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August 4, 2023

Honorable Karen A. Janisch
Judge of District Court
C-1431 Government Center
300 South Sixth Street
Minneapolis, MN 55487

RE: MNCOGI v. City of Minneapolis et al., 27-cv-21-7237

Dear Judge Janisch,

In advance of the informal discovery conference scheduled for August 8, Plaintiff Minnesota Coalition on Government Information (“MNCOGI”) respectfully submits this letter requesting that the Court order Defendants to cooperate in the discovery process by promptly, and on a rolling basis, completing their document production, complying with the parties’ stipulated ESI Protocol and Minn. R. Civ. P. 34.02, and removing improper redactions from documents already produced.

As the Court is aware, this case arises from a February 2021 data request by MNCOGI for, *inter alia*, coaching forms for B-, C-, or D-level violations of the Minneapolis Police Department’s policy manual, as well as “[a]ll data, dating from January 1, 2011 to present, in which coaching is described as a form of discipline or acknowledged by a supervisor or the Chief of Police to constitute a form of discipline.” Compl. Ex. 8.

Defendants denied MNCOGI’s request, stating that “[c]oaching is not discipline and has never been discipline. . . . MPD has no responsive data.” *Id.* Ex. 9. When, in June 2021, MNCOGI sued under the Minnesota Government Data Practices Act (“DPA”), Defendants doubled down, stating that “coaching has [n]ever been acknowledged or otherwise treated as a form of discipline.” *See* Joint Answer ¶¶ 40, 43. In August 2021, when MNCOGI asked Defendants to look again for responsive data, they insisted they had nothing responsive to the portion of DPA request quoted above because “[t]he City has consistently treated coaching as non-disciplinary.” And in January 2022, counsel for Defendants represented to the Court that “coaching is just not discipline It’s not discipline because the Chief says it’s not and the Chief has the discretion to make these decisions. It’s not discipline because it has never been treated as such.” Jan. 18, 2022 Hr’g. Tr. at 22.

We now know that none of that is true: Defendants have produced coaching forms showing that,

[REDACTED]¹ Discovery has also revealed the misleading nature of many other statements by Defendants, both to the public and within this litigation, including that only A-

¹ These documents are available upon request, but MNCOGI objects to their nonpublic filing in light of the public’s right to access judicial records. Privacy concerns can be mitigated via redaction.


level violations can be coached (documents show [REDACTED]) and that coaching forms are not maintained in official personnel files (many forms [REDACTED]). And even outside the discovery process, MNCOGI has obtained several, *indisputably public* documents that contradict Defendants' repeated claims and that should have been disclosed (but were not) in response to its 2021 DPA request. *See, e.g.*, Exhibits A-C. These inconsistencies and failures of disclosure demonstrate MNCOGI's need and entitlement to discover (1) what other documents Defendants improperly withheld in responding to its DPA request; and (2) in light of the Court's definition of "disciplinary action," how Defendants' internal admissions and practices contradict their public statements, policies, and agreements on coaching.

Since receiving Defendants' May 8 supplemental responses to MNCOGI's initial discovery requests, MNCOGI has sent Defendants three deficiency letters (5/19, 6/29, 7/31), participated in two meet and confers (5/30, 7/13), attempted to schedule a third meet and confer (which Defendants canceled at the last minute), provided an ESI protocol (6/14), drafted a proposed list of search terms (7/3), negotiated over both search terms and custodians, and has largely made its counsel available around the clock to confer on discovery issues. Defendants, on the other hand, have objected to nearly all of MNCOGI's requests as "irrelevant." They continue to withhold documents on grounds they are private under the DPA (even though they told the Court in the parties' joint discovery proposal that they would not do this). And they have acknowledged that they have yet to produce a significant portion of documents responsive to MNCOGI's *first* set of discovery requests, served almost *two years ago*. They have also failed to produce *any* documents in accordance with the specifications in the parties' ESI Protocol or even in a manner consistent with the requirements of Minn. R. Civ. P. 34.02. Moreover, Defendants have redacted many documents based on a unilateral determination that the redacted information is irrelevant, unresponsive, or "private" under the DPA, though no authority supports such redaction.

The deadline for Defendants to "substantially complete" their document production is August 15. Am. Sch. Order at 2 ¶ 4(b)(b). As Defendants concede, that will be nearly impossible to achieve; indeed, in an email sent Wednesday night they claimed "extremely limited availability" to even discuss search terms, much less finalize them and begin reviewing and producing documents. They have yet to discuss a new discovery schedule with us. MNCOGI therefore respectfully asks the Court to order that, **on or before August 15:**

- (1) Defendants must complete production of documents responsive to MNCOGI's October 2021 requests that they have identified or reasonably can identify without the use of search terms.
- (2) To facilitate identification of, and possible compromise regarding, additional responsive documents, Defendants must provide to MNCOGI a report showing how many documents hit on each search term requested by MNCOGI as of July 31, using the parties' agreed date range. Defendants must also spot check the documents containing search terms so that they can provide a good-faith estimate of the frequency with which search terms hit on nonresponsive documents.
- (3) The parties must meet and confer and file a new proposed discovery plan, requiring, at a minimum, that the production of all responsive document be substantially completed on or before September 30, with documents produced in rolling batches of relatively similar size on a weekly basis until complete. And,
- (4) Defendants must re-produce all documents produced to date in a manner consistent with the ESI Protocol and Rule 34.02, and remove any redactions from the re-produced documents, except those based on an assertion of privilege, which must then be captured in a privilege log.

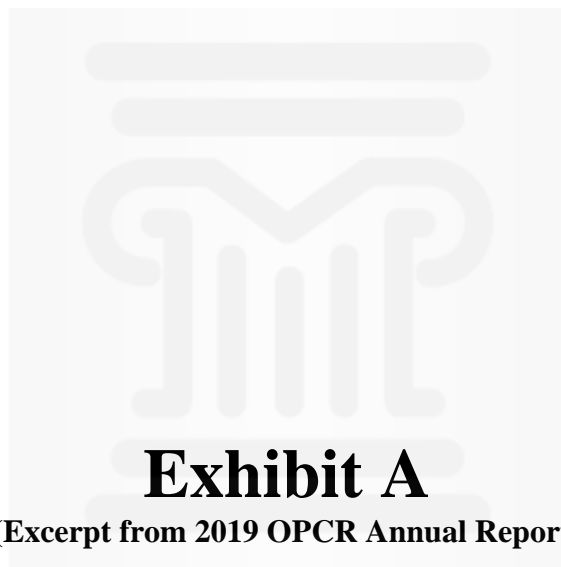
Very truly yours,



Leita Walker



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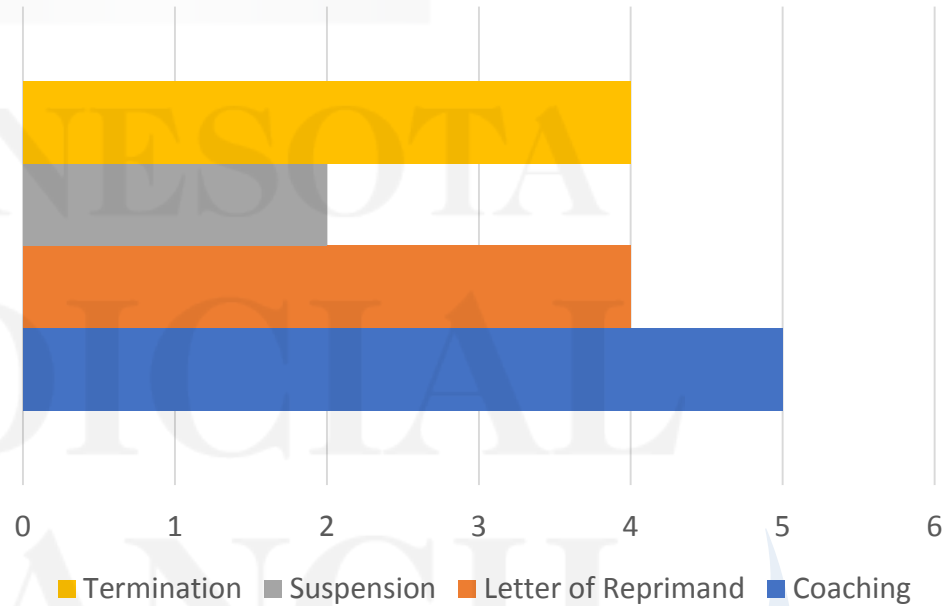
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Discipline

- Q3 2018 – Q3 2019

- 11 Corrective Actions

- 5 coaching
- 4 Letters of reprimand
- 2 suspensions
- 4 Terminations



- 16 Cases Outstanding

October 16th, 2019



Exhibit B

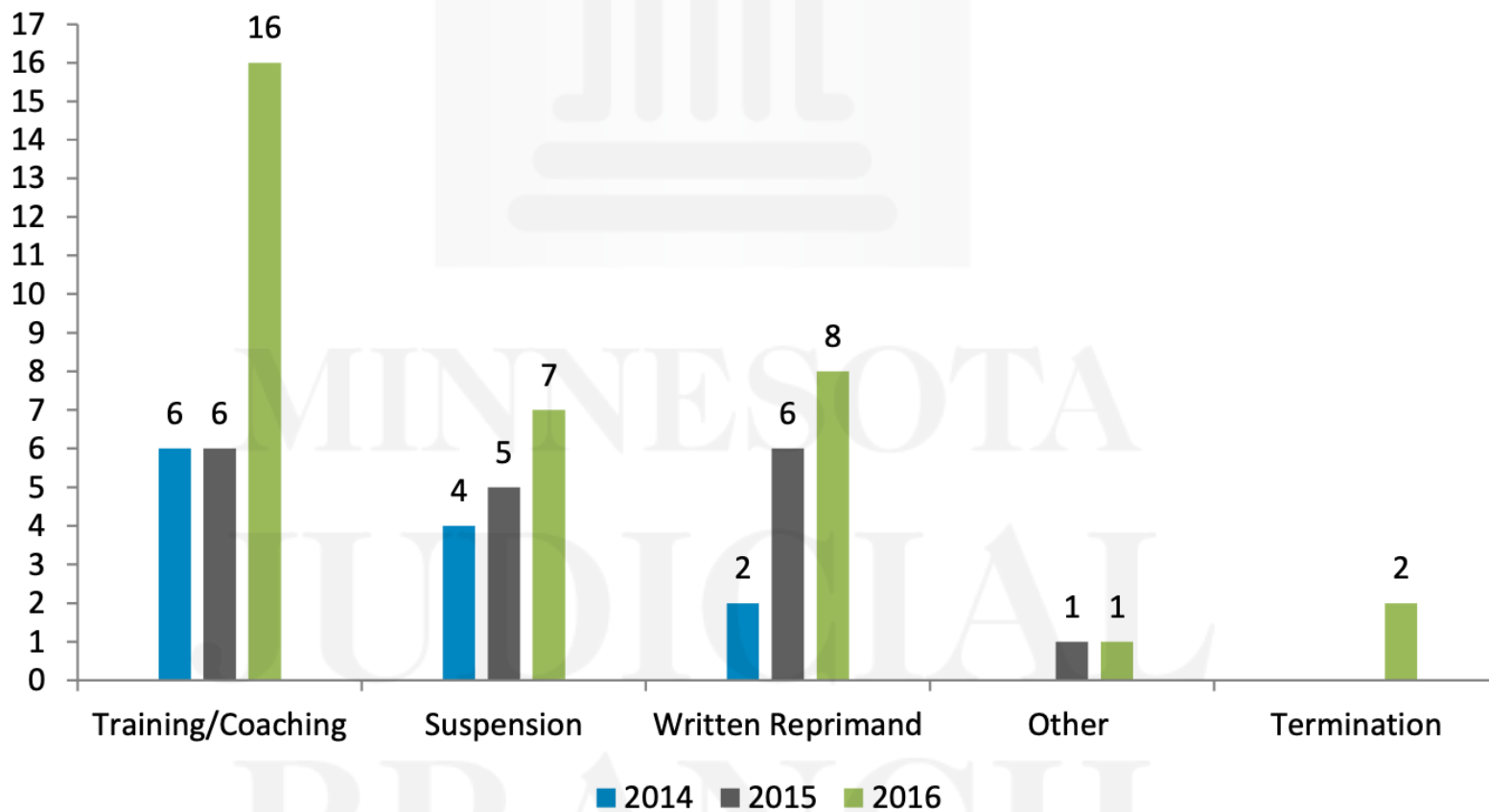
(Excerpt from 2017 Minneapolis Civil Rights Department report)

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Meet Stakeholder Needs

OPCR

Discipline Types Issued by Chief



Source: OPCR Practice Manager

Figure 21



Exhibit C

(2020 Email to Councilmember Jenkins containing responsive attachment)

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From: "Burt, Glenn" <Glenn.Burt@minneapolismn.gov>

To: "Jenkins, Andrea" <andrea.jenkins@minneapolismn.gov>

Subject: 2003 Federal Mediation Agreement

Date: Tue, 22 Sep 2020 00:16:20 +0000

Importance: High

Attachments: 2003_Federal-Mediation-Agreement.pdf

Inline-Images: image001.gif; image002.jpg

Glenn L. Burt, Jr.
Gender Pronouns: He/Him/His
Manager of Community Engagement
Supervisor - Community Navigator Unit
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1925 Plymouth Avenue North
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(612) 370-4978 (fax)



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MEMORANDUM OF AGREEMENT

This Agreement is made this 4th day of December, 2003 by and between the Unity Community Mediation Team and the Minneapolis Police Department.

PREAMBLE

The Unity Community Team and the Minneapolis Police Department enter into this agreement dedicated to protecting safety and the human rights, civil rights, and legal rights of all Minneapolis residents, regardless of race, ethnicity, national origin, religion, language, immigration status, gender, sexual orientation, mental health, age, economic status or disability status.

We condemn cultures of brutality and violence everywhere they exist. Where we find them in society, we will combat them. Where we find them in the police department, we will combat them. We also condemn institutional racism everywhere it exists. Where it is found in society, we will combat it. Where it is found in the police department, we will combat it.

We agree to work together to protect the life, dignity, health and safety of all Minneapolis residents; to continue this dialogue to improve police practices; to ensure that violations of Minneapolis residents' rights by police officers are resolved justly; to improve the level of professionalism, training, and racial and gender diversity at all levels of the Minneapolis Police Department; and to improve relations between our communities and their police department and the City of Minneapolis.

Police officers are sworn to uphold the law and take action without regard to race. If race is a motivating factor in police actions, it is a vital concern to the community and the department. The data contained in the September 24, 2003 "Minnesota Racial Profiling Study," published by the Council on Crime and Justice, heightens this concern and demands further analysis. Police Officers are entrusted with enormous authority and are accountable for a strong commitment to public service. MPD officers must project professionalism and are held accountable for excellence in serving all members of the public. The many officers who live up to this standard of excellence deserve respect from the community they serve.

The Federal Mediator, Patricia Glenn, met with both sides to facilitate reform, the exchange of information and views, and the creation of an agreement that both sides agree will advance their goals of improving the quality of life in Minneapolis and that they hope will be the beginning of a new, more productive dialogue between the City of Minneapolis, the Minneapolis Police Department and the residents of the city on issues related to police work.

imposed without “just cause” and that the employee has a right to appeal an imposition of discipline to a neutral fact finder such as an arbitrator or a civil service commission.

7.3.1 *Paid Leave of Absence.* When a public employer determines that the allegations against an employee are so serious that the employee should be relieved of duty pending the investigation and the imposition of discipline, the employee is entitled to be placed on a paid leave of absence during such time because of the legal requirement that the employee not be disciplined without due process.

7.3.2 *Disciplinary Options.* Pursuant to the Minneapolis Civil Service Rules and the MPD Discipline Manual, disciplinary options are coaching, oral reprimand, written reprimand, suspension, demotion and termination. Both documents provide that discipline is to be corrective and not punitive.

7.3.3 *Report of Disciplinary Actions.* Subject to the provisions of the Minnesota Government Data Practices Act, the MPD will prepare an annual report summarizing data regarding complaints against officers and the disposition, including the nature of any discipline of such complaints.

Section 8. Removal of Children from the Home/Out of Home Placement

8.1 The MPD recognizes that when a child is removed from their home, it is not only traumatic for the child, but also for the child’s family and community as well. Accordingly, the MPD agrees to take the following measures to limit the circumstance in which a child is removed from his/her home to those in which such action is necessary to protect the safety and well-being of the child.

8.1.1 The MPD will participate in periodic meetings with the following entities to discuss the issues surrounding out of home placement and the procedures used to remove children from their homes.

- Juvenile Detention
- SOS (Social Outreach Services)
- Truancy
- St. Joseph’s
- Child Welfare
- Hennepin County

8.1.2 The MPD agrees to review with the PCRC;