

Meeting Minutes: Plumbing Board

Date: April 19, 2022
Time: 9:30 a.m.
Minutes by: Lyndy Logan
Location: WebEx Event

Members

1. Sam Arnold
2. Richard Becker (Chair)
3. Kent Erickson (Secretary)
4. Mike Herman (Vice Chair)
5. Justin Parizek
6. Troy Seitz
7. Scott Stewart
8. Rick Wahlen
9. Mike Westemeier (DLI CO's Designee)
10. Shane Willis
David Weum (MDH Commissioner's Designee)

Members Absent

Mike Dryke
Natasha Lawrence

DLI Staff & Visitors

Brittany Wysokinski (Gen. Counsel, DLI)
Lyndy Logan (DLI)
Brad Jensen (DLI)
Greg Metz (DLI)
John Roehl (DLI)
Nick Erickson (Housing First)
Joel Hipp (Hobart)
Rick Jacobs (Plumbers Local 34)
Mike Johnson (J-Berd Mechanical)
Larry Justin (KFI Engineers)
Stephanie Menning (MUCA)
Adam Seubert (Tony's Plumbing)
Scott Thompson (My Plumbing Training)

1. **Call to Order, Chair Presiding**

- A. The meeting was called to order by Chair Becker at 9:32 AM. Roll call was taken by *Chair* Becker and a quorum was declared with 10 of 12 voting members, and one non-voting member, present via WebEx.
- B. Announcements – Introductions (members and attendees)
 - **Remote meeting statement:** Thank you for joining this remote meeting via WebEx. As the board chair, I have determined today's meeting is via the WebEx platform due to the COVID-19 pandemic. Per Minnesota Statutes, section 13D.021, of the Open Meeting Law, electronic meetings are acceptable when an in-person meeting is "not practical or prudent because of a health pandemic or an emergency declared under Chapter 12." It is not practical or prudent to hold an in-person meeting because, consistent with MDH guidance, the usual meeting place is not open to the public due to the COVID-19 pandemic.
 - Board members and attendees present on this WebEx are able to hear all discussions.
 - All handouts discussed and WebEx instructions are posted on the Board's website at: <https://www.dli.mn.gov/about-department/boards-and-councils/plumbing-board>
 - All votes will be by roll call. WebEx instructions/procedures were read aloud.

2. **Approval of meeting agenda**

A motion was made by Herman, seconded by Stewart, to approve the agenda as presented. The roll call vote was unanimous with 10 votes in favor; the motion carried.

3. **Approval of previous meeting minutes**

- A. A motion was made by Herman, seconded by Wahlen, to approve the Jan. 18, 2022, regular meeting minutes as presented. The roll call vote was unanimous with 10 votes in favor; the motion carried.
- B. A motion was made by Arnold, seconded by Willis, to approve the March 17, 2022, special meeting minutes as presented. The roll call vote was unanimous with 9 votes in favor and one abstention (Herman); the motion carried.

4. **Regular Business**

Approval of expense reports – *Becker* approved.

5. **Special Business**

- A. **Enforcement & Licensing update**
 - A handout was provided – see **Attachment A**.
- B. **Department Updates**

Plumbing plan review turnaround time is four weeks for larger projects; two weeks for smaller projects.
- C. **Chapter 4714 rulemaking update**

Wysokinski said the rules went into effect on Jan. 31, 2022.
- D. **MN Government Data Practices Act (MGDPA) and Open Meeting Law (OML) Training – Brittany Wysokinski** – see **Attachment B**.

6. **Committee Reports**

Construction Codes Advisory Council (CCAC) – Mike Herman (rep) / Richard Becker (alt). The last CCAC meeting was held on Jan. 20, 2022. The presentation can be found at <http://www.dli.mn.gov/sites/default/files/pdf/ccac-presentation0122.pdf>

7. **Complaints and Correspondence**

Nothing to report

8. **Open Forum**

Adam Seubert, Tony's Plumbing and Heating

- Seubert said he submitted 236 hours for the first year that he served as a plumbing apprentice; however, when he checked his hours with the state there was a discrepancy. He contacted the licensing unit and was told his hours recorded prior to being registered as an apprentice are ineligible for credit. At the time of his initial hire, he was not made aware he needed to register with the State. Seubert asked if he could still get credit for these hours and Lyndy said she would send an email to Charlie Durenberger and copy him.

9. **Board Discussion**

- Westemeier said he is receiving calls regarding the definition of emergency floor drains – “floor drain that does not serve as a receptor, are located in restrooms, are under emergency showers or are in laundry rooms.” The SONAR says the floor drain needs to be located in the restroom under the showers or in a laundry room. The comments they are receiving, say that the way the code is written it appears that any floor drain that is not

used as a receptor can be classified as an emergency floor drain. The issue isn't related to venting but to whether they have a fixture unit value assigned to them. If the telltale is classified as emergency drain then you are back to a two inch therefore impacting the sizing of the piping. He hasn't received a formal complaint or Request for Interpretation at this point.

- Becker said he reads it as that it not only cannot serve as a receptor, but it has to be in those locations; however, he understands the language is based on how it is written, not the intent.
- Wysokinski said she reviewed the language changes and noted that the printed version of the code has a semi-colon (typo) – the Revisor's version is correct. If language is not ambiguous then from a legal side, if someone were to challenge the language they could bring this to an Administrative Law Judge.

10. Announcements

Next regularly scheduled meeting in 2022, 9:30 a.m., in-person or via WebEx TBD

- July 19, 2022
- October 18, 2022

11. Adjournment

A motion was made by Erickson, seconded by Seitz, to adjourn the meeting at 10:32 a.m. The roll call vote was unanimous with 10 votes in favor of the motion; the motion passed.

Respectfully submitted,

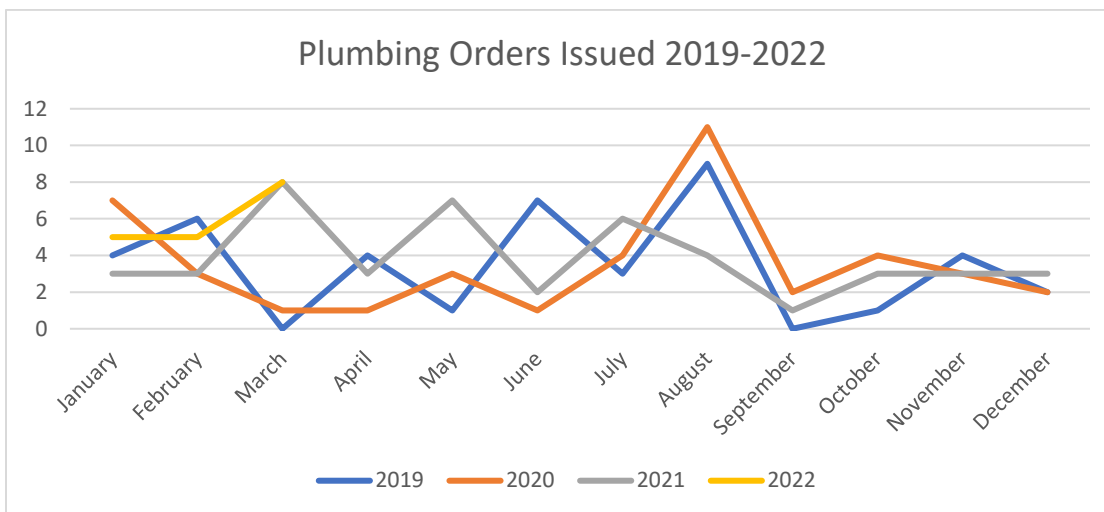
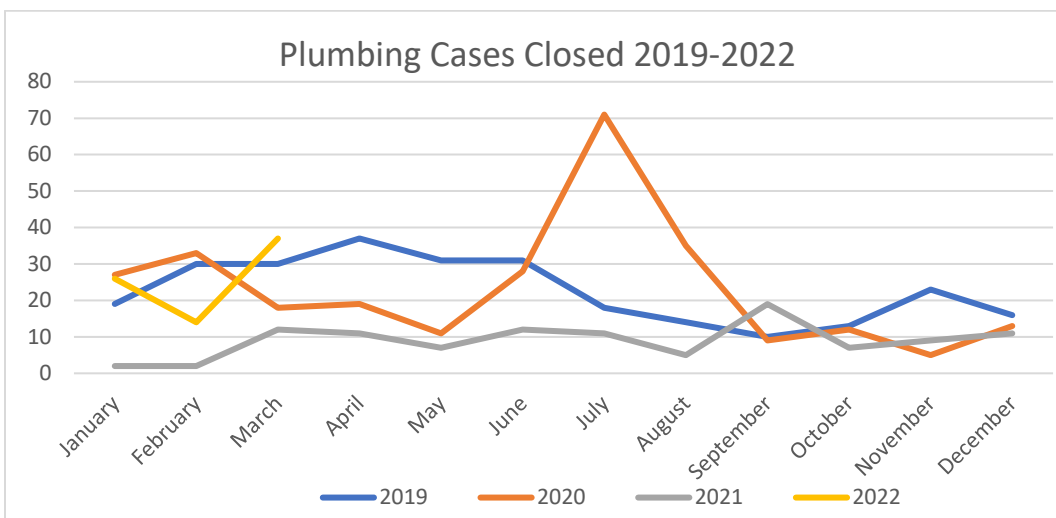
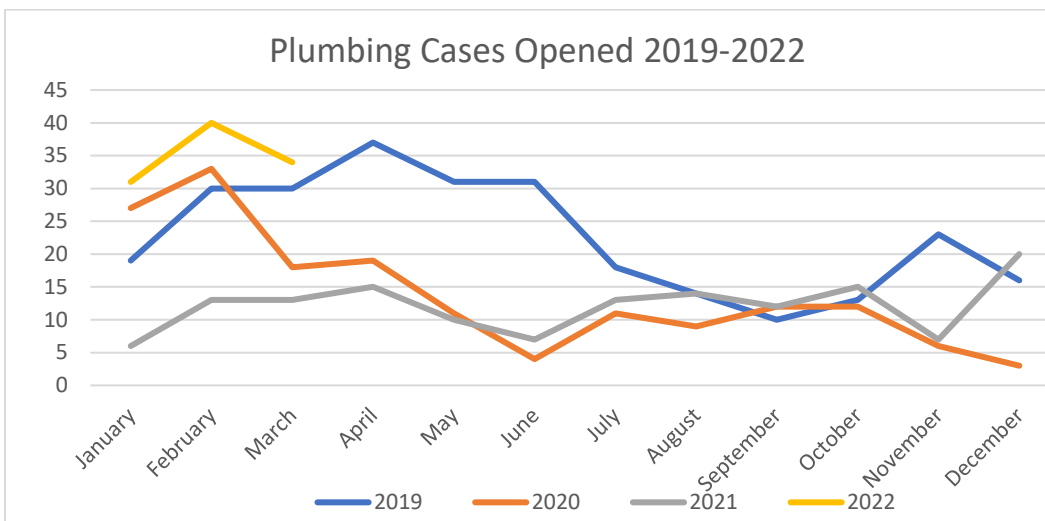
Kent Erickson

Kent Erickson
Secretary

Green meeting practices

The State of Minnesota is committed to minimizing in-person environmental impacts by following green meeting practices. DLI is minimizing the environmental impact of its events by following green meeting practices. DLI encourages you to use electronic copies of handouts or to print them on 100% post-consumer processed chlorine-free paper, double-sided.

CCLD PLUMBING ENFORCEMENT STATISTICS 2019-2022



Cases Active April 13, 2022: 114



Plumbing Enforcement Actions

2022 Year to Date

A Consent Order is not a finding of fact or admission of guilt.

For more information about specific orders, please call 651-284-5069 or email dli.contractor@state.mn.us.

Bruns, Gerald J., dba JB Plumbing & Heating

- Evansville, MN
- Notice of Determination and Determination: Corrective action not achieved; \$2,500 forgivable penalty now due and owing – 1/18/2022
- PLB2104-0002/MG

Burth, Keith M. – PJ065607

- North Branch, MN
- Licensing Order: License suspended until response provided to Commissioner's requests for information and \$1,500 monetary penalty paid; during suspension, cease and desist from performing or offering to perform plumbing work; cease and desist from contracting or offering to contract to perform plumbing work until plumbing contractor license obtained – 3/01/2022
- PLB2104-0010/MG

C&L Maintenance Inc., dba CLM Midwest, and Guy Lollino and Kevin Chalmers

- River Grove, IL
- Consent Cease and Desist Order: Cease and desist from performing or offering to perform electrical, plumbing, and mechanical work in Minnesota until all required licenses and certification obtained; \$15,000 monetary penalty with \$9,000 stayed – 2/22/2022
- ELE2112-0027/CMW

Cordani, Antonio Nicholas and Christopher Joseph Cordani, dba HGC Handyman Services

- Oak Grove, MN
- Consent Cease and Desist Order: Administrative Order vacated; cease and desist from performing or offering to perform electrical, plumbing, and mechanical work in Minnesota until all required licenses, bonds, and registration are obtained; \$2,500 monetary penalty stayed – 3/07/2022
- MLT2201-0008/CMW

Countertop Classics, Inc. and Ronald L. Messer

- Princeton, MN
- Consent Cease and Desist Order: Cease and desist from performing or offering to perform plumbing work in Minnesota until appropriate licensure and bonding are achieved; \$2,500 monetary penalty stayed – 1/25/2022
- PLB2108-0012/MG

Daly, Daniel R. – PM059328

- Stillwater, MN
- Consent Order: Censure; Respondent must complete 16 hours of approved continuing education by May 25, 2022; \$1,000 monetary penalty with \$900 stayed – 4/07/2022
- PLB2111-0004/SAS

Donovan, Justin Wayne, dba JD mechanical – PC716267 and PM066637

- Minneapolis, MN
- Consent Order: Censure; \$4,000 monetary penalty with \$2,500 stayed with conditions – 1/27/2022
- PLB2108-0013/CMW

Dot USA Remodel LLC and Juan Francisco Col Pop

- Burnsville, MN
- Consent Cease and Desist Order: Cease and desist from acting or holding selves out as a residential building contractor, remodeler, or roofer; cease and desist from performing or offering to perform electrical, plumbing, or mechanical work in Minnesota until all required licenses and bonds are obtained; \$7,000 monetary penalty with \$6,500 stayed – 3/15/2022
- MLT2201-0005/KF

First Choice Handyman Services Limited Liability Company, and Samir Demir

- Anoka, MN
- Consent Cease and Desist Order: Cease and desist from performing or offering to perform plumbing work in Minnesota until appropriate licensure and bonding are achieved; \$2,500 monetary penalty stayed – 2/01/2022
- PLB2111-0007/MG

Fowler, Joshua Deaun, dba Handyman Home Service's Limited Liability Company

- Buffalo, MN
- Administrative Order: Cease and desist from acting or holding self out as a residential building contractor, remodeler, or roofer; cease and desist from performing or offering to perform electrical or plumbing work in Minnesota; \$22,700 monetary penalty – 3/01/2022
- MLT2110-0001/DLC, RBC2110-0012/DLC, and RBC2110-0020/DLC

Goodmen Enterprise LLC, aka Goodmen Enterprise, Brandon Gilles L.L.C., and Brandon Jerome Gilles

- Ramsey, Minneapolis, and Champlin, MN
- Administrative Order: Cease and desist from acting or holding selves out as a residential building contractor, remodeler, or roofer; cease and desist from performing or offering to perform electrical, plumbing, or mechanical work in Minnesota; \$12,500 monetary penalty – 3/01/2022
- MLT2201-0004/CMW

High Road Builders LLC and Earl Christian Rode IV, Individually and dba Rode's Remodeling & Repair L.L.C.

- Minneapolis and North St. Paul, MN
- Administrative Order: Cease and desist from acting or holding selves out as a residential building contractor, remodeler, or roofer; cease and desist from performing or offering to perform the services of an electrical, plumbing, or mechanical contractor; \$15,00 monetary penalty – 1/04/2022
- RBC2110-0035/CMW, MLT2112-0004/CMW, and RBC2007-0006/SAS

Jeanson, Brian G. – PJ089401

- Lakeville, MN
- Consent Order: Censure; Respondent must complete 16 hours of approved continuing education by June 18, 2022; \$1,000 monetary penalty stayed – 3/29/2022
- PLB2203-0026/CN

Jeffers, Kevin J. – WJ065664

- Princeton, MN
- Consent Order: Censure; Respondent must complete 4 hours of approved continuing education by April 30, 2022; \$1,000 monetary penalty stayed – 3/08/2022
- PLB2201-0014/SAS

Jovaag, Jeffrey S. – PJ062966

- Shakopee, MN
- Consent Order: Censure; Respondent must complete 16 hours of approved continuing education by March 31, 2022; \$1,000 monetary penalty stayed – 3/08/2022
- PLB2201-0007/SAS

Kallioinen, Brian, dba BKMC – BC225195 and PC736918

- Minneapolis, MN
- Consent Order: Respondent censured; \$3,000 monetary penalty with \$2,500 stayed with conditions – 4/06/2022
- PLB2112-0013/WGG

Lawn N Order L.L.C. and Brandon Willard

- Walnut Grove, MN
- Consent Cease and Desist Order: Cease and desist from acting or holding itself out as a residential building contractor, remodeler, or roofer; cease and desist from performing or offering to perform plumbing or electrical work until licensure obtained; \$10,000 monetary penalty with \$9,000 stayed – 1/05/2022
- MLT2106-0002/AWT

Madetzke, Andrew L. – PJ068277

- Jasper, MN
- Licensing Order: License suspended until continuing education completed and \$1,000 monetary penalty paid, during suspension, cease and desist from performing plumbing work in Minnesota – 1/18/2022
- ELE2112-0008/SAS

Malec, Steven John, dba SJM Systems LLC

- Minneapolis, MN
- Consent Cease and Desist Order: Cease and desist from performing or offering to perform plumbing work in Minnesota until appropriate licensure and bonding are achieved; \$2,500 monetary penalty stayed – 2/01/2022
- PLB2109-0001/MG

Meyer, James Gordon - PM061770

- Lonsdale, MN
- Consent Order: Licensing Order vacated; censure; \$2,000 monetary penalty with \$1,500 stayed with conditions – 1/13/2022
- PLB2009-0002/MG

Minear, Nathan K. – PJ064445

- Dexter, MN
- Consent Order: Censure; Respondent must complete 16 hours of approved continuing education by May 31, 2022; \$1,000 monetary penalty stayed – 3/22/2022
- PLB2202-0005/SAS

New Concept Plumbing, LLC – PC674339

- Prior Lake, MN
- Licensing Order: License suspended until required permits are obtained and \$2,000 monetary penalty paid; during suspension, cease and desist from performing or offering to performing plumbing work in Minnesota – 2/08/2022
- PLB2112-0005/MG

Nstructions LLC and Wilbur D. Marshall

- St. Paul, MN
- Consent Cease and Desist Order: Cease and desist from acting or holding selves out as a residential building contractor, remodeler, or roofer, and cease and desist from performing or offering to perform plumbing and electrical work in Minnesota; \$4,000 monetary penalty stayed – 4/08/2022
- MLT2203-0002/CN

Oberstar-Cline, Tylor M.

- Rogers, MN
- Consent Cease and Desist Order: Cease and desist from acting or holding himself out as a residential building contractor, remodeler, or roofer until licensure obtained; cease and desist from performing plumbing work in Minnesota; \$5,000 monetary penalty with \$4,500 stayed – 1/27/2022
- RBC2112-0015/CN

Penticoff, Todd Allen

- Eagan, MN
- Consent Cease and Desist Order: Cease and desist from acting or holding self out as a residential building contractor, remodeler, or roofer; cease and desist from performing or offering to perform plumbing work in Minnesota; \$5,000 monetary penalty with \$4,500 stayed – 3/04/2022
- MLT2201-0002/CN

River Rock Builders L.L.C. and Francisca Tapia – BC661155

- Edina, MN
- Consent Order: Respondents censured; cease and desist from performing or offering to perform plumbing work in Minnesota; \$2,500 monetary penalty stayed – 3/17/2022
- PLB2202-0011/MG

Scala Design & Construction Services, Inc., Jose Escalante Gomez, and Erika Carillo


- Chanhassen, MN
- Consent Cease and Desist Order: Cease and desist from acting or holding selves out as a residential building contractor, remodeler, or roofer; cease and desist from performing or offering to perform electrical or plumbing work in Minnesota; \$7,500 monetary penalty with \$6,500 stayed with conditions – 2/11/2022
- RBC2109-0007/AWT

Steuck, Jeffrey Scott, dba Dane Farms Handyman Service and Dane Farms Home Services & Furnishings

- Owatonna, MN
- Consent Cease and Desist Order: Cease and desist from acting or holding selves out as a residential building contractor, remodeler, or roofer; cease and desist from performing or offering to perform electrical or plumbing work in Minnesota; \$7,500 monetary penalty stayed – 2/16/2022
- RBC2201-0001/ALF

Data Practices, Records Retention and the Open Meeting Law:
An Introduction for the Plumbing Board

Brittany Wysokinski | General Counsel
April 19, 2022



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Data Practices Act

April 19, 2022

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What is the "Data Practices Act"?

- Minnesota's law that's like the Federal Freedom of Information Act
- It's the law that allows people to access some but not all information maintained by the Plumbing Board.
- When someone outside the Board asks to look at or get a copy of documents maintained by the Board, it's called a "data practices request."

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The Data Practices Act (DPA)

Minnesota Statutes, Chapter 13

- Presumes government data is public
- Classifies data that is not public
- Provides rights for the public and data subjects
- Requires that data on individuals is accurate, complete, current, and secure

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Why is the DPA important?

- Board members and DLI staff need data to perform our jobs
- The Data Practices Act tries to balance:
 - Our need to have and use data to do our work
 - Public's right to know about the activities of government
 - Privacy rights

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Why is the DPA important?

- DPA requires the Plumbing Board and DLI to:
 - Protect the rights of data subjects
 - Provide appropriate access to government data

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"Data" is interpreted broadly




- Saved telephone messages
- Microfilm
- E-mails, notes, drafts
- Computer records

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What about mental impressions?



- Why didn't the Plumbing Board put my issue on its agenda?
- Not "data" because not recorded in any way
- But if you write it down, it becomes data!

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Government data vs. personal data

- Personal data is outside the scope of the Data Practices Act
- Not created in a person's capacity as a Plumbing Board member or government employee
- Must be entirely personal to be outside DPA

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Government data vs. personal data

- Example: I send an e-mail to Cathy on my DLI computer, using my DLI e-mail account, and ask Cathy if she wants to have lunch on Friday.
 - That's personal data.
- Example: A Board member sends an e-mail to another Board member about an issue to be discussed in an upcoming Board meeting.
 - That's government data.

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Classification of Data

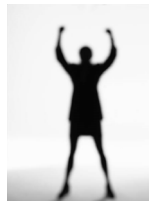


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Classification of government data

- There are two types of government data
- Data on individuals: an individual can be identified as the subject of the data




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Classification of government data

- Data not on individuals: data that are not about individuals, e.g., data on businesses, organizations, or intangible objects



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Terms used to classify government data

- Different terms are used depending on who has access to the data (other than Board members and DLI staff)
- Data is "public" if anyone can have access to it.
- For data that's not public, data practices act uses different terms depending on whether the data is about an individual or something else.

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Terms used to classify government data

- Some data is not available to the public but is available to the subject of the data.
- "Private" data is data about an individual that's not available to the public but is available to:
 - the subject of the data; and
 - anyone that the subject of the data authorizes to have access to the data.

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Terms used to classify government data

- The most protected of any data is data that's not available to the public or to the subject of the data.
- "Confidential" data is data that's about an individual but is not available to the subject of the data.

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"Not Public"


- Anything that's not public



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Examples of Data Classification



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Example: Social security numbers




- Private

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Example: Identity of the complainant



- Private

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Example: Attorney-client privilege




- Confidential
- But can be waived

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DATA SECURITY




- DPA requires the Plumbing Board to maintain the security of not public data.

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Security of email



- When is email from DLI encrypted
 - Not public
 - Not to someone in the state email system (state.mn.us)

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Data Security

- Remember:
 - If you reply to an encrypted mail, your reply is encrypted.
 - The attachments to an encrypted email are also encrypted.

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Consequences of a data breach




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Types of Data Breaches

There are 3 kinds of data breaches:

1. Not public data is provided to an unauthorized person



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Types of Data Breaches

2. Not public data is viewable by an unauthorized person.




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Types of Data Breaches

3. A Board member accesses not public data for an impermissible reason.



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Consequences of a data breach

- Data breaches can be:

Accidental



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Consequences of a data breach

or **Intentional**



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Consequences of a data breach

Consequences that apply to intentional data breaches:

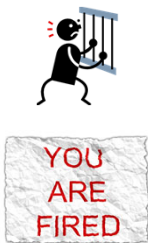
- **Willfully** violating the data practices act; or
- **Knowingly** accessing not public data for a reason other than Plumbing Board business

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Consequences of a data breach

- Criminal penalty
 - Misdemeanor
- Disciplinary action
 - Suspension or dismissal




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Consequences of a data breach

- Consequence of **any** violation of the data practices act (accidental or intentional, whether the data is about an individual or some other entity):
 - The person harmed can sue the Plumbing Board.




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Consequences of a data breach

- Consequences of **any** data breach (accidental or intentional) involving data on one or more individuals:

1. Provide written notice:
 - The Board must give **written** notice to each individual data subject.




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Consequences of a data breach

2. Investigate:
 - The Board must conduct an investigation into the data breach.



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Consequences of a data breach


3. Prepare a report:
 - The Board must prepare a report on the facts and results of the investigation.



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RESPONDING TO DATA REQUESTS



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Responding to data requests

- The Responsible Authority (an individual designated by the Board) is responsible for responding to data requests.

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Deadline for responding



- Deadline depends on who's requesting the data
 - Member of the public--Reasonable amount of time
 - Individual data subject--Immediately, if possible, or within 10 business days

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Records Retention

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Two laws related to DPA

- **The Official Records Act**
 - Minnesota Statutes, section 15.17
- **The Records Management Statute**
 - Minnesota Statutes, section 138.17



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The Official Records Act
Minnesota Statutes, section 15.17

"All ... agencies of the state ... shall make and preserve **all records necessary to a full and accurate knowledge of their official activities.**"

These are the records needed for the public to understand what Plumbing Board is doing and why.

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The Official Records Act

- Official records can be stored in any media
 - Paper
 - Electronic
 - Hard drive
 - CD
 - Thumb drive



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Records Management Statute

- Requires government entities to follow a process when disposing of official records that are no longer needed, which includes:
 1. Establishing records retention schedules
 2. Documenting the destruction of official records
 3. Protecting not public information when you destroy records

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Records Retention Schedule

- Plumbing Board has a retention schedule
- Only covers **official records**, not all **data**
 - **Data** includes: extra copies, drafts
- Shows minimum retention requirements
- Should you keep records for longer?
- Should you keep other data?

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What to retain?


1. Records and other data while you need them to do your work on the Board.
2. Records that are within the required retention period.
3. Records and other data that are subject to a litigation hold.

- Why might you want to get rid of everything else?

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Destruction of records



- To protect not public information when destroying records, shred or put in confidential bin for destruction.

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Open Meeting Law

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Open Meeting Law (OML) Minnesota Statutes, Chapter 13D

- With limited exceptions, all meetings of public bodies must be open to the public (Minn. Stat. § 13D.01)
- The public has a right to attend open meetings
- The public has a right to inspect meeting materials

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Purposes of the OML

- Prohibit “secret meetings”
- Ensure the public’s right to be informed
- Allow members of the public to be present at open meetings

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- Is the Plumbing Board a “public body” that must comply with the OML?



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What is a *meeting* of a public body?

- Not defined in the OML
- MN Supreme Court’s definition
 - “Quorum rule”: Gathering of a quorum of the public body when that quorum is transacting public business
- Chance or social gatherings are not meetings

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Is an *email* thread subject to the OML?

- OML is silent on the issue, courts have yet to definitively decide.
- But the experts at the Department of Administration DPO say “yes.”
- Be careful about email meetings.



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Virtual Meetings

- Pandemic or Chapter 12 Emergency (13D.021)
- Other virtual meetings (13D.015)

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How must the Board give notice for regular meetings?

- Keep a schedule of regular meetings on file at the Board's primary office or post the schedule on the Board's website
- No additional notice requirement except:
 - Change in date, time, or place: give notice as if special meeting

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How must the Board give notice for special meetings?

- Three days before a special meeting:
 - Post written notice on principal bulletin board or usual meeting room door
- Notice must include date, time, place, and meeting purpose
 - Purpose should include specific topics

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What is required if someone requests personal notice of a special meeting?

- Three days before the special meeting:
 - Mail/deliver notice to requestors
- Personal notice must include date, time, place, and purpose of the meeting
- Requests must be written
- Personal notice requests may be limited to specific topic areas

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What is an emergency meeting? Minn. Stat. § 13D.04, subd. 3

- An emergency meeting is:
 - A special meeting
 - Called because of circumstances that require immediate consideration
- Calling an emergency meeting is within the judgment of the Board
- *Emergency* is not defined
- More limited notice requirements

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Does OML allow any closed meetings?

- Must close:
 - Discussion of active criminal investigations
 - Discussion of identifiable medical data
- May close:
 - Attorney-client privilege

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What are the notice requirements for *closed* meetings?



- The same notice requirements for open meetings apply to closed meetings

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What must the Board do before closing a meeting?

- Before closing a meeting, a Board member must make a statement on the record that:
 - Provides the specific grounds that permit a closed meeting (statute citation or attorney-client privilege)
 - Describes the subject to be discussed
- All closed meetings, **except** those closed by attorney-client privilege, must be recorded

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Are there penalties for violating the OML?

- Intentional violation
 - Personal liability - \$300 fine
- Three intentional violations
 - Forfeit office
- Court may award reasonable costs, disbursements, attorneys fees up to \$13,000
- No reversal of Board actions for OML violation

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What are some common misconceptions about the OML?


- No requirement to send notice of regular meetings
- The OML doesn't require Robert's Rules of Order
- The OML doesn't give the public a right to speak at open meetings



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• QUESTIONS??



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