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

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

Preamble:

Faculty at the University of Minnesota support transparency and accountability in government and recognize as public employees that much of the work we do at the University is open and available to the members of the public if they make a request via the Minnesota Government Data Practices Act. In addition, faculty want to ensure that the public are getting access to research and creative works that are responsibly ready for dissemination. That is, work that has gone through the appropriate rigorous review. We are thus concerned that attempts to target faculty members’ unfinished work may lead to incomplete and misleading information, stifle creativity, and even dissuade faculty from pursuing important, yet potentially controversial, topics. For example, in other states, a variety of research has been subject to open records requests, including: research notes, email communication between co-authors, manuscripts in progress, and confidential information collected pursuant to an Institutional Review Board (IRB) approved human subjects proposal. While reaffirming faculty, staff, and administration commitment to openness, those of us who teach and conduct research at the University of Minnesota are concerned that if these types of requests were granted in Minnesota, it would have a chilling effect on creative and cutting edge scholarship and teaching at the University.

Several states, including New Jersey, Ohio, and Utah, shield unfinished creative and scholarly research. We request that the Minnesota Data Practices Act be amended to shield human subject information protected by an IRB approved protocol, as well as unfinished research, creative works, and scholarly communications. Our intent is to balance the public right to know with academic freedom, protection of research subjects, and scholarly integrity.

University members recognize the need to balance openness with the need to ensure that faculty members do not shy away from potentially controversial topics that they believe are important because someone might make a Government Data Practices Act. In addition, making public unfinished work can be misleading. It is undesirable to affect public debate and decision-making with information that turns out to be wrong, insufficient, or inaccurate. Finally, university researchers go through a variety of institutional review boards and the proposals contain, for example, information that identifies a human subject who has been promised confidentiality or contain other sensitive information that could put the health and safety of human and animal research subjects, and researchers, and the public at risk. Balancing openness with the potential harm to research subjects is also an impetus for the proposed amendment.
Nothing in this proposal would shield unethical research practices—there are internal and external mechanisms in place to review and investigate research ethics, misappropriation of funds, fraud, etc. In instances where malfeasance is an issue, documents can be obtained through a variety of means. Rather, the concern the proposed amendment addresses is the use of Government Data Practices Act requests intended to harass a scholar or to shut down a line of inquiry.

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

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

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

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

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