

1 DRAFT SHIELD AMENDMENT (As unanimously approved by the Senate Committee
2 on Academic Freedom and Tenure on March 7, 2014 and the Senate Committee on
3 Faculty Affairs on March 11, 2014)

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5 **A proposal to the Minnesota Legislature to Amend the Data Practices Act**
6 **(Minnesota Statutes § 13.01 et seq)**

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8 Preamble:

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10 Faculty at the University of Minnesota support transparency and accountability in
11 government and recognize as public employees that much of the work we do at the
12 University is open and available to the members of the public if they make a request
13 via the Minnesota Government Data Practices Act. In addition, faculty want to
14 ensure that the public are getting access to research and creative works that are
15 responsibly ready for dissemination. That is, work that has gone through the
16 appropriate rigorous review. We are thus concerned that attempts to target faculty
17 members' unfinished work may lead to incomplete and misleading information,
18 stifle creativity, and even dissuade faculty from pursuing important, yet potentially
19 controversial, topics. For example, in other states, a variety of research has been
20 subject to open records requests, including: research notes, email communication
21 between co-authors, manuscripts in progress, and confidential information collected
22 pursuant to an Institutional Review Board (IRB) approved human subjects proposal.
23 While reaffirming faculty, staff, and administration commitment to openness, those
24 of us who teach and conduct research at the University of Minnesota are concerned
25 that if these types of requests were granted in Minnesota, it would have a chilling
26 effect on creative and cutting edge scholarship and teaching at the University.
27 Several states, including New Jersey, Ohio, and Utah, shield unfinished creative and
28 scholarly research. We request that the Minnesota Data Practices Act be amended to
29 shield human subject information protected by an IRB approved protocol, as well as
30 unfinished research, creative works, and scholarly communications. Our intent is to
31 balance the public right to know with academic freedom, protection of research
32 subjects, and scholarly integrity.

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34 University members recognize the need to balance openness with the need to
35 ensure that faculty members do not shy away from potentially controversial topics
36 that they believe are important because someone might make a Government Data
37 Practices Act. In addition, making public unfinished work can be misleading. It is
38 undesirable to affect public debate and decision-making with information that turns
39 out to be wrong, insufficient, or inaccurate. Finally, university researchers go
40 through a variety of institutional review boards and the proposals contain, for
41 example, information that identifies a human subject who has been promised
42 confidentiality or contain other sensitive information that could put the health and
43 safety of human and animal research subjects, and researchers, and the public at
44 risk. Balancing openness with the potential harm to research subjects is also an
45 impetus for the proposed amendment.

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47 Nothing in this proposal would shield unethical research practices—there are
48 internal and external mechanisms in place to review and investigate research ethics,
49 misappropriation of funds, fraud, etc. In instances where malfeasance is an issue,
50 documents can be obtained through a variety of means. Rather, the concern the
51 proposed amendment addresses is the use of Government Data Practices Act
52 requests intended to harass a scholar or to shut down a line of inquiry.

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54 The goal is to (1) protect the integrity of scholarship, protect research subjects from
55 harm, and protect academic freedom, and (2) protect openness in government.

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58 **Draft of proposed language to amend the Minnesota Data Practices Act:**

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60 The following data of an institution within the state system of higher education,
61 which have been developed, discovered, created, disclosed to, or received by or on
62 behalf of faculty, staff, or students of the institution are protected non public data:

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64 (a) unpublished notes and information relating to research, including, but not
65 limited to, items under institutional review;
66 (b) unpublished notes and information related to a sponsor or sponsored research;
67 confidential information contained in research proposals, including unfunded grant
68 proposals;
69 (c) creative works in progress;
70 (d) unpublished manuscripts; and
71 (e) scholarly correspondence.

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73 Nothing in this section is intended to shield unethical or fraudulent practices.