STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Minnesota Coalition on Government Information,

Plaintiff,

vs.

City of Minneapolis; Casey J. Carl, in his official capacity as City Clerk for the City of Minneapolis; Patience Ferguson, in her official capacity as Chief Officer of the Human Resources Department for the City of Minneapolis; and Medaria Arradondo, in his official capacity as Chief of Police for the Minneapolis Police Department,

Defendants,

vs.

The Police Officers' Federation of Minneapolis,

Intervenor Defendant.

Case File No. 27-CV-21-7237
Case Type: Civil Other/Misc.
Judge: Karen A. Janisch

ORDER ON MOTIONS FOR PARTIAL SUMMARY JUDGMENT

This matter came before Judge Karen Janisch on January 18, 2022 for a hearing on the Defendants' Motion for Judgment on the Pleadings.

Mary Walker, Esq., Emily Parsons, Esq., Daniel Shulman, Esq., Clare Diegel, Esq. and Isabella Nascimento, Esq. all appeared on behalf of Plaintiff Minnesota Coalition on Government Information.

Mark Enslin, Esq., Rebecca Krystosek, Esq. and Sarah Riskin, Esq, appeared on behalf of the Defendant City of Minneapolis, Casey J. Carl, in his official capacity as City Clerk for the City of Minneapolis; Patience Ferguson, in her official capacity as Chief Officer of the Human Resources Department for the City of Minneapolis; and Medaria Arradondo, in his official capacity as Chief of Police for the Minneapolis Police Department

Joseph Kelly, Esq. appeared on behalf of the Intervenor, the Police Officers' Federation of Minneapolis.

Based on the files, records, and proceedings herein and the arguments of counsel the Court makes the following:

ORDER

1. Plaintiffs' and Defendants' Cross Motions for Partial Summary Judgment are GRANTED, in part, and DENIED, in part as follows:

    a. The language of Minn. Stat. § 13.43, regarding scope and meaning of "disciplinary action" is ambiguous.

    b. "Disciplinary action" must be construed consistently with the use of the term within § 13.43, in consideration of other closely related statutes addressing public sector employment, and consistent with longstanding administrative interpretations. Accordingly, the Court concludes "disciplinary action" as used in § 13.43 means: an action imposed through the decision of a government entity to punish or penalize an individual within the scope of § 13.43, subd. 1 consistent with the with rights and obligations between the government entity and the individual data subject as established by law and/or collective bargaining.

2. The attached Memorandum is incorporated as part of this Order.

3. To the extent any of the motions sought relief beyond the clarification of the scope and meaning of disciplinary action as used in Minn. Stat. § 13.42, the Court's consideration of additional relief is deferred until the parties are able to frame further motions in light of the Court's ruling.

4. The parties are ordered to meet and confer about scheduling and to present a joint, of if agreement is not possible separate proposals for further issuance of scheduling and trial orders.

BY THE COURT:

Janisch, Karen
2023.02.06
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Karen A. Janisch
Judge of District Court

MEMORANDUM

Plaintiff Minnesota Coalition on Government Information ("MCGI") brings this action pursuant to the Minnesota Government Data Practices Act ("MGDPA"). MCGI asserts Defendant City of Minneapolis ("City") improperly denied them access to data related to police officer coaching that was required by the City following investigation of certain types of complaints. MCGI asserts the documents are data of a "disciplinary action" which, once final, are classified as public data. MCGI asserts disciplinary action under the MGDPA is broad and includes corrective actions such as coaching that are mandated following determinations that an employee has violated City policies related to police officer conduct. The City and Intervenor-Defendant Police Officers' Federation of Minneapolis ("Union") assert coaching is training imposed within the City's inherent authority to manage and direct its workforce and not discipline under the terms of the collective bargaining contract and laws relating to peace officers.

The Court's April 15, 2022 Order denied the City's Motion for Judgment on the Pleadings and identified a threshold issue of statutory interpretation regarding the scope and meaning of "disciplinary action" as used in § 13.43 of the MGDPA. Following additional consultation with the parties, the Court directed a procedure to address this threshold issue. *(See Order for Further Proceedings, filed July 11, 2022*). The parties then brought their respective motions seeking partial summary judgment. MCGI and the City each filed a Motion for Partial Summary Judgment urging their respective positions on interpretation of "disciplinary action" as used in § 13.43. The Union filed a Memorandum in Support of the City's motion and opposing MCGI's motion.

STANDARD OF REVIEW

Summary Judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits . . . show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.02. On summary judgment, the court does not decide factual disputes. *Prestressed Concrete, Inc. v. Bladholm Bros. Culvert Company*, 498 N.W.2d 274, 276 (Minn. Ct. App. 1993), *rev. denied* (Minn. April 6, 1993). Statutory interpretation is a question of law for the Court. *See Cocchiarella v. Driggs,* 888 N.W.2d 621, 624 (Minn. 2016). As a result, cross motions for partial summary judgment is an appropriate mechanism for the Court to address the meaning and application of statutory language.

ANALYSIS

In its April 15, 2022 Order, the Court identified potential meanings of "disciplinary action" in concluding the meaning and scope of the statutory language was ambiguous. The parties in their briefing have fully addressed the issue raised by the Court and have offered additional proposed interpretations. The Court is not bound by the initial potential interpretation set forth in its prior Order. With the benefit of additional briefing of the parties, the Court considers all of the proposed arguments and interpretations presented.

A. Standard of Review for Statutory Interpretation.

"The objective of statutory interpretation is to 'effectuate the intention of the legislature' reading the statute as a whole." *Hagen v. Steven Scott Management, Inc.,* 963 N.W.2d 164, 169 (Minn. 2021). The Court must first determine whether the statute's language is ambiguous. *Id.* The court construes "the statute's words and phrases according to their plain and ordinary meaning. *Id.* "[W]ords and phrases are construed according to rules of grammar and according

to their common and approved usage[.]" Minn. Stat. § 645.06(1). A statute is ambiguous if its language is subject to more than one reasonable interpretation. *Hagen,* 963 N.W.2d at 169. If statutory text is clear and unambiguous, the Court's role is to enforce the language of the statute and not explore the spirit or purpose of the law." *Id*.

"But if the text of the statute is unclear or ambiguous, [the Court] 'will go beyond the plain language of the statute to determine the intent of the legislature.'" *Id.* (citing *Rohmiller v. Hart,* 811 N.W.2d 585, 589 (Minn. 2012). When statutory text is ambiguous, the "post-ambiguity" cannons of statutory interpretation can be considered by the Court. The statutory cannons of interpretation identify the following areas of inquiry:

(1) the occasion and necessity for the law;
(2) the circumstances under which it was enacted;
(3) the mischief to be remedied;
(4) the object to be attained;
(5) the former law, if any, including other laws upon the same or similar subjects;
(6) the consequences of a particular interpretation;
(7) the contemporaneous legislative history; and
(8) legislative and administrative interpretations of the statute.

Minn. Stat. § 645.16.

B. "Disciplinary Action" as used in § 13.43 is Ambiguous

"Discipline" and "disciplinary action" are not defined in the MGDPA. To determine whether a statute is ambiguous, we analyze "the statute's text, structure, and punctuation" and use the canons of interpretation. *Hagen,* 963 N.W.2d at 170 (citing *State v. Riggs*, 865 N.W.2d 679, 682 n.3 (Minn. 2015) (distinguishing between pre-ambiguity "canons of interpretation" and post-ambiguity "canons of construction")). The pre-ambiguity canons of interpretation include the ordinary-meaning canon, the whole-statute canon, and the canon against surplusage. *Id.* Under the whole-statute canon, the "language in dispute is not examined in isolation; rather, all

provisions in the statute must be read and interpreted as a whole" and each section is interpreted "in light of the surrounding sections to avoid conflicting interpretations." *Id.* "The canon against surplusage advises us to avoid interpretations that would render a word or phrase superfluous, void, or insignificant, thereby ensuring each word in a statute is given effect." *Id.*

MCGI urges the Court, in consideration of the more complete briefing on the issue, to conclude the phrase "any disciplinary action" is unambiguous and means "an act or thing done or having to do with treatment that corrects or punishes." MCGI first argues that Defendants' position in the initial set of briefing referenced a dictionary meaning and urged that disciplinary action was "punishment intended to correct or train." *(City Reply Mem. filed Dec, 10., 2021, p. 10).* MCGI argues this definition and the dictionary definitions they propose are "essentially" the same. The Court disagrees. The definition offered by MCGI is significantly broader than that proposed by the City in its initial briefing because it would apply to actions directed to correct *or* punish; whereas the initial phrase offered by the City was grounded in the action being an intended *punishment* given with the intent to correct or penalize. The City's initial arguments also expressly asserted that interpretation of whether disciplinary action was imposed is based on consideration collective bargaining contracts and other statutes governing discipline of public employees. The initial briefing on the Motions for Judgment on the Pleadings do not establish that the parties agreed as to an unambiguous meaning of "disciplinary action."

Second, MCGI argues the context of the phrase used in § 13.43, subd. 2(a)(5) includes "*any* disciplinary action" and that this modifier reflects a broad meaning of "disciplinary action" that would include corrective actions, not just actions that materially impact terms of employment as suggested by one of the Court's identified potential interpretations. As to "disciplinary action" not requiring an action that rises to the level of an adverse employment

action, this Court agrees. In unpublished decision in *Whelan v. Hennepin Healthcare Sys.*, 2013 WL 3491278, *3 (July 15, 2013) (*rev. denied* September 25, 2013), the Court of Appeals upheld summary judgment on a public sector employee's claim of retaliation for her having filed a grievance. The employee asserted a verbal reprimand documented in a letter stating it was the "last step before termination" was retaliatory. *Id.* The Court of Appeals held that the verbal reprimand and letter did not sufficiently alter the terms of her employment sufficient to support an "adverse employment action" to support a claim for retaliation. *Id.* The next issue addressed was the grant of summary judgment in relation to the employee's MGDPA claim based on alleged improper disclosure of the data in the letter. The Court of Appeals held that the letter documenting the verbal reprimand and basis for the verbal reprimand, which included the statement it was the "final step before termination," was (at the time) a final disposition of disciplinary action that was public data. *Id.* The Court agrees that *Whelan* supports that a disciplinary action under § 13.43 does not require that an action rise to the level of an "adverse employment action" as that term is used in discrimination and retaliation claims. However, *Whelan*'s conclusion that a letter documenting a verbal reprimand and giving the employee notice the action was the "last step prior to termination" establishes the broad ready of "disciplinary action" proposed by MCOGI. The context of the opinion supports that the verbal reprimand was intended as prior step of disciplinary action imposed by the employer, a step of discipline immediately before termination.[1]

Third, MCGI argues that limiting the scope of disciplinary action to a narrower interpretation would result in the Court legislating. MCGI argues the legislature knew how to

[1] This is consistent with the analysis of the Department of Administration in Advisory Op. 96-045. *(See supra).*

put limits on disciplinary action, and has specifically designated forms of disciplinary action and cited language in various licensing board statutes. *See e.g.* Minn. Stat. §§ 147.141 (setting forth disciplinary responses for Board of Medical Practice); 148.75 (discipline of Physical Therapists), 151.071 (discipline of pharmacists), and 153.22 (discipline of podiatrists). However, licensing data, is actually a distinct type of data described by the MGDPA. *See* Minn. Stat. § 13.41. Licensing by a government entity does bring an individual within the scope of "personnel data," Minn. Stat. § 13.43, subd. 1. There are statutes that more closely related to public sector employee discipline, such as the Peace Officer Discipline Procedures Act, Minn. Stat § 626.89. As statutes directed at discipline of certain public employees, those statutes overlay the procedures, rights and responsibilities specific to those public sector employees in relation to disciplinary actions and disciplinary procedures.

Fourth, MCGI argues the grammatical structure of the phrase "disciplinary action" supports their interpretation. Specifically, that use of "disciplinary" as an adjective is broader than discipline as a sanction meaning "of or relating to discipline." *The Merriam Webster Dictionary* (1978). MCGI cites a Court of Appeals opinion containing language that "[t]he term 'disciplinary action' refers to the entire disciplinary process prompted by the complaint or charge against the employee, not just the sanction that may result." *State v. Renneke*, 563 N.W.2d 335, 338 (Minn. Ct. App. 1997) (abrogated on other grounds). The holding, however, describes what becomes public upon there being a final disposition of disciplinary action, which under the unambiguous statutory language includes more than just the sanction imposed as discipline, but also the reasons for imposing the discipline and data supporting the discipline. This is not helpful to the instant dispute as to the scope and meaning of what constitutes a "disciplinary action." The limited application of the language cited by MCGI is apparent from the sentence that

immediately follows. Citing Minn. Stat. § 626.89 (1996), the Court of Appeals stated "the legislature has specified what procedures must be followed in disciplining a police officer." *Id.* *Renneke* supports that disciplinary action under § 13.43 as to certain employees includes consideration of the requirements and procedures of more specific statutes governing those particular government employees.

Finally, MCGI cites multiple, reputable dictionary definitions from near the time the statute was enacted and later to reach their proffered definition. (*Pl. Memo Supp. Mot. P. Sum. Jud., filed Oct. 10, 2022, pp. 7-10*). MCGI credibly asserts that various dictionary definitions could be distilled to define the term "disciplinary action" as "an act or thing done or having to do with treatment that corrects or punishes." (*Id. at pp. 9-10.*) However, as demonstrated by the various dictionary cites, there is no singular definition or clear consensus that isolates actions intended to correct from actions intended to punish. As noted by Defendants, the dictionary definitions of discipline and disciplinary generally include "punishment" and other like terms denoting a penalty or punitive intention.

Although the Court may consider dictionaries as an aid to determine the "plain and ordinary meaning" of a statutory phrase, the availability of dictionary definitions does not establish the language is unambiguous. If that were the case, there would not ever be an ambiguity as a dictionary definition of some sort would always be available as to the words used. Importantly, the meaning of a statutory phrase depends on its context. *See Matter of J.M.M. o/b/o Minors for a Change of Name*, 937 N.W.2d 743, 747 (Minn. 2020). "Multiple parts of a statute may be read together so as to ascertain whether the statute is ambiguous." *In re Dakota Cty.,* 866 N.W.2d 905, 909 (Minn. 2015). The context of § 13.43 provides guidance. Section 13.43, subd. 2(a)(4) describes that the existence of status of a complaint or charge

against an employee is public "regardless of whether the complaint or charge resulted in a disciplinary action." Section 13.43(b) provides that "final disposition occurs when the *government entity* makes a final *decision* about the disciplinary action." (emphasis added). When read together, this establishes that substantiation of a charge or complaint is ***not*** relevant to whether further personnel data is public data; but rather imposition of "disciplinary action" is focused on there being a "final decision" by the government entity to impose discipline.

Moreover, the reference in § 13.43, subd. 2(b) to collective bargaining rights and grievance proceedings reflects the legislature unambiguously intended to preserve grievance rights of public employees in relation to disciplinary action before any data related to a disciplinary action could become public. Collective bargaining agreements in the public sector are governed by the Public Employee Labor Relations Act ("PELRA"), Minn. Stat. Ch. 179A. PELRA mandates that "[a]ll contracts must include a grievance procedure providing for compulsory binding arbitration of grievances including *all written disciplinary actions*." Minn. Stat. § 179A.20, subd. 4 (a). Thus, any written disciplinary action governed by the MGDPA, would be subject to the collective bargaining process and grievance procedures. The context of the language surrounding "disciplinary action" under § 13.43 supports that whether an employer has made a decision to impose disciplinary action may depend on consideration of the government entity's rights and obligations under applicable labor laws and contracts.

There is no clear, plain or unambiguous meaning of the language "disciplinary action" as used in § 13.43. Dictionary definitions are not unified in a definition and fail to consider the context of considerations referenced in the statute in relation to public employment including, but not limited to, collective bargaining. MCGI presents a reasonable interpretation based on dictionary references and usage that "disciplinary action" is intended to include any action

imposed by an employer intended correct an issue with conduct or performance or impose a penalty for violation of the employer's policies, rules or expectations. Defendants' proposed interpretation is also reasonable in that it looks to the intention of the government entity to impose a disciplinary action as that term would be understood considering the nature and context of the rights and obligations between the government entity and individual established through collective bargaining or otherwise.

The Court concludes the language is ambiguous and that the Court must consider the "post ambiguity" cannons of construction to interpret the statute.

C. Statutory Interpretation is Required

When statutory text is ambiguous, the Court considers the eight areas of inquiry set forth in Minn. State § 645.16, including

(1) the occasion and necessity for the law;
(2) the circumstances under which it was enacted;
(3) the mischief to be remedied;
(4) the object to be attained;
(5) the former law, if any, including other laws upon the same or similar subjects;
(6) the consequences of a particular interpretation;
(7) the contemporaneous legislative history; and
(8) legislative and administrative interpretations of the statute.

The Court determines the appropriate weight to give each factor, and the Court may go beyond them as needed. *See* Minn. Stat. 645.16 (the statute directs in reference to the above factors that the "intention of the legislature *may* be ascertained by considering [the listed factors], *among other matters*") (Emphasis added).

1. The Occasion and Necessity for the Law and Circumstances under which it was Enacted (Factors 1 and 2).

The MGDPA was created to provide for public access to data created and maintained by government entities and to describe and define the rights of individuals from whom a

government entity collects and maintains data. "The purpose of the MGDPA is to balance the rights of individuals (data subjects) to protect personal information from the indiscriminate disclosure with the right of the public to know what the government is doing." *Demers v. City of Minneapolis,* 468 N.W.2d 71, 72 (Minn. 1991).

The personnel data provision was enacted to address data collected and maintained by government entities on their employees.[2] The personnel data provisions are now codified as § 13.43. The purpose of the personnel data provisions is to balance the interests of the public's right to know, the individual data subject's rights in relation to their public employment and privacy, and the government entity's interests in effective management of its personnel. The MGDPA's provision regarding public access creates a presumption that data is public unless otherwise designated. Minn. Stat. § 13.02. The personnel data provision of § 13.43 is a law that designates otherwise. Certain personnel data is designated as public data. *Id.* at § 13.43, subds. 2. All other personnel data not designated as public is private data on individuals. *Id.* at § 13.43, subd. 4.

In any system regulating government data, rules relating to employees is necessary because every government entity needs employees to carry out its functions and operations. The inclusion of personnel data within the first significant classifications of specific areas of data reflects the importance of addressing handling of employee data. There is significant variety of of work performed by different employees across all types of government entities. The scope includes classified employees, unclassified employees, employees subject to collective

[2] The original personnel data provision only governed data on individuals collected or maintained because of employment or an application for employment. *See* Minn. Sess. L. 1979, ch. 328, § 17. Expansion of the definition of personnel data to volunteers and independent contractors was enacted later through amendment.

bargaining agreements, at-will employees, temporary employees, probationary employees, and managers. The need for and purpose of § 13.43 is to provide notice to the public and public employees as to what data about employees is accessible to the public and to provide direction to government entities for implementation that allows them to comply with the MGDPA. The need for the personnel data provision to provide clear directives to governmental entities as to management of personnel data is reflected in the MGDPA's provisions allowing for both claims by members of the public if access to public data is denied; and for claims by public employees if private data is improperly disclosed. *See* Minn. Stat. § 13.08.

2. The Mischief to be Remedied/Object to be Attained (Factors 3 and 4).

As to the personnel data provision at issue, the object to be attained was for the legislature to delineate what information was public regarding government employees, including what and when information related to complaints about public employees becomes public data, and how to handle data related to discipline of government employees.

There is no support cited to the Court that reflects the personnel data provision related to disciplinary action was intended to mandate government entities impose disciplinary action if a complaint or charge is substantiated, or to limit, mandate or interfere with existing statutes and law related to the constitutional and statutory rights that may apply in public sector employment. The Court notes, however, that as the policy making branch of state government, the legislature has amended § 13.43 on occasions that suggest the legislature determined more public access was warranted under specific circumstances. *See e.g.* Minn. Stat. §§ 13.43, subd. 2(e) and (f) (detailed designating as to data on complaints, charges, investigation and termination of public officials); 13.43, subd. 10 (prohibition of agreements that limit or preclude discussion of personnel data) The volume of more specific amendments to § 13.43 over the past decades

reflect that the legislature has amended the statute to clarify what is public and what remains private data if circumstances or actions of government entities under the current language is precluding access to data the legislature wants to be public, or to address specific areas where additional protection of individual privacy is needed.

3. The Former Law, if any, Including Other Laws Upon the Same or Similar Subjects (Factor 5).

The MGDPA was enacted in 1974 as part of the Official Records Act. *See generally,* Minn. Stat. Ch. 15; *see also* Minn. Sess. Laws 1974, Ch. 479, § 1-7. The system created in 1974 required the Commissioner of the Department of Administration ("DOA") to annually report to the legislature lists of the systems of data and types of data on individuals kept by government entities and provided the DOA with authority to promulgate rules. *Id.* at §§ 2-3. Thereafter, the legislature regularly addressed additional categories of data and responsibilities for state agencies and entities. For example, the definitions section, now codified as § 13.02, was amended to add new definitions related to data in 1975, 1976, 1977 and 1978. *See* Minn. Sess. L. 1974, ch. 479, § 1; Minn. Sess. L. 1975, ch. 401, § 1; Minn. Sess. L. 1976, ch. 239, § 2; Minn. Sess. L. 1976, ch. 283, § 1; Minn. Sess. L. 1977, ch. 375, § 1; Minn. Sess. L. 1978, ch. 790, § 1.

In 1979, the legislature enacted significant amendments to the prior law that applied the statute to all state agencies, statewide systems and political subdivisions and titled the law as the " Minnesota Government Data Practices Act." Minn. Sess. Laws 1979 Ch. 328, §§ 1-2. The 1979 amendments created the statutory terms related to access to government data, including that "all government data . . . . shall be public unless classified by statute . . . or federal law, as not public, or with respect to data on individuals as private or confidential." *Id.* at § 7 . The 1979 amendments also created new provisions specific to certain types of data with designations that certain data was private data on individuals or non-public. These included new provisions

governing "welfare data," "investigative data," "licensing data," "medical data," public hospital data, "*personnel data*," "educational data," data of public attorneys, "law enforcement data," crime victims access to data, and addressing correspondence between individuals and public officials . *See* Minn. Sess. L. 1979 Ch. 328. The "personnel data" provision includes the first language by the legislature designating certain data as public and all other personnel data as private data on individuals. *Id. § 17.* It is the first designation by the legislature that "the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a *disciplinary action*; and the final disposition of any *disciplinary action* and supporting documentation" as public data. *Id. (emphasis added).* When enacted, § 13.43 applied only to "data on individuals collected because the individual is or was an employee or an applicant for employment by a state agency, statewide system or political subdivision." *Id.* As enacted, the language used was intended specifically to address data arising within the context of public sector employment.

The enactment of the personnel data provision of the MGDPA occurred *after* enactment of the Public Employee Labor Relations Act ("PELRA"), currently codified as Minn. Stat. Ch. 179A. PELRA provided for collective bargaining between government entities and their employees. PELRA, as initially codified in 1971, did not include any reference to "disciplinary action." However, in 1979 (the same year the personnel data provision was enacted), the legislature amended PELRA in relation to "disciplinary action." Minn. Sess. L. 1979, chap. 50, § 20. Although both laws were enacted in 1979, the session law numbers reflect the 1979 PELRA amendments were enacted by the legislature before the passage of MGDPA amendments creating the personnel data provision. PELRA was amended to state that "[a]ll contracts *shall* include a grievance procedure which shall provide compulsory binding arbitration of grievances

including *all disciplinary action.*" Minn. Sess. L. 1979, chap. 50, § 20 (amending Minn. Stat. § 179.70, subd. 1 (1978) (emphasis added). .

Courts must presume that the legislature "did not intend to interfere with or abrogate any prior laws[,]" and "the legislature, in passing a new law, is presumed to have acted with due deliberation and with the knowledge of and due regard for existing laws" *Strizich v. Zenith Furnace Co.*, 223 N.W. 926, 927 (Minn. 1929). The requirement under PELRA for grievance procedures for "all disciplinary action" in relation to collective bargaining agreements and the later inclusion of the phrase "final disposition of any disciplinary action" in relation to data on individuals and reference to arbitration as to when final disposition occurs strongly supports the legislature intended these statutory provisions to be consistent and read in harmony with one another. MCGI's argument that "disciplinary action" as used in § 13.43 is intended to be distinct from or broader than "disciplinary action" contemplated in relation to public sector collective bargaining and the rights, obligations and procedures for discipline under PELRA is not persuasive.

MCGI argument that PELRA was "repealed" and its modern form was established through legislation in 1984 *after* enactment of the personnel data provisions is also unpersuasive. The bill passed by the legislature in 1984 (Senate File 1986) contains the following description: "An Act relating to public employment labor relations; recodifying the public employment labor relations act; proposing new law coded as Minnesota Statutes, chapter 179A; repealing Minnesota statutes 1982, sections 179.61 to 179.76." Minn. Sess. L. 1984, chap. 462. MCGI's characterization of this as a full repeal of the prior version of PELRA is contrary to the clearly stated intent of the legislature, which designated the action as a repeal of the prior version of PELRA with its reenactment as a newly codified section of the Minnesota Statutes. "When a

law is repealed and its provisions are at the same time reenacted in the same or substantially the same terms by the repealing law, the earlier law shall be construed as continued in active operation." Minn. Stat. § 645.37.

4. The Consequences of a Particular Interpretation (Factor Six).

MCGI asserts Defendants' interpretation improperly allows the City and Union to determine what are disciplinary actions and would allow them to improperly avoid public scrutiny in relation to how a government entity addressed sustained complaints against government personnel and by precluding public access by designating the response as non-disciplinary. Defendants argue that the broad definition proposed by MCGI related to actions that are "corrective" in nature would potentially include a broad range of actions by government entities to review performance of employees and direct corrections in relation to performance expectations. Defendants assert this would cause significant confusion as to what is public and what is private, result in documents treated and understood as private data by the employees and employer suddenly and without notice to the data subject becoming subject to public disclosure. Defendants argue this interpretation would invade what is generally understood under the law to be inherent managerial authority of an employer under PELRA and other laws governing the relationship between employers and employees.

The consequence of a definition of "disciplinary action" that includes any action by an employer designed to be corrective through providing training, peer resources, reassignment (without demotion), identifying requirements and expectations for future performance, setting requirements for professional development, corrective action plans, or similar action imposed to correct performance related issues would expand the scope of "disciplinary action" in a manner that would invade areas generally understood to be inherent managerial authority of public sector

employers to direct and control personnel. If corrective actions are disciplinary action, this would expand the areas in which collective bargaining and grievance procedures in areas that are currently defined as within the broad definition of inherent managerial authority under PELRA. *See* Minn. Stat. § 179A.07, subd. 1. Designating actions not intended and identified by the government entity as "disciplinary actions" could make public a broad section of personnel data for which the individual data subject was not given notice that it would be public data when it was created and maintained and, for employees subject to collective bargaining, the right to collectively bargain over a policy or procedure and rights to notice of discipline and right to demand grievance proceedings may be impaired or precluded. The nature of the potential consequences weigh in favor of the narrower interpretation of "disciplinary action" proposed by Defendants.

5. Contemporaneous Legislative History (Factor 7)

Given the significance of the amendments to the MGDPA in relation to public employees and personnel, the Court presumed that there would likely be contemporaneous legislative history that would provide insight as to the legislative intent in relation to the "final disposition of disciplinary action" language. The Court believes the parties diligently made efforts to locate relevant legislative history, but despite the efforts, none was available for consideration.

6. Legislative and Administrative Interpretations (Factor 8).

The Department of Administration ("DOA") was granted authority by the legislature to issue rules and advisory opinions in relation to the Act. Minn. Stat. §§ 13.07, 13.072. The DOA has authority on request from a government entity to provide "a written opinion on any question relating to public access to government data, rights of subjects of data, or classification of data under" any chapter "governing government data practices." Minn. Stat. §13.072, subd. 1(a).

DOA opinions "are not binding on the government entity" but the opinion relating to the data "must be given deference by a court…in a proceeding involving the data." Minn. Stat. § 13.072, subd. 2. The statute requires the Commissioner to arrange for public dissemination of its opinions and that the opinions "shall indicate when the principles stated in an opinion are not intended to provide guidance to all similarly situated persons or government entities." *Id.* Advisory opinions are published on the Department of Administration's website: https://mn.gov/admin/data-practices /opinions/.

Defendants assert the administrative interpretation of the Act strongly favors their proposed interpretation. The parties each cite a number of advisory opinions provided by the DOA. Defendants urge that various advisory opinions are contrary to the interpretation of MCGI and support their proposed interpretation of the statute. The data at issue in this case is not "the data" upon which the DOA issued a specific opinion. The DOA advisory opinions are not binding on the Court, but "the opinion can be persuasive authority." *Harlow v. State Dept. of Human Serv.*, 862 N.W.2d 704, 712 (Minn. Ct. App. 2015). DOA advisory opinions are at their most persuasive when the issue being addressed is the same or similar to questions presented to the Court. *Id.*

Advisory Opinion 96-001 was issued in response to a school district's request as to whether letters issued to teachers after an investigation that "set forth the behaviors of concern and specific directives for corrective action" were public data. Advisory Op. 96-001 (Minn. Dept. of Admin., Jan. 9, 1996). The issue turned on whether the documents were "disciplinary as that term is used in Section 13.43 of the Data Practices Act[.]" *Id.* The opinion states that in determining the question of whether the letters were disciplinary, "the Commissioner has relied upon the language, which relates to discipline, contained in the employees' contract." *Id.* The

DOA concluded "[w]hen considered in light of the employees' contract (which requires that certain information be provided with a notice of discipline), the data in question do not constitute data which document disciplinary action taken against the two employees, and are, therefore, not public data." *Id.*

Advisory Op. 96-045 was issued in response to a request from a school district regarding the classification of eight documents identified by the school district as to "directives and reprimands given to an employee(s)" that were not grieved, one document subject to an unconcluded grievance; and two documents which included a letter from another entity related to violation of that entity's rules and a letter from the superintendent reprimanding the employee for the violation. Advisory Op. 96-045, (Minn. Dept. of Admin, Oct. 30, 1996). This lengthy opinion goes through multiple specific written communications directed to employees related to violations of rules, performance problems, and/or problematic behaviors. Citing *The American Heritage Dictionary, Second College Edition,* Houghton Mifflin Company, 1985, the DOA concluded discipline was defined as "[t]o punish or penalize" and that "a reasonable interpretation of disciplinary action is an act that either punishes or penalizes." *Id.* Two of the documents were found to reflect final disposition of disciplinary action. In concluding disciplinary action occurred, the DOA looked to language in the documents that reflected the employer considered and intended to impose discipline through the communication: one was titled "Reprimand" of which the DOA noted "[t]he supervisor further states, I am directing you to apologize by [specific date]...Should you choose to disregard this directive, you will be subject to *further* discipline which may include dismissal. *Id.* (Emphasis in original). DOA reasoned that the statement was clear that the act of apologizing was considered by the employer to be discipline. The other document was also titled "Reprimand," but was subject to conclusion of

grievance procedures. The other documents consisted of letters to employees identifying various problem conduct or behaviors, but not imposing a penalty or punishment and only threatening the potential of future discipline if not performance was not corrected. In addition to specifically providing an interpretation of "disciplinary action," this opinion also demonstrates that DOA defines disciplinary action, at least in part, in reference to the employer's own intent and understanding of their actions as imposing "discipline."

Advisory Op. 01-072 was issued in response to a request from a school district in relation to classification of two written communications from the school board to the superintendent. Advisory Op. 01-072 (Minn. Dept. of Admin. Sep. 10, 2001). The opinion addresses written communication to the superintendent that set for the proposed goals for the superintendent for upcoming school year. The school district argued the written proposed goals for the superintendent represented the superintendent's duties that must be performed to meet expectations and were public because they intended to adopt the goals in a public meeting and that the letter was a final disposition of disciplinary action. *Id.* The written communication included statement that if the goals were not met, the superintendent would be subject to negative consequences. *Id.* DOA disagreed and determined the writings were private personnel data about the superintended. The opinion found that the document was a "threat of *punishment or penalty,*" but not punishment and not discipline. The opinion concluded that a threat of punishment or penalty if certain things did not occur was not discipline under the Act. As in Advisory Opinion 96-001, the DOA again defined the term disciplinary action in relation to the American Heritage Dictionary, Second College Ed. (1985) and found that it means "to punish or penalize[.]"

Advisory Opinion 03-045 involved a request from a union seeking access to public data concerning a disciplinary action against an employee. The school district responded there was no public data, but that "the matter was investigated and appropriate action taken against [the employee]." Advisory Opinion 03-045 (Nov. 10, 2003). The school district maintained that the "appropriate action" that was taken was not disciplinary and the information remained private data. *Id.* The Commissioner referenced its earlier Advisory Op. 01-072, and stated "it appears the purpose of this document is to serve as a threat of punishment or penalty to the employee; not to set forth discipline. There is no mention of punishment." *Id.* The DOA opinion is caveated with the statement that "the District asserts that it did not take disciplinary action against the employee, and the Commissioner has no information that contradicts that position." *Id.*

Advisory Op. 09-001 was issued in response to a request by a newspaper which sought and was not provided with documents related to the termination of a school district employee. Advisory Op. 09-001 (Minn. Dept. of Admin. Jan. 21, 2009). The school district asserted the employee was employed *at will* and her employment "could be terminated at any time for any or no reason" and further information was not public. *Id.* The opinion stated that the district did not have responsive data under the MGDPA, but stated the basis for the opinion was the district's own assertion that the termination was not disciplinary. To the extent the employee was terminated for reasons that were not disciplinary, the DOA concluded that the information as to reasons for the termination were not public. *Id.* This opinion reflects that the action itself (termination) is not necessarily a disciplinary action, because whether it is disciplinary action depends on the nature of the employment relationship and intent of the government entity in severing the employment relationship.

Taken together, the Court accepts as persuasive guidance that: (1) DOA has interpreted the term "disciplinary action" under § 13.43 in relation to the government entity's intent to impose discipline as considered within the legal framework governing the employer/employee relationship; (2) that the threat of potential future discipline as a response to a complaint or charge, or area of deficient performance is not disciplinary action; and (3) the DOA has engaged in a limited dictionary analysis to conclude that disciplinary action "is an act that either punishes or penalizes." The Court is persuaded by the DOA opinions and analysis on this issue because its approach and definition are long-standing for more than 25 years. *See Marks v. Comm'r of Revenue,* 875 N.W.3d 321, 327 (Minn. 2016).

The analysis of the DOA in these opinions carries significant weight because the agency was expressly granted the authority to provide opinions to provide both specific and general guidance as to the Act. The opinions have shaped the present understanding of public entities and public employees as to their attendant rights and obligations to each other. Government entities, employees and the public have likely relied upon the DOA's analysis in shaping their data classifications and responding to requests under the MGDPA. The Court presumes that the legislature is aware of the guidance and perspective of the DOA and has had the ability to act to clarify the statute if the DOA is providing opinions that they believe are contrary to the policy and intent.

7. Conclusion.

The Court having considered the factors to determine legislative intent gives primary weight to the legislative history relating to the enactment of PELRA's provisions related to grievance arbitration for all disciplinary actions and the enactment of the personnel data provisions in the MGDPA. Although subsequent amendments to both statutes have added

provisions, the fundamental nature of collective bargaining and grievance procedures for public sector employees subject to collective bargaining and the recognition as to personnel data of the rights and interests in grievance proceedings in relation to disciplinary action have remained within each statute. The Court also gives significant weight to the long-standing DOA Advisory opinions defining "disciplinary action" and providing guidance as to consideration of the relationship between the government entity and individual data subject in determining whether disciplinary action has occurred. Considering the context of the statute as a whole, and the post-ambiguity consideration, "disciplinary action" means: an action imposed through the decision of a government entity to punish or penalize an individual within the scope of § 13.43, subd. 2 consistent with the rights and obligations between the government entity and the individual data subject as established by law and/or collective bargaining.

K.A.J.