us/opinions/displayOpinion.cfm?caseNo=26505>

FindLaw
<http://caselaw.findlaw.com/sc-supreme-court/1279054.html>

**COUNTY OF SANTA CLARA v. SUPERIOR COURT OF SANTA CLARA CO., Respondent;
CALIFORNIA FIRST AMENDMENT COALITION, Real Party in Interest.**

FindLaw
Court of Appeal, Sixth District, California
COUNTY OF SANTA CLARA v. SUPERIOR COURT
<http://caselaw.findlaw.com/ca-court-of-appeal/1417775.html>

California Planning and Development Report from
Santa Clara County Legal Digest
Paul Shigley, Vol. 24, Number 3, March 2009
"County's Attempt To Withhold GIS Base Map Rejected"
<http://www.cp.dr.com/node/2269>

**SIERRA CLUB v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent
COUNTY OF ORANGE, Real Party in Interest**

*California Public Records Access Project: Sierra Club v. Orange County
Supreme Court's Decision, Issued, July 8, 2013*
<http://calpubrec.org/oclawsuit/appeal/>

**"Sierra Club Entitled to County's GIS Database under California Public Records Act, Says
California Supreme Court"**
Legal Planet, July 10, 2013, Richard Frank
<http://legalplanet.wordpress.com/2013/07/10/sierra-club-entitled-to-countys-gis-database-under-california-public-records-act-says-california-supreme-court/>

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DOCUMENT 4
RESEARCH ON “FREE & OPEN ACCESS TO DATA”

MINNESOTA STATUTE LANGUAGE RELEVANT TO DATA AVAILABILITY

**A SUMMARY COLLECTION OF RELEVANT EXISTING MINNESOTA
STATUTE LANGUAGE RELATED TO THE AVAILABILITY OF
GOVERNMENT DATA TO THE PUBLIC**

Submitted to the [MetroGIS Policy Board](#) on **October 23, 2013**

Compiled and edited by:

*Geoff Maas, GISP
MetroGIS Coordinator
390 Robert Street North
St Paul, Minnesota 55101*

651.602.1638
geoffrey.maas@metc.state.mn.us

www.metrogis.org

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Introduction. *As part of the on-going research on existing government practices on free and open data government data in Minnesota, a collection of the existing state statutes germane to the issue have been assembled for the convenience of the [MetroGIS Policy Board and Coordinating Committee](#) to assist their discussion and understanding.*

Summary Statement. *This document is indented to serve as a summary collection of relevant laws and contains excerpts directly from the most currently available Minnesota State Statutes. Statutes are not listed with their entire contents, only the relevant sections and subsections are provided in this summary document. The editor/compiler claims no original authorship of the contents of this document.*

References. All materials contained herein were taken directly from the Minnesota Office of the Revisor of Statutes (<https://www.revisor.mn.gov/statutes/>) accessed between September 27—October 1, 2013.

Chapter 13-13C:

<https://www.revisor.mn.gov/statutes/?view=part&start=13&close=13C>

Chapter 16:

<https://www.revisor.mn.gov/statutes/?id=16E.30>

Chapter 466:

<https://www.revisor.mn.gov/statutes/?id=466>

CHAPTER 13: DATA PRACTICES ACT

CHAPTER 13, SECTION 1: GOVERNMENT DATA

Subd. 1. Applicability All government entities shall be governed by this chapter.

Subd. 2. Citation This chapter may be cited as the "Minnesota Government Data Practices Act."

Subd. 3. Scope.

This chapter regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities. *It establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.*

CHAPTER 13, SECTION 2: DEFINITIONS

Subd. 3. Confidential data on individuals.

"Confidential data on individuals" are data made 'not public' by statute or federal law applicable to the data and are inaccessible to the individual subject of those data.

Subd. 4. Data not on individuals.

"Data not on individuals" are all government data that are not data on individuals.

Subd. 5. Data on individuals.

"Data on individuals" means all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

Subd. 6. Designee.

"Designee" means any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data.

Subd. 7. Government data.

"Government data" means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.

Subd. 7a. Government entity.

"Government entity" means a state agency, statewide system, or political subdivision.

Subd. 8. Individual.

"Individual" means a natural person. In the case of a minor or an incapacitated person as defined in section 524.5-102, subdivision 6, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

Subd. 8a. Not public data.

"Not public data" are any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.

Subd. 9. Nonpublic data.

"Nonpublic data" are data not on individuals made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.

Subd. 10. Person.

"Person" means any individual, partnership, corporation, association, business trust, or a legal representative of an organization.

Subd. 11. Political subdivision.

"Political subdivision" means any county, statutory or home rule charter city, school district, special district, any town exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2, and any board, commission, district or authority created pursuant to law, local ordinance or charter provision. It includes any nonprofit corporation which is a community action agency organized pursuant to the Economic Opportunity Act of 1964 (Public Law 88-452) as amended, to qualify for public funds, or any nonprofit social service agency which performs services under contract to a government entity, to the extent that the nonprofit social service agency or nonprofit corporation collects, stores, disseminates, and uses data on individuals because of a contractual relationship with a government entity.

Subd. 12. Private data on individuals.

"Private data on individuals" are data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data.

Subd. 13. Protected nonpublic data.

"Protected nonpublic data" are data not on individuals made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.

Subd. 14. Public data not on individuals.

"Public data not on individuals" are data accessible to the public pursuant to section 13.03.

Subd. 15. Public data on individuals.

"Public data on individuals" are data accessible to the public in accordance with the provisions of section 13.03.

CHAPTER 13, SECTION 3: ACCESS TO GOVERNMENT DATA

Subd.1. Public data.

All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06 [Temporary Classification], or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential. The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records.

Subd. 2. Procedures.

(a) The responsible authority in every government entity shall establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner.

(b) Full convenience and comprehensive accessibility shall be allowed to researchers including historians, genealogists and other scholars to carry out extensive research and complete copying of all records containing government data except as otherwise expressly provided by law.

Subd. 3. Request for access to data.

(a) Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places, and, upon request, shall be informed of the data's meaning. If a person requests access for the purpose of inspection, the responsible authority may not assess a charge or require the requesting person to pay a fee to inspect data.

(b) For purposes of this section, "inspection" includes, but is not limited to, the visual inspection of paper and similar types of government data. Inspection does not include printing copies by the government entity, unless printing a copy is the only method to provide for inspection of the data. In the case of data stored in electronic form and made available in electronic form on a remote access basis to the public by the government entity, inspection includes remote access to the data by the public and the ability to print copies of or download the data on the public's own computer equipment. Nothing in this section prohibits a government entity from charging a reasonable fee for remote access to data under a specific statutory grant of authority. A government entity may charge a fee for remote access to data where either the data or the access is enhanced at the request of the person seeking access.

(c) The responsible authority or designee shall provide copies of public data upon request. *If a person requests copies or electronic transmittal of the data to the person, the responsible authority may require the requesting person to pay the actual costs of searching for and*

retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting the copies of the data or the data, but may not charge for separating public from not public data. However, if 100 or fewer pages of black and white, letter or legal size paper copies are requested, actual costs shall not be used, and instead, the responsible authority may charge no more than 25 cents for each page copied. If the responsible authority or designee is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible.

(d) When a request under this subdivision involves any person's receipt of copies of public government data that has commercial value and is a substantial and discrete portion of or an entire formula, pattern, compilation, program, device, method, technique, process, database, or system developed with a significant expenditure of public funds by the government entity, the responsible authority may charge a reasonable fee for the information in addition to the costs of making and certifying the copies. Any fee charged must be clearly demonstrated by the government entity to relate to the actual development costs of the information. The responsible authority, upon the request of any person, shall provide sufficient documentation to explain and justify the fee being charged.

(e) The responsible authority of a government entity that maintains public government data in a computer storage medium shall provide to any person making a request under this section a copy of any public data contained in that medium, in electronic form, if the government entity can reasonably make the copy or have a copy made. This does not require a government entity to provide the data in an electronic format or program that is different from the format or program in which the data are maintained by the government entity. The entity may require the requesting person to pay the actual cost of providing the copy.

(f) If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall inform the requesting person of the determination either orally at the time of the request, or in writing as soon after that time as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based. Upon the request of any person denied access to data, the responsible authority or designee shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.

Subd. 4. Change in classification of data; effect of dissemination among agencies.

(a) The classification of a government entity's data shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving entity.

(b) If data on individuals are classified as both private and confidential by this chapter, or any other statute or federal law, the data are private.

(c) To the extent that government data are disseminated to a government entity by another government entity, the data disseminated shall have the same classification at the entity receiving them as they had at the entity providing them.

(d) If a government entity disseminates data to another government entity, a classification provided for by law at the entity receiving the data does not affect the classification of the data at the entity that disseminates the data.

(e) To the extent that judicial branch data are disseminated to government entities by the judicial branch, the data disseminated shall have the same level of accessibility at the government entity receiving them as they had at the judicial branch entity providing them. If the data have a specific classification in state statute or federal law, the government entity must maintain the data according to the specific classification.

Subd. 5. Copyright or patent of government data.

A government entity may enforce a copyright or acquire a patent for a computer software program or components of a program created by that government entity without statutory authority. In the event that a government entity acquires a patent to a computer software program or component of a program, the data shall be treated as trade secret information pursuant to section 13.37.

Subd. 6. Discoverability of not public data.

If a government entity opposes discovery of government data or release of data pursuant to court order on the grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer, arbitrator, or administrative law judge an action to compel discovery or an action in the nature of an action to compel discovery. The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action. If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by the parties. If the data are a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse, the presiding officer shall consider the provisions of section 611A.90, subdivision 2, paragraph (b).

Subd. 7. Data transferred to archives.

When government data that is classified as not public by this chapter or any other statute, including private data on decedents and confidential data on decedents, is physically transferred to the state archives, the data shall no longer be classified as not public and access to and use of the data shall be governed by section 138.17.

Subd. 8. Change to classification of data not on individuals.

Except for security information, nonpublic and protected nonpublic data shall become public either ten years after the creation of the data by the government entity or ten years after the data was received or collected by any governmental entity unless the responsible authority for the originating or custodial entity for the data reasonably determines that, if the data were made available to the public or to the data subject, the harm to the public or to a data subject would outweigh the benefit to the public or to the data subject. If the responsible authority denies access to the data, the person denied access may challenge the denial by bringing an action in district court seeking release of the data. The action shall be brought in the district court located in the county where the data are being maintained, or, in the case of data maintained by a state agency, in any county. The data in dispute shall be examined by the court in camera. In deciding whether or not to release the data, the court shall consider the benefits and harms in the same manner as set forth above. The court shall make a written statement of findings in support of its decision.

Subd. 9. Effect of changes in classification of data.

Unless otherwise expressly provided by a particular statute, the classification of data is determined by the law applicable to the data at the time a request for access to the data is made, regardless of the data's classification at the time it was collected, created, or received.

Subd. 10. Costs for providing copies of data.

Money may be collected by a responsible authority in a state agency for the actual cost to the agency of providing copies or electronic transmittal of government data. When money collected for purposes of this section is of a magnitude sufficient to warrant a separate account in the state treasury, that money must be deposited in a fund other than the general fund and is appropriated to the agency.

Subd. 11. Treatment of data classified as not public; public meetings.

Not public data may be discussed at a meeting open to the public to the extent provided in section 13D.05.

Subd. 12. Pleadings.

Pleadings, as defined by court rule, served by or on a government entity, are public data to the same extent that the data would be public if filed with the court.

CHAPTER 13, SECTION 5: DUTIES OF RESPONSIBLE AUTHORITY

Subd. 5. Data protection.

(a) The responsible authority shall (1) establish procedures to assure that all data on individuals is accurate, complete, and current for the purposes for which it was collected; and (2) establish appropriate security safeguards for all records containing data on individuals.

(b) When not public data is being disposed of, the data must be destroyed in a way that prevents its contents from being determined.

Subd. 6. Contracts.

Except as provided in section 13.46, subdivision 5, in any contract between a government entity subject to this chapter and any person, when the contract requires that data on individuals be made available to the contracting parties by the government entity, that data shall be administered consistent with this chapter. A contracting party shall maintain the data on individuals which it received according to the statutory provisions applicable to the data.

Subd. 7. Preparation of summary data.

The use of summary data derived from private or confidential data on individuals under the jurisdiction of one or more responsible authorities is permitted. Unless classified pursuant to section 13.06, another statute, or federal law, summary data is public. The responsible authority shall prepare summary data from private or confidential data on individuals upon the request of any person if the request is in writing and the cost of preparing the summary data is borne by the requesting person. The responsible authority may delegate the power to prepare summary data (1) to the administrative officer responsible for any central repository of summary data; or (2) to a person outside of the entity if the person's purpose is set forth, in writing, and the person agrees not to disclose, and the entity reasonably determines that the access will not compromise private or confidential data on individuals.

Subd. 9. Intergovernmental access of data.

A responsible authority shall allow another responsible authority access to data classified as not public only when the access is authorized or required by statute or federal law. An entity that supplies government data under this subdivision may require the requesting entity to pay the actual cost of supplying the data.

Subd. 10. International dissemination.

No government entity shall transfer or disseminate any private or confidential data on individuals to the private international organization known as Interpol, except through the Interpol-United States National Central Bureau, United States Department of Justice.

Subd. 11. Privatization.

(a) If a government entity enters into a contract with a private person to perform any of its functions, the government entity shall include in the contract terms that make it clear that all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and that the

private person must comply with those requirements as if it were a government entity. The remedies in section 13.08 apply to the private person under this subdivision.

(b) This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.

Subd. 12. Identification or justification.

Unless specifically authorized by statute, government entities may not require persons to identify themselves, state a reason for, or justify a request to gain access to public government data. A person may be asked to provide certain identifying or clarifying information for the sole purpose of facilitating access to the data.

CHAPTER 16E, SECTION 30: GEOSPATIAL INFORMATION OFFICE

Subd. 10. Electronic geospatial data defined.

"Electronic geospatial data" means digital data using geographic or projected map coordinate values, identification codes, and associated descriptive data to locate and describe boundaries or features on, above, or below the surface of the earth or characteristics of the earth's inhabitants or its natural or human-constructed features.

Subd. 11. Government sharing of electronic geospatial data.

(a) The definitions in section 13.02 apply to this subdivision;

(b) Electronic geospatial government data must be shared at no cost with government entities, the notification center established under section 216D.03 [Note: this refers to Gopher State One Call] and federal and tribal government agencies. Data received under this subdivision may be reproduced or shared with other government entities or agencies. A release of data under this subdivision must include metadata or other documentation that identifies the original authoritative data source. Government entities providing data under this subdivision are not required to provide data in an alternate format specified by the requestor. A government entity is not required to provide the same data to the same requestor more than four times per year, unless required by law or court order. Government entities and agencies sharing and receiving electronic geospatial data under this subdivision are immune from civil liability arising out of the use of the shared electronic geospatial data. This subdivision does not authorize the release of data that are not public data.

CHAPTER 466: TORT LIABILITY, POLITICAL SUBDIVISIONS

CHAPTER 466, SECTION 1: DEFINITIONS

Subdivision 1. Municipality.

For the purposes of sections 466.01 to 466.15, "municipality" means any city, whether organized under home rule charter or otherwise, any county, town, public authority, public corporation, nonprofit firefighting corporation that has associated with it a relief association as defined in section 424A.001, subdivision 4, special district, school district, however organized, county agricultural society organized pursuant to chapter 38, joint powers board or organization created under section 471.59 or other statute, public library, regional public library system, multicounty multi-type library system, the following local collaboratives whose plans have been approved by the Children's Cabinet: family services collaboratives established under section 124D.23, children's mental health collaboratives established under sections 245.491 to 245.495, or a collaborative established by the merger of a children's mental health collaborative and a family services collaborative, other political subdivision, community action agency, or a limited partnership in which a community action agency is the sole general partner.

Subd. 2. Governing body of a town, school district.

For the purposes of sections 466.01 to 466.15, the "governing body of a town" means the board of supervisors thereof; "school district" includes an unorganized territory as defined in Minnesota Statutes 1961, section 120.02, subdivision 17.

CHAPTER 466, SECTION 2: TORT LIABILITY

Subject to the limitations of sections 466.01 to 466.15, every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.

CHAPTER 466, SECTION 3: EXCEPTIONS

Subd. 21. Geographic information systems (GIS) data.

(a) Any claim against a municipality, based on alleged or actual inaccuracies in geographic information systems data, arising from the public's use of GIS data, if the municipality provides a disclaimer of the accuracy of the information at any point of initial contact with a geographic information system to which the public has general access.

(b) Geographic information systems data is government data subject to the presumption of Chapter 13, Section 1, subdivision 3. GIS data is data generated by a computer database or system that is designed to electronically capture, organize, store, update, manipulate, analyze, and display all forms of geographically referenced information that is compiled, from private or public sources, either alone or in cooperation with other public or private entities, for use by a municipality. GIS data is accurate for its intended use by a municipality and may be inaccurate for other uses.

GLOSSARY:

Tort: *Torts are civil wrongs recognized by law as grounds for a lawsuit. These wrongs result in an injury or harm constituting the basis for a claim by the injured party. While some torts are also crimes punishable with imprisonment, the primary aim of tort law is to provide relief for the damages incurred and deter others from committing the same harms. The injured person may sue for an injunction to prevent the continuation of the tortious conduct or for monetary damages. A tort is a civil wrong, as opposed to a criminal wrong.*

Intentional Tort: *A deliberate act that causes harm to another, for which the victim may sue the wrongdoer for damages.*

Negligent Tort: *Failure to exercise the care toward others that a reasonable or prudent person would use in the same circumstances or taking action that such a reasonable person would not, resulting in unintentional harm to another. Primary factors to consider in ascertaining whether the person's conduct lacks reasonable care are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm.*

Strict Liability: *In both tort and criminal law, strict liability exists when a defendant is in legal jeopardy by virtue of a wrongful act, without any accompanying intent or mental state.*

Invasion of Privacy: A bundle of torts including intrusion into seclusion, appropriation of likeness or identity, public disclosure of private facts, and portrayal in a false light. Defenses include truth, consent and privilege. There are certain applicable constitutional principles. A legal claim that another person or business has illegally used someone's likeness or unjustifiably intruded into that person's personal affairs. Examples of invasion of privacy include using someone's likeness for commercial advantage (for example, falsely claiming that a particular person has endorsed a product), public disclosure of private facts (for example, that a person has a particular disease or has had an affair), putting someone in a false light to the public (for example, publicizing false information that someone was arrested or said something inflammatory), and intrusion into someone's private affairs (for example, secretly eavesdropping on someone's phone conversations).

Source: *Cornell University Law School (<http://www.law.cornell.edu/wex/tort>)*

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**DOCUMENT 5
RESEARCH ON “FREE & OPEN ACCESS TO DATA”**

DISCLAIMER LANGUAGE SAMPLES

**EXISTING DISCLAIMERS PRESENTLY IN USE WITH DATASETS
AVAILABLE FROM THE METROGIS DATAFINDER.ORG WEBSITE**

Submitted to the **MetroGIS Policy Board** on **October 23, 2013**

Compiled and edited by:

*Geoff Maas, GISP
MetroGIS Coordinator
390 Robert Street North
St Paul, Minnesota 55101*

*651.602.1638
geoffrey.maas@metc.state.mn.us*

www.metrogis.org

Existing Data Disclaimer Examples Presently In Use on MetroGIS' DataFinder.org

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Introduction. *As part of the on-going research on existing practices on free and open data government data in Minnesota, this collection of examples of existing disclaimer language has been compiled for the reference and use of the [MetroGIS Policy Board and Coordinating Committee](#) to assist their discussion and understanding.*

Summary Statement. *This document is indented to serve as a summary collection of Data Disclaimer examples presently in use. The editor/compiler claims no original authorship of the contents of this document.*

Example 1: Metropolitan Council Data Disclaimer

Created by: **Metropolitan Council Legal Counsel**

Applies to: *All publicly available data produced by the Metropolitan Council*

***NOTICE:** The Geographic Information System (GIS) Data to which this notice is attached are made available pursuant to the Minnesota Government Data Practices Act (Minnesota Statutes Chapter 13). THE GIS DATA ARE PROVIDED TO YOU AS IS AND WITHOUT ANY WARRANTY AS TO THEIR PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. The GIS Data were developed by the Metropolitan Council for its own internal business purposes. The Metropolitan Council does not represent or warrant that the GIS Data or the data documentation are error-free, complete, current, or accurate. You are responsible for any consequences resulting from your use of the GIS Data or your reliance on the GIS Data. You should consult the data documentation for this particular GIS Data to determine the limitations of the GIS Data and the precision with which the GIS Data may depict distance, direction, location, or other geographic features. If you transmit or provide the GIS Data (or any portion of it) to another user, it is recommended that the GIS Data include a copy of this disclaimer and this metadata.*

(Note: This disclaimer is also used by, and applied to, data produced and distributed by the **Metropolitan Mosquito Control District**)

Example 2: MetroGIS Address Points Dataset-Twin Cities Metropolitan Area

Created by: **League of Minnesota Cities and Metro Cities legal counsel**

Applies to: **MetroGIS Address Points Dataset** (*under construction*)

NOTICE: By accessing these geographic information system (GIS) data, you agree to be bound by the terms and conditions provided below. These GIS data are made available as a public service. The data have been compiled using information received from Data Contributors including cities and counties. Data Contributors are not obligated to provide updates to data when newer versions become available. Although reasonable efforts have been made to ensure the accuracy of these data, no guarantee is given or implied.

Maps and data are to be used for reference purposes only. All users are strongly urged to independently verify these data before relying on such data. The use of these data is at the sole risk of the party using such data. Data Contributors may make changes or corrections to the data and to these conditions at any time without notice.

Data Contributors, and their officials, employees and agents, supplying these data cannot be held liable for any improper or incorrect use of the information. They assume no responsibility for any use of the information. They will not be liable for any direct, indirect, incidental, special, exemplary, or consequential damages however caused and on any theory of liability arising in any way out of the use of these data. All information is provided "as-is" without any warranty of any kind. All warranties of any kind, express or implied, such as merchantability and fitness for a particular purpose, are specifically disclaimed.

User agrees to defend, indemnify, and hold harmless, the Data Contributors, and their officials, employees and agents from and against all claims and expenses, including attorneys' fees, arising out of the use of these data.

This agreement is governed by the law of Minnesota, and any lawsuits involving this agreement or these data must take place in Minnesota. This agreement is the exclusive statement of the agreement between the parties and may be modified only by a written agreement.

By using these data, the user acknowledges that the above conditions have been read and that the user is bound by them.

Example 3: Ramsey County Data Disclaimer Language

Created by: **Ramsey County Legal Counsel**

Applies to: **All Ramsey County Data Available to the Public**

DISCLAIMER: EXCEPT AS EXPRESSLY STATED HEREIN, THIS DATA IS PROVIDED AS IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE BEARS ANY AND ALL RISK RELATING TO QUALITY AND PERFORMANCE OF THIS DATA.

Limit on Liability. *This data is not a legally recorded map or survey and is not intended to be used as one. This data is a compilation of records and information from various state, county, and city offices, and other sources, and should be used for reference only.*

In no event will the County of Ramsey be liable for direct, indirect, special, incidental, or consequential damages arising out of the use of, or inability to use, the data, even if advised of the possibility of such damages. Specifically, the County of Ramsey is not responsible for any costs including, but not limited to, those incurred as a result of lost profits or revenue, loss of use of data, the costs of recovering such programs or data, the cost of any substitute programs or data, claims by third parties, or for other similar costs.

The sole liability of the County of Ramsey and the licensee's exclusive remedy for any substantial defect which impairs the licensee's use of the data for purposes stated herein shall be the right to terminate this license and refund any fee paid.

Access Constraints: *This data set is available to everyone. Fees and policy are published in the Ramsey County Fee Schedule. Charges are variable and are subject to change. See the Ramsey County Fee Schedule for specific information on fees and policy.*

Use Constraints: *This data is Copyright by the County of Ramsey. All rights reserved. Except as expressly provided herein, no part of this data may be copied, reproduced, sold, transferred, or transmitted in any form, or by any means, whether graphic, electronic, or mechanical, including photocopying, recording, or by an information storage or retrieval system, without express prior written permission of the County of Ramsey.*

Example 4: NCompass Road Centerline & Landmarks Data Disclaimer Language

Created by: **NCompass and Metropolitan Council Legal Counsel**

Applies to: **NCompass Road Data and NCompass Landmarks Data**

Access Constraints: *In May of 1997, an agreement for the use of NCompass Technologies Street Centerline data was completed by Metropolitan Council, Minnesota Department of Transportation (Mn/DOT) and NCompass Technologies.*

The agreement makes NCompass Technologies Street Centerline data available to all State and Local Government agencies and Colleges and Universities in the State of Minnesota. Mn/DOT and the Metropolitan Council have funded the licensing of the NCompass Technologies Street Centerline data for use by these organizations to promote standardization and sharing of geographic information.

Use Constraints: *All users are licensees and the dataset may be used within the licensee's business, organization, or agency only. A licensee may alter the data if records of updates and changes are provided to the Licensing Agent. Altered data may not be otherwise distributed. NCompass Technologies will be the maintenance provider for the street centerline dataset agreements for specific information.*

While for the Minnesota public users mentioned in 'Access Constraints' there is no charge for the license, there are some responsibilities by which users agree to abide. These include:

- > Submit roadway and address information additions and changes to NCompass Technologies so that they may be incorporated into the street centerline dataset and made available in future monthly updates.*
- > Take measures to prevent the distribution of the NCompass Technologies data to unauthorized users since it is proprietary trade secret information, making it non-public data.*
- > Determining appropriate applications for the use of the data are the responsibility of the user.*

Distribution Liability: *NCompass Technologies and Metropolitan Council shall use its best efforts to ensure the dataset is delivered free of physical defect and shall have sole authority to determine whether the dataset was free of any physical defect at the time of delivery. The dataset and associated manuals, reference materials, and technical documentation (if any) are provided 'as is', without warranty as to their performance, merchantability, or fitness for any particular purpose. The entire risk as to the results and performance of the dataset is assumed by the user. The Metropolitan Council and NCompass Technologies shall not be liable for indirect, special, incidental, compensatory, or consequential damages or third party claims which may result from the use of the dataset, even if the Council or NCompass Technologies has been advised of the possibility of such potential loss or damage.*

Example 5: MetroGIS Regional Parcel Dataset Disclaimer

Created by: *Created jointly by the legal counsel of the **Metropolitan Council** and the **Attorneys of the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington;***

Applies to: **MetroGIS Regional Parcel Dataset**

*The following is the **Distribution Liability Disclaimer** associated with the **MetroGIS Regional Parcel Dataset**. This language was agreed upon by the attorneys of the Seven Metropolitan Counties and the legal counsel of the Metropolitan Council and has been in use since 2002.*

Notice: The Geographic Information System (GIS) Data to which this notice is attached are made available pursuant to the Minnesota Government Data Practices Act (Minnesota Statutes Chapter 13).

The GIS data are provided to you as is and without any warranty as to their performance, merchantability, or fitness for any particular purpose. The GIS data were developed by the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington ("Counties") for their own internal business purposes.

The Counties do not represent or warrant that the GIS Data or the data documentation are error-free, complete, current, or accurate.

You are responsible for any consequences resulting from your use of the GIS Data or your reliance on the GIS Data.

You should consult the data documentation for this particular GIS Data to determine the limitations of the GIS Data and the precision with which the GIS Data may depict distance, direction, location, or other geographic features.

If you transmit or provide the GIS Data (or any portion of it) to another user, you must provide a copy of this disclaimer and the accompanying metadata for this dataset to the user.