

# FREQUENTLY ASKED QUESTIONS

## Executive Order 20-34: COVID-19 Address Data Sharing for First Responders

On April 10, 2020, Governor Walz signed Executive Order 20-34 (EO 20-34) to help protect Minnesota's first responders by sharing limited information between the Minnesota Department of Health (MDH), the Minnesota Department of Public Safety Emergency Communications Networks division (DPS-ECN), and 911 dispatchers and first responders. EO 20-34 directed the MDH to develop a protocol for the sharing of information while safeguarding patient privacy.

First responders keep Minnesotans and their communities safe and help ensure that critical services continue to be provided—and it is imperative to protect their health and safety during a time when personal protective equipment is in short supply. It is also critical to maintain the privacy rights of Minnesotans and to acknowledge that for every positive test, many more positive cases exist that are not confirmed.

To this end, limited information—the addresses where a positive COVID-19 case has been identified and is still contagious—can be disclosed via DPS to Public Safety Answering Point (911) dispatchers and first responders upon an address being determined and agreement provided by the tested individual. The information is only provided to first responders when they are already on the way the address, not prior.

EO 20-34 contains safeguards to prevent abuse of this data and requires compliance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (MGDPA). The statute protects private data and includes strict prohibitions against inappropriately sharing protected information beyond those who have an emergent need to know it.

The balance of interests in providing the protected public health information of COVID-positive addresses and the need of first responders to be prepared when entering COVID-positive homes is a difficult one. Below are frequently asked questions to help sort through some of the considerations in this effort.

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## SHARED PRIVATE HEALTH DATA

### HOW DOES MDH DETERMINE WHICH ADDRESSES ARE PROVIDED TO DPS-ECN?

At the start of each day, MDH runs a report containing the addresses for individuals who:

- a. Have a laboratory confirmed positive COVID-19 test result;
- b. Are under current recommendation for self-isolation in their own residence; and
- c. Provided an address after receiving the *Tennessee* warning (discussed below).

Addresses are not provided for hospitalized patients, the homeless, inmates, or those individuals who did not provide an address.

DPS-ECN does not directly provide addresses or lists of addresses to law enforcement or other first responders. DPS-ECN sends each dispatch center any addresses that are within that center's jurisdiction. The addresses are used to include an advisory statement in a field for that address in the dispatch system. If an address previously provided to DPS-ECN is no longer the location for an active positive case (e.g., the person has recovered or has been hospitalized), MDH provides a list of those addresses for removal of the advisory statement from the dispatch system record for that address.

#### HOW ARE LONG-TERM CARE AND CONGREGATE SETTINGS DIFFERENT FROM PRIVATE RESIDENCES?

Many long-term care residents have been victims of COVID-19. The MDH-DPS agreed upon protocol cautions that “[d]ue to prevalence of COVID-19 spread among residents and staff of long-term care congregate settings such as nursing homes, assisted living, and group homes, first responders should assume the presence of COVID-19 in such settings.” Because such settings have staffing present and their own infection control protocols, first responders need to establish contact with facility staff.

Long-term care resident cases usually involve an interview with a staff person rather than the individual, so the individual does not have the same informed opportunity to decide to share their information as do individuals who are directly interviewed. The criteria for release from isolation of a long-term care resident have an added level of individualization tied to their other health conditions.

In order to efficiently provide long-term care location addresses to DPS-ECN, MDH is providing long-term care locations known to have had a positive COVID-19 case at any time (i.e., the provision of the address does not necessarily mean there is confirmed ongoing active transmission at that location). New long-term care locations are provided daily. The advisory statement in dispatch systems for long-term care locations will be removed when the peacetime emergency ends or EO 20-34 is rescinded.

#### WHY DON'T THE NUMBER OF POSITIVE CASES AND THE NUMBER OF SHARED ADDRESSES MATCH? FOR EXAMPLE, AS OF APRIL 19, NOBLES COUNTY HAD 352 TOTAL REPORTED POSITIVE CASES, BUT RECEIVED ONLY 12 ADDRESSES FOR THE WEEK OF APRIL 19-APRIL 26.

Case investigation interviews using a *Tennessee* warning about address sharing began on April 20, 2020. MDH began providing the addresses of newly reported positive cases to DPS-

ECN on April 23. Only the addresses of newly positive individuals who have agreed to give their addresses are being provided.

The positive outcome of a laboratory test can be included in the publicly reported totals the next day. The address associated with that positive test can only be shared with DPS after the case investigation is complete and the patient provides their address. It can take 24-48+ hours to complete a case investigation.

Not all positive cases share their address. Some people simply are not willing to share an address. Others are not willing to share their address with MDH knowing that it could be shared with others.

Not all positive cases have a residential address. Many are hospitalized, reside in long-term care facilities, have unstable housing such as shelters, or may be in prison or jail. If in a long-term care facility, multiple cases may have the same address.

For example, on April 22, there were 223 new cases reported. Of those new cases, 52 were already hospitalized, 3 were homeless, 76 were in long-term care settings, and 29 were in jails and prisons. Removing those 160 from 223, leaves 63 possible residential cases. Of those, some may still have open investigations and some may have refused to provide an address.

#### IS IT TRUE THAT AN INDIVIDUAL WHO HAS TESTED POSITIVE WILL NOT APPEAR ON THE LIST FOR ONE DAY OR UP TO A FEW DAYS AFTER THE TEST RESULTS?

Yes, MDH must establish phone contact and provide the *Tennessee* warning before an address can be shared. There will also be cases that may not be recommended to isolate or not for very long by the time they are interviewed. That could arise because of the timing of testing after onset of symptoms, turnaround of getting results, and then making contact for the phone interview. In unfortunate circumstances, the individual may already be hospitalized.

#### WHAT IS THE DIFFERENCE BETWEEN BEING POSITIVE AND BEING POSITIVE AND IN ISOLATION?

If an individual is lab-confirmed positive but has not yet gone fever-free for 72 hours (while not taking fever-suppressing medication), the individual is recommended for isolation. An individual may have tested positive but no longer be recommended for isolation because their fever has ended and symptoms are improving. Many people have recovered by the time they receive a COVID-19 positive confirmation.

#### WHAT IS THE TIME FRAME THAT A POSITIVE INDIVIDUAL IS CONSIDERED CONTAGIOUS?

People can be contagious *before* showing symptoms and being tested. Individuals are told to stay in home isolation for at least 10 days since symptoms started and for at least three fever-free days and improving respiratory symptoms. (See “How long to stay home if sick” at the MDH COVID-19 website.)

[<https://www.health.state.mn.us/diseases/coronavirus/basics.html>]

#### WHEN ARE THE CASES DELETED FROM THE LIST?

Every day, MDH sends an “add list” and a “removal list.” Advisory statements are purged within eight hours of receiving the removal list. All data remaining must be deleted within 15 days of termination of the peacetime emergency or rescission of EO 20-34.

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## FIRST RESPONDERS AND U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT'S (ICE) CONCERNS

#### DOES THE DEFINITION OF “FIRST RESPONDER” IN THE PROTOCOL INCLUDE FEDERAL LAW ENFORCEMENT AGENCIES?

Yes, the definition used in the protocol is “emergency medical services personnel, ambulance transport staff, law enforcement personnel, fire responders, fire inspectors, and probation officers and parole agents.” This can include state, local, and federal law enforcement.

#### DOES DPS-ECN PROVIDE THE ADDRESSES TO ICE? IS THERE A LIST THAT A FIRST RESPONDER COULD GIVE TO ICE OR SOMEONE NOT COVERED BY THE EXECUTIVE ORDER?

No, addresses are not provided to first responders by the 911 dispatchers unless the first responder is on the way to an address. A list is not available for a dispatcher or first responder to review for names or to give to anyone. Also, first responders and dispatch operators do not directly receive the addresses – the addresses are used to place an advisory statement in the dispatch database record for the address. There is a chance that a federal agency could call 911 dispatch as a notification courtesy (e.g., the FBI notifying local law enforcement that a warrant is being executed). If that occurred, 911 dispatch would provide the federal agency with the advisory statement (as it would for any other state or local law enforcement staff or first responder). It is important to understand that the agency would already be going to that location - the 911 dispatcher will not send the agency to the address nor will the response change based on knowledge of COVID-19 at an address. Additionally, 911 dispatchers have been asking CDC-recommended screening questions of

everyone who calls 911 and then notifying first responders of the addresses with affirmative responses. This is a practice that is completely unrelated to the data shared by MDH.

The MDH data provided is meant to protect all first responders and could include those who work for federal agencies, as in the rare instance mentioned above.

#### WHY WON'T DPS-ECN SIMPLY REFUSE TO PROVIDE DATA TO ICE AGENTS?

The intention of EO 20-34 is to provide a mechanism to better protect all law enforcement and first responders, not to expose some to higher risk due to the agency for which they work.

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## TENNESSEN WARNING

#### EO 20-34 DOES NOT MENTION A *TENNESSEN* WARNING. WHY IS IT BEING READ BY MDH?

EO 20-34 makes clear that disclosure of the data is governed by the MGDPA. This data is classified by the MGDPA as “private” data. There is a section of the MGDPA (13.04, subdivision 2) that requires a *Tennessee* warning be read to a subject of private data before being asked for that data.

#### WHY IS IT CLASSIFIED AS PRIVATE DATA IF THE INDIVIDUAL'S NAME ISN'T PROVIDED TO DPS-ECN, JUST AN ADDRESS?

In this situation, an individual's home address is private because it is linked to their health status and is also obtained as part of an investigation about their health status. Under the MGDPA this data is “health data.” It belongs to MDH.

Section 13.3085 - "Health data" are data on individuals created, collected, received, or maintained by the Department of Health, political subdivisions, or statewide systems relating to the identification, description, prevention, and control of disease or as part of an epidemiologic investigation the commissioner designates as necessary to analyze, describe, or protect the public health.

“Health data” is defined as “private data on individuals.” Names do not need to be used; an address can be enough to identify an individual and require MGDPA protection.

#### WHY DOES PERMISSION NEED TO BE GRANTED BY THE INDIVIDUAL BEFORE AN ADDRESS IS SHARED WITH DPS-ECN?

The *Tennessee* warning is to inform the individual when they are being asked to provide private information about the intended use of that information. It allows the individual to decide whether to provide the requested information. Section 13.04, subd. 2 of the MGDPA states the subject of the private data must be told:

- a. The purpose and intended use of the data;
- b. Whether the subject may refuse or is legally required to supply the data;
- c. Any known consequences for supplying or refusing to supply the data; and
- d. The identity of other persons or entities authorized by state or federal law to receive the data.

EO 20-34 does not remove these basic protections from an individual with a positive COVID-19 address, nor does it state that these individuals are required to supply their addresses.

#### WHAT IS THE LANGUAGE OF THIS *TENNESSEN* WARNING?

The *Tennessee* warning is read to the individual at the beginning of the case interview. Below is the script:

I am calling because you had a positive test for COVID-19. We want to give you some information and ask some questions about your illness.

#### **Tennessee Warning- COVID-19**

*Read to parent/guardian if individual is <18*

Before asking for any private information, we are required by Minnesota state law to give you the following information regarding your participation and your right to privacy. There are two parts to this.

We are collecting information to help monitor your health, prevent illness in others, and better understand COVID-19. With the exception of one piece of information which I will talk with you about next, the only people who will have access to private information such as your name and medical information will be public health staff from the Minnesota Department of Health and staff from local public health who are directly working on novel coronavirus response. If you need additional medical care, we may need to share your information with health care providers in order to help them assist you.

Understand/Agree

The next part is about your address. Under Minnesota Law and Governor Walz’s Executive Order, we need to ask if you will give us your address to share with 911 dispatch centers. Sharing your address will help dispatch centers tell any first responders who might have to go to your address that they should use personal protective equipment. To share your address, your agreement is required.

The reason for asking is there is a shortage of personal protective equipment for first responders and they need to know whether to wear their limited supply when they go to an address. If you agree to share your address, 911 dispatch will be able to tell ambulance and emergency medical services workers, police officers, sheriff’s deputies, federal law enforcement, fire fighters, fire inspectors, and probation and parole agents to take precautions. 911 dispatchers will only tell first responders who have an official reason for going to your address. If you agree to provide it, your address is only shared with 911 dispatchers while you are in home isolation. Your name is not shared, only your address.

You can refuse to share your address and it will not affect any medical care you receive, or services provided by MDH or local public health.

Do you agree to share your address?  Yes  No

IS PERMISSION BY THE INDIVIDUAL GIVEN ORALLY, OR IS THERE A REQUIREMENT THE INDIVIDUAL SIGN AN AUTHORIZATION?

No signed authorization is required. The address is requested during the interview and the individual verbally states whether they agree to provide their address or not. If they agree, they are asked. If they do not agree, that question is skipped.

CAN AN ADDRESS BE PROVIDED TO DPS-ECN IF THE INDIVIDUAL REFUSES?

No. Under the MGDPA the individual has the right to refuse to provide an address to MDH and no address will be forwarded from MDH to DPS-ECN.

IF I SIGNED A CONFIDENTIALITY AGREEMENT, CAN I BE PENALIZED IF AN INDIVIDUAL’S PRIVATE DATA IS RELEASED ACCIDENTALLY?

No. Only a “willful violation” of the confidentiality agreement or the MGDPA triggers a penalty. Even those who are not signing a confidentiality agreement (first responders) must adhere to the MGDPA and cannot improperly disclose this private data. However, you are only responsible for your handling of the data (or the supervising of your employees’ handling of the data). As with any of the protected data we are responsible for in our work, we should use safeguards to avoid accidental disclosure.

## DOES MY AGENCY HAVE TO PARTICIPATE IN THE DATA SHARING?

Participation is not mandatory; however, EO 20-34 was intended to protect first responders and law enforcement and participation is strongly encouraged by the Governor.

## ARE PATIENTS TOLD TO TELL DISPATCHERS THAT THEY ARE COVID POSITIVE IF THEY CALL FOR HELP?

Yes. If an individual is recommended to self-isolate at home, they are told to tell 911 dispatchers of their diagnosis: "If you are experiencing a medical emergency, please call 911 and tell the dispatcher and first responders when they arrive that you have been diagnosed with COVID-19. This is so the dispatcher can tell the emergency responders to take precautions. If possible, put on a face mask before emergency medical services arrive."