

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

MINNESOTA COALITION ON
GOVERNMENT INFORMATION,

Court File No.:

Judge:

Plaintiff,

v.

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.

COMPLAINT

Defendants.

“There is a compelling need [] for public accountability, particularly with law enforcement.”

—*Demers v. City of Minneapolis*,
468 N.W.2d 71, 74 (Minn. 1991)

“The image of integrity and trust is essential to the performance of a police officer’s duties.”

—*City of Minneapolis v. Moe*,
450 N.W.2d 367, 370 (Minn. Ct. App. 1990).

INTRODUCTION

For more than a year, the eyes of the world have been on the State of Minnesota, and in particular the Minneapolis community. The murder of George Floyd on May 25, 2020, by former Minneapolis Police Department (“MPD”) officer Derek Chauvin, once again laid bare the broken relationship between police in Minnesota and the communities they are meant to serve, especially communities of color. A culture of secrecy in the MPD and lack of transparency by the City of Minneapolis (“the City”) and its police department has deepened the chasm between police and the community by reinforcing the fear that police will not be held accountable for their misconduct—unless, as in the case of Derek Chauvin, that misconduct happens to be witnessed and recorded by civilians *and* happens to be so brutal that it cannot be ignored.

As Minnesota Attorney General Keith Ellison stated after a jury convicted Chauvin of murder: “This verdict reminds us that we must make enduring, systemic, societal change. . . . We need to use this verdict as an inflection point. What if we just prevented the

problem, instead of having to try these cases?”¹ Some may say legislative action is needed. But this lawsuit takes aim at lower-hanging fruit. Substantial progress toward “prevent[ing] the problem” of police misconduct is possible by simply requiring the MPD and the City (collectively, “the City Defendants”) to comply with *existing* law—namely, their obligations under the Minnesota Government Data Practices Act (“MGDPA”) to release public disciplinary data upon request.

Under the MGDPA, personnel data including “the final disposition of any *disciplinary* action” is public government data. Minn. Stat. § 13.43, subd. 2(a)(5) (emphasis added). According to the City Defendants, however, so-called “coaching”—the most common consequence when an MPD employee is found to have engaged in misconduct—is not discipline. In reliance on this self-serving nomenclature—and citing a quirk of the MGDPA that makes complaints against government employees public not when an allegation is substantiated, but only when discipline is imposed—the City Defendants refuse to release hundreds of records where MPD found misconduct, imposed coaching, completed a Coaching Documentation form, and stored that form in an employee’s personnel file, potentially to be used against the employee in later disciplinary actions.

To put it in context, since 2013, city officials recommended 741 complaints against MPD employees be considered for coaching, and 226 of those actually resulted in coaching. During this same period, the Chief of Police ordered coaching in at least another 48 instances

¹ NowThis News, *Minnesota AG Keith Ellison Speaks After Derek Chauvin’s Guilty Verdicts*, YOUTUBE (Apr. 20, 2021), <https://www.youtube.com/watch?v=eEtxYzRzrUo> (quoting from 13:17 to 13:56).

where city officials had initially determined the infraction was not eligible to be referred directly to coaching. This means that, at minimum, 274 Coaching Documentation forms should be public as documenting the imposition of a consequence—*i.e.*, discipline—for the misconduct. To make matters worse, thanks to the City Defendants’ doublespeak, the outcome of these sustained complaints where coaching was imposed is misleadingly listed in public records as “Closed – No Discipline.”²

This lack of transparency is deliberate. Velma Korbel, former director of the City’s Department of Civil Rights, has admitted that “the [C]ity has been very intentional in designating coaching as a nondisciplinary corrective action.”³ On information and belief, another senior official in that department divulged that the Chief of Police for the Minneapolis Police Department, Defendant Medaria Arradondo, knowingly imposes coaching in cases in which he does not want the underlying facts to become public. That is, coaching is the City Defendants’ discipline of choice to *hide* this data from public disclosure under the MGDPA.

Community members have raised concerns about the MPD’s strategic use of coaching—specifically, that within the MPD there exists a culture of secrecy and impunity for misconduct, and that both the lack of accountability and transparency erode the public’s

² Minneapolis Dept. of Civil Rights Complaint Response Document at 3 (attached hereto as Ex. 1).

³ Andy Mannix, *Proposal to unseal hundreds of misconduct allegations against Minneapolis police officers moves forward*, STARTRIBUNE (Aug. 25, 2020), <https://www.startribune.com/mpls-official-s-proposal-to-unseal-claims-of-police-misconduct-moves-forward/572217352/> (City spokesperson, Casper Hill, calls coaching “a valuable tool” to “swiftly address” low-level behavioral problems).

trust in the City Defendants.⁴ In response, the City Defendants state that coaching is used only to discipline the lowest category of infractions (known as “A-level violations”).⁵ But that is false. Public records of the City’s own Police Conduct Oversight Commission (“PCOC”),⁶ show that MPD liberally imposes “coaching” even after finding serious violations of MPD policy—those classified as B-, C-, and D-level violations. This is despite the City Defendants’ public statements that such violations are ineligible for coaching, and despite the MPD’s own Discipline Matrix prescribing various forms of *discipline*—not coaching—as the baseline consequence for such violations.⁷

Plaintiff Minnesota Coalition on Government Information now brings this action against the City Defendants, asking the Court to require the City Defendants to comply with the Minn. Stat. § 13.43, subd. 2(a)(5). The City Defendants are willfully subverting the MGDPA mandate to release public data upon request when they withhold public personnel

⁴ Andrew Gordon, Community Letter to PCOC on Coaching, at 2 (attached hereto as Ex. 2).

⁵ At a meeting of the Police Conduct Oversight Commission on May 11, 2021, MPD Deputy Chief Amelia Huffman and Assistant City Attorney Trina Chernos both claimed that only A-level violations are eligible for coaching. City of Minneapolis, *May 11, 2021 Police Conduct Oversight Commission*, YOUTUBE (May 14, 2021), https://www.youtube.com/watch?v=OxvCq_aGles; see also Mannix, *supra* n.3 (City spokesperson, Casper Hill, calls coaching “a valuable tool” to “swiftly address” low-level behavioral problems); Jennifer Bjorhus & Liz Sawyer, *Minneapolis police officers disciplined in fraction of cases*, STARTRIBUNE (June 9, 2020), <https://www.startribune.com/minneapolis-police-officers-disciplined-in-fraction-of-cases/571120852/?refresh=true> (according to Director of the Office of Police Conduct Review, Imani Jafaar, “[o]nly A-level violations . . . are eligible for coaching”).

⁶ See *infra* ¶¶ 50-51 & Ex. 11.

⁷ Minneapolis Police Department Discipline Matrix (attached hereto as Ex. 3).

data regarding disciplinary action imposed for sustained B-, C-, and D-level violations. The City Defendants should not be permitted to avoid their obligations under the MGDPA through linguistic gymnastics—they should be required to disclose public data that goes to the very heart of whether MPD officers can be trusted to serve and protect the people of Minneapolis.

PARTIES

1. The Minnesota Coalition on Government Information (“MNCOGI”) is an organization incorporated under the laws of the State of Minnesota. Its purpose is to “advocate for government transparency” so that “individuals have access to the government information they need in order to hold their government accountable.”⁸ MNCOGI is a “person,” as defined by Minn. Stat. § 13.02, subd. 10.

2. Defendant City of Minneapolis (“the City”) is a municipal corporation, organized under the laws of the State of Minnesota and located in Hennepin County, Minnesota. It operates and is the entity legally responsible for the Minneapolis Police Department.⁹ The City is a “political subdivision” and a “government entity,” as defined by Minn. Stat. § 13.02, subds. 7a, 11.

3. Defendant Casey J. Carl is the City Clerk for Defendant City of Minneapolis. It is the duty of the City Clerk to “keep . . . all municipal papers and records.”¹⁰ Defendant Carl is, therefore, the “responsible authority” for “the collection, use and dissemination of any . . . government data” for the City and its departments. Minn. Stat. § 13.02, subd. 16(b).

⁸ *Home: Principles*, MNCOGI, <https://mncogi.org/> (last visited May 19, 2021); *Policy*, MNCOGI, <https://mncogi.org/policy/> (last visited May 19, 2021).

⁹ Minneapolis City Charter, Art. VII, § 7.3.

¹⁰ Minneapolis City Charter, Art. IV, § 4.2(e)(2)(A).

He is sued only in his official capacity.

4. Defendant Patience Ferguson is Chief Human Resources Officer for Defendant City of Minneapolis. Pursuant to the Labor Agreement Between the City of Minneapolis and the Police Officers' Federation of Minneapolis ("Police Union Contract") § 12.03,¹¹ Defendant Ferguson is also a "responsible authority' with regard to all 'personnel data' gathered or maintained by the City with regard to" employees of the Minneapolis Police Department. She is sued only in her official capacity.

5. Defendant Medaria Arradondo is the Chief of Police for the Minneapolis Police Department ("MPD"), which is a department of Defendant City of Minneapolis¹² and a "criminal justice agency," as defined by Minn. Stat. § 13.02, subd. 3a. Defendant Arradondo is the appointed official responsible "for the management, direction, and control of the administration of the Minneapolis Police Department."¹³ He is the final policymaker on all issues related to MPD policies, customs, and practices,¹⁴ including the Department's Code of Conduct.¹⁵ Defendant Arradondo is also the ultimate decisionmaker on "determination[s]"

¹¹ Available at <https://www2.minneapolismn.gov/media/content-assets/www2-documents/departments/wcm-sp-200131.pdf> (governing between Jan. 1, 2017, and Dec. 31, 2019, but remaining in effect until successor agreement reached).

¹² Minneapolis City Charter, Art. VII, § 7.2(11).

¹³ Minneapolis Police Department Policy & Procedure Manual ("Policy Manual") § 1-302 (last updated Apr. 4, 2021), available at <https://www.minneapolismn.gov/media/-www-content-assets/documents/MPD-Policy-and-Procedure-Manual.pdf> (attached hereto as Ex. 4); Minneapolis City Charter, Art. VII, § 7.3(a)(1)(A); Minneapolis Code of Ordinances ("M.C.O.") § 171.20.

¹⁴ Ex. 4 (Policy Manual) § 1-103.1.

¹⁵ *Id.* § 5-101.

regarding discipline” of MPD employees.¹⁶ Pursuant to the Police Union Contract § 12.03, Defendant Arradondo is a “responsible authority” with regard to all ‘personnel data’ gathered or maintained by the City with regard to” MPD employees.¹⁷ He is sued only in his official capacity.

6. Collectively, the defendants will herein be referred to as “the City Defendants.”

JURISDICTION AND VENUE

7. The District Courts of Minnesota are courts of general jurisdiction, having original jurisdiction over “all civil actions within their respective districts.” Minn. Stat. § 484.01, subd. 1(1).

8. This action arises under the laws of the State of Minnesota. Plaintiff MNCOGI brings its claims pursuant to the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.01 *et seq.*, and the Uniform Declaratory Judgment Act (“UDJA”), Minn. Stat. § 555.01 *et seq.* Specifically, the MGDPA creates multiple civil causes of action through which “a person . . . who suffers any damage as a result of [a] violation” of the MGDPA may seek redress “against the responsible authority or government entity,” Minn. Stat. § 13.08, subds. 1, 2, 4, and the UDJA confers upon the Court the “power to declare rights” in the form of declaratory judgment, Minn. Stat. § 555.01.

9. This Court has personal jurisdiction over the City Defendants because they are located within Hennepin County. Minn. Stat. § 484.01.

10. Venue in this Court is proper pursuant to Minn. Stat. § 13.08, subd. 3, because

¹⁶ *Id.* § 2-122(C); M.C.O § 172.70.

¹⁷ *See supra* n.11.

Defendants City of Minneapolis and Minneapolis Police Department are political subdivisions located in Hennepin County, Minnesota. *See* Minn. Stat. § 542.09.

STATEMENT OF FACTS

MINNESOTA GOVERNMENT DATA PRACTICES ACT

11. The Minnesota Government Data Practices Act (“MGDPA”), “establishe[d] a presumption that government data are public and are accessible by the public.” Minn. Stat. § 13.01, subd. 3; *see* Minn. Stat. § 13.03, subd. 1 (“All government data . . . *shall* be public.” (emphasis added)). The MGDPA is “part of a fundamental commitment to making the operations of our public institutions open to the public.” *Prairie Island Indian Cmty. v. Minn. Dep’t of Pub. Safety*, 658 N.W.2d 876, 884 (Minn. Ct. App. 2003); *see Westrom v. Minn. Dep’t of Labor & Indus.*, 667 N.W.2d 148, 150 (Minn. Ct. App. 2003) (The public has a right “to know what the government is doing within a context of effective government operation.” (internal marks omitted)). All government entities—including the City Defendants—are subject to the MGDPA. Minn. Stat. § 13.01, subd. 1.

12. Certain “personnel data”¹⁸ is presumptively public. Minn. Stat. § 13.43, subd.2. Relevant here, “the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action” is public personnel data. Minn. Stat. § 13.43, subd. 2(a)(5).¹⁹

¹⁸ “Personnel data” means “government data on individuals maintained because the individual is or was an employee of . . . a government entity.” Minn. Stat. § 13.43, subd. 1.

¹⁹ “[A] final disposition occurs when the government entity makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings.” Minn. Stat. § 13.43, subd. 2(b).

13. The MGDPA requires the City Defendants to “keep records containing government data . . . easily accessible for convenient use,” Minn. Stat. § 13.03, subd. 1, and that a person seeking access thereto shall be permitted to inspect and copy public government data “[u]pon request,” *id.*, subd. 3.

14. Where the public’s access to public government data is at stake, the MGDPA mandates expeditious and public resolution of the matter. Minn. Stat. § 13.08, subd. 4.

THE CITY DEFENDANTS’ POLICIES & PROCEDURES

Minneapolis Police Department Policy & Procedure Manual (“Policy Manual”)

15. “The conduct of police officers is governed by the MPD Policy and Procedure Manual and applicable State and Federal law.” Ex. 4 (Policy Manual) § 5-101.

16. Until recently, the Policy Manual stated that “[a]ny member of the Department who violates the code of conduct is subject to discipline.” Ex. 5 (relevant excerpts of prior Policy Manual) § 5-101.02. The imposition of discipline for a sustained violation of the MPD Code of Conduct was mandatory. *Id.* (“Discipline *shall* be imposed following a sustained violation.” (emphasis added)). The MPD Code of Conduct did not delineate between the grades of violation severity (A through D) in issuing this mandate.

17. Effective December 31, 2020, the City Defendants²⁰ removed Section 5-101.02 of the Policy Manual. Ex. 4.

18. The City Defendants also removed Section 1-102.01, titled, “Disciplinary System Used in the Policy and Procedure Manual.” Section 1-102.01 provided “a

²⁰ See Ex. 6 (emails between MPD and city officials produced in response to MNCOGI data request regarding MPD Policy Manual changes).

comprehensive, uniform discipline process to assist the Chief of Police in administering a final disposition of employee misconduct in an appropriate and timely manner.” *Compare* Ex. 4, *with* Ex. 5. The removed section delineated disciplinary categories, ranging in severity from “A,” the least serious, to “D,” the most severe. *Id.*

19. The City Defendants replaced Sections 5-101.02 and 1-102.01 with Section 2-112, “Complaint, Coaching, and Disciplinary System.” Ex. 4, § 2-112. Under this new section, the Chief of Police is no longer required to discipline officers who violate the code of conduct, and “coaching” is defined as “non-disciplinary.”

20. Specifically, Section 2-112(C), “Discipline,” states that “[w]hen investigations [into complaints of misconduct] have concluded and when allegations have been sustained, the determination regarding discipline, *if any*, is made by the Chief of Police or the Chief’s designee.” *Id.* (emphasis added).

21. The newly-added Section 2-112(D), “Coaching,” asserts, conclusorily, that “[c]oaching is not discipline.” *Id.*, § 2-112(D)(2); *see also id.*, § 2-112(D)(1) (“[Coaching] should be used as a non-disciplinary management tool.”).

22. Prior to December 31, 2020, the Policy Manual did not mention coaching.

Police Union Contract

23. The City Defendants have entered into a collective bargaining agreement with the Police Officers’ Federation of Minneapolis (“the Police Union Contract”).²¹

²¹ *See generally* Police Union Contract.

24. The Police Union Contract does not mention coaching.²²

25. Article 12 of the Police Union Contract governs discipline.²³ Consistent with the MGDPA, Minn. Stat. § 13.43, subd. 2(a)(5), Section 12.01 prohibits the following: “Investigations into an employee’s conduct which do not result in the imposition of discipline shall not be entered into the employee’s official personnel file maintained in the Police Department and/or the City’s Human Resources Department.”²⁴

*Minneapolis Civil Service Commission Rules*²⁵

26. The Minneapolis Civil Service Commission Rules (“CSC Rules”) are intended “to ensure a fair and effective system of human resource management.” CSC Rules § 1.01.

27. Rule 11 governs the City Defendants’ “disciplinary rules and procedures.” *Id.* § 11.01.

28. Pursuant to Rule 11, the “two primary causes of disciplinary action are substandard [job] performance or misconduct.” *Id.* § 11.03.

29. Rule 11 also establishes five “levels of discipline.” *Id.* § 11.04. Those levels are: warning, written reprimand, suspension, demotion, and discharge. *Id.* The levels of discipline are “normally [] administered progressively, in the [above] order.” *Id.*

30. The Civil Service Rules define a “warning” as “a verbal discussion between the

²² *Id.*

²³ *Id.*, Art. 12.

²⁴ *Id.*, § 12.01.

²⁵ MPD employees are subject to the Civil Service Commission Rules. *See* Policy Manual, § 5-101 (“All disciplinary actions taken will be in accordance with Civil Service rules and provisions.”); CSC Rules, § 1.05.

employee and supervisor covering the details of the problem, plans for correcting the problem and a written memo to document the event.” *Id.* § 11.04(A).

31. The Civil Service Rules do not mention coaching.

MPD’s “Coaching” Process

32. The Minneapolis Police Department has used a coaching process since at least the beginning of 2013, long before the Policy Manual was revised to categorize it as something other than discipline.²⁶

33. The “coaching” process used by MPD is identical to a “warning,” *supra* ¶ 30, which is a form of discipline under the Civil Service Commission Rules: both involve a verbal discussion between the employee and supervisor covering the details of the problem, plans for correcting the problem and a written memo to document the event.

34. The MPD’s written memo documenting the coaching process is a form labeled “Coaching Documentation.” Ex. 7. Under the form’s “Details of Coaching Session” section, the supervisor is required to input the details of the verbal discussion which took place with the employee. *Id.* In the same section, the supervisor inputs the recommendation or plan for correcting the problem. *Id.* Under the form’s “Action Taken” section, the supervisor indicates whether a policy violation occurred.

35. Notably, if the problem is not corrected or if the officer continues to violate the

²⁶ OPCR Portal, “Coaching,” https://tableau.minneapolisnmn.gov/views/OPCRRevisedDataPortal/Coaching?%3Aembed=y&%3AshowVizHome=no&%3Ahost_url=https%3A%2F%2Ftableau.minneapolisnmn.gov%2F&%3Aembed_code_version=3&%3Atabs=yes&%3Atoolbar=yes&%3Adisplay_spinner=no&%3AloadOrderID=0 (last visited May 19, 2021).

Code of Conduct, multiple A-level violations can result in an enhancement in corrective action for future violations.²⁷

MNCOGI'S DATA REQUEST

36. On February 20, 2021, Plaintiff MNCOGI submitted a data request to the City Defendants for public personnel data pursuant to the MGDPA. Ex. 8. The request sought access to various forms of “data, including but not limited to ‘coaching documentation’ forms . . . , related to coaching” of MPD officers. *Id.*

37. Specifically, MNCOGI requested (1) “[a]ll data . . . related to coaching of Derek Chauvin;” (2) “[a]ll data . . . related to coaching of any officer as a result of his/her involvement in any one of the 44 incidents referenced in” a media report;²⁸ (3) “[a]ll data . . . related to coaching of any officer resulting from a sustained complaint where the original complaint alleged a B-, C-, or D-Level Violation where coaching was the only corrective action taken;” and (4) “[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.” Ex. 8.

²⁷ According to the City Defendants, “repeated policy violations at the A level are eligible for enhancement” to discipline. *May 11, 2021 Police Conduct Oversight Commission, supra* n.5 (“Two As in a one year [] period that are same or similar violations, or three [A] violations in any period of a year then become a B-level violation, which is disciplinary.”). Pursuant to Minn. Stat. § 13.43, subd. 2(a)(5), the underlying coaching data from the A-level violations that are enhanced, resulting in discipline, is also public government data as the “data documenting the basis of the [disciplinary] action.”

²⁸ Emily R. Siegel *et al.*, *Minneapolis police rendered 44 people unconscious with neck restraints in five years*, NBC News (June 1, 2020), <https://www.nbcnews.com/news/us-news/minneapolis-police-rendered-44-people-unconscious-neck-restraints-five-years-n1220416>.

38. On March 26, 2021, the City Defendants denied MNCOGI's data request. Ex. 9. Specifically, Katherine Knudsen, a City employee, responded as follows: "Coaching is not discipline and has never been discipline. The data you are requesting is private under MN statute 13.43; MPD has no responsive data. Your request is now closed." *Id.*

39. Ms. Knudsen did not deny that "coaching" is imposed for B-, C-, or D-level violations that are substantiated. Nor did Ms. Knudsen suggest that no data responsive to Request No. 3 exists. Thus, on information and belief, MPD addresses even sustained B-, C-, and D-level violations through coaching, yet then takes the position that, because the City does not define coaching as discipline, information about those violations is exempt from disclosure under the MGDPA.

40. Ms. Knudsen subsequently closed MNCOGI's OpenCity Portal request. The City Defendants provided no other basis for denying MNCOGI's data request. Ex. 9. The City Defendants provided no data responsive to Request No. 4, even though that request clearly does not seek private personnel data but rather data showing that, despite how the City Defendants try to characterize it publicly, among themselves they acknowledge coaching as a form of discipline.

IMPORTANCE OF THE WITHHELD DATA

41. The City Defendants are intentionally withholding government data that is public under the MGDPA, which requires release of personnel data of a final disposition when discipline is imposed. Minn. Stat. § 13.43, subd. 2(a)(5).

42. From the beginning of 2013 to the end of the first quarter of 2021, the Office of

Police Conduct Review (“OPCR”)²⁹ received approximately 2,538 complaints against MPD employees.³⁰ Of those, 741 complaints were directly recommended for “coaching.”³¹ Two hundred twenty-six of these complaints actually resulted in an officer being “coached.”³² In addition, after investigation, the Joint Supervisors recommended to the Chief of Police that discipline be imposed in another 136 complaints against MPD employees.³³ Of those, the Chief sent 48 of the cases to coaching—meaning that the City Defendants are now taking the position that they need not disclose the details of those violations because, despite the Joint

²⁹ The Office of Police Conduct Review (“OPCR”) is an agency of the Minneapolis Department of Civil Rights charged with investigating allegations of police misconduct by MPD employees. See Office of Police Conduct Review, <https://www2.minneapolismn.gov/government/departments/civil-rights/opcr/>. OPCR has a civilian unit that reports to the OPCR Director and an internal affairs unit that reports to the Chief of Police for the MPD. M.C.O. § 172.20. The Police Conduct Oversight Commission (“PCOC”) is an independent body, distinct from the OPCR, comprised of Minneapolis residents. M.C.O. § 172.80(b).

³⁰ Office of Police Conduct Review Data Portal (“OPCR Portal”), “Complaints Filed,” available at https://tableau.minneapolismn.gov/views/OPCRRevisedDataPortal/ComplaintsFiled?%3Aembed=y%3AshowVizHome=no%3Ahost_url=https%3A%2F%2Ftableau.minneapolismn.gov%2F%3Aembed_code_version=3%3Atabs=yes%3Atoolbar=yes%3Adisplay_spinner=no%3AloadOrderID=0 (last visited May 19, 2021). These are only the complaints which OPCR determined fell within its jurisdiction.

³¹ OPCR Portal, “Coaching,” https://tableau.minneapolismn.gov/views/OPCRRevisedDataPortal/Coaching?%3Aembed=y%3AshowVizHome=no%3Ahost_url=https%3A%2F%2Ftableau.minneapolismn.gov%2F%3Aembed_code_version=3%3Atabs=yes%3Atoolbar=yes%3Adisplay_spinner=no%3AloadOrderID=0 (last visited May 19, 2021).

³² *Id.*

³³ OPCR Portal, “Chief Decision Issued,” https://tableau.minneapolismn.gov/views/OPCRRevisedDataPortal/ChiefDecisionIssued?%3Aembed=y%3AshowVizHome=no%3Ahost_url=https%3A%2F%2Ftableau.minneapolismn.gov%2F%3Aembed_code_version=3%3Atabs=yes%3Atoolbar=yes%3Adisplay_spinner=no%3AloadOrderID=0 (last visited May 19, 2021).

Supervisors' recommendation, they were not disciplined. In the remaining 88 instances, the Chief ordered the imposition of some other corrective action—*e.g.*, letter of reprimand, demotion, suspension, or termination. *Id.*

43. In other words, the MPD has about a 14.26% discipline rate when coaching is properly considered discipline (taking $(226+136)/2,538$). Yet, because the City has intentionally classified coaching as non-disciplinary, MPD appears to have a disciplinary rate of 3.5%,³⁴ (taking $88/2,538$) falling below estimated national averages which range between 7% and 15%.³⁵

44. The Minnesota Supreme Court has stressed the need for public access to the complaint data of police officers. Without such data, it explained, “there is virtually no way in which citizens, scholars, and the news media can examine whether law enforcement agencies are adequately policing themselves.” *Demers*, 468 N.W.2d at 74.

45. This principle from *Demers* of transparency as the mechanism of accountability—and the strong public policy considerations in its favor—is empirically

³⁴ Other sources estimate this number to be even lower. *See, e.g.*, Max Nesterak & Tony Webster, *The Bad Cops: How Minneapolis protects its worst police officers until it's too late*, MINNESOTA REFORMER (Dec. 15, 2020), <https://minnesotareformer.com/2020/12/15/the-bad-cops-how-minneapolis-protects-its-worst-police-officers-until-its-too-late/> (estimating just 2.7% of police misconduct results in public disciplinary data); Brandon Stahl *et al.*, *Kare11 Investigates: Discipline against MPD officers exceedingly rare*, KARE11 (June 2, 2020), <https://www.kare11.com/article/news/investigations/kare-11-investigates-discipline-against-mpd-officers-exceedingly-rare/89-3a19bffe-163c-4430-a018-521f82758f60> (estimating just 2% of misconduct results in discipline that is public data).

³⁵ Christopher Ingraham, *Police unions and police misconduct: What the research says about the connection*, Washington Post (June 10, 2020), <https://www.washingtonpost.com/business/2020/06/10/police-unions-violence-research-george-floyd/>.

grounded.³⁶ A seven-year study (the “Stinson Study”) analyzing more than 6,000 cases in which sworn law enforcement officers were arrested for on- and off-duty crimes determined that “police [officers] arrested for a criminal offense are problem officers that exhibit shortcomings in other aspects of the job” before escalating to the criminal conduct of their arrest.³⁷

46. Minneapolis had a front-row seat this past year to how low-level violations, if not adequately addressed, can foreshadow criminal conduct resulting in tragedy: During his more than 19 years on the force, Derek Chauvin was the subject of at least 22 complaints or internal investigations.³⁸ Further, in advance of trial, the State of Minnesota filed motions *in limine* to admit as *Spreigl*³⁹ evidence eight incidents in which Chauvin used excessive force during his tenure as a MPD officer.⁴⁰ Yet, according to Chauvin’s MPD Internal Affairs Public Summary, all complaints against him were “Closed with No Discipline” except one,⁴¹

³⁶ Rob Arthur, *We Now Have Algorithms To Predict Police Misconduct*, FiveThirtyEight (Mar. 9, 2016), <https://fivethirtyeight.com/features/we-now-have-algorithms-to-predict-police-misconduct/>.

³⁷ Philip M. Stinson, Sr. *et al.*, *Police Integrity Lost: A Study of Law Enforcement Officers Arrested*, 63 CRIM. JUST. FAC. PUBL’NS. 1, 192 (2016), available at https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1062&context=crim_just_pub.

³⁸ Jamiles Lartey & Abbie Vansickle, “*That Could Have Been Me*”: *The People Derek Chauvin Choked Before George Floyd*, THE MARSHALL PROJECT (Feb. 2, 2021), <https://www.themarshallproject.org/2021/02/02/that-could-have-been-me-the-people-derek-chauvin-choked-before-george-floyd>.

³⁹ *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965).

⁴⁰ State’s Notice of Intent to Offer Other Evidence (“Chauvin Notice”), *State v. Chauvin*, 27-CR-20-12646 (Sept. 10, 2020), available at https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/27-CR-20-12646_States-Notice-of-Intent-to-Officer-Other-Evidence.pdf.

⁴¹ MPD Internal Affairs Public Summary for Derek Chauvin (attached hereto as Ex. 10).

and nothing on the face of the public police reports for the eight incidents focused on by the State indicate that unreasonable or excessive force was used. It is entirely possible that each of the twenty-one complaints against Chauvin that were “Closed with No Discipline” resulted in “coaching.” Due to the City Defendants’ self-serving labels and refusal to comply with the MGDPA, however, the public has no means to find out—even today, as Chauvin awaits sentencing for the second-degree murder of George Floyd.

47. Because of the State of Minnesota’s public filings, the public also now knows that Tou Thao’s arrest for aiding and abetting the murder of Floyd could likely have been predicted, and perhaps even prevented, if his personnel record had been available to the public. Before his arrest, Thao was an MPD officer for 9 years. In his first year alone, Thao was written up by his field training officer eight times for conduct involving dishonesty and/or taking shortcuts to avoid work.⁴² In its motions *in limine*, the State moved to admit as *Spreigl* evidence these eight incidents, as well as a ninth, which the State claimed was the subject of an OPCR complaint.⁴³ According to the State, Thao’s personnel record showed a pattern of “expediency, a desire to avoid scrutiny, and work-avoidance.”⁴⁴ At the time of his firing, Thao had been the subject of at least six complaints, five of which were closed without discipline and one which was still open.⁴⁵ Again, as with Chauvin, the public has no way of

⁴² State’s Notice of Intent to Offer Other Evidence (“Thao Notice”), *State v. Thao*, 27-CR-20-12949 (Sept. 10, 2020), available at https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12949-TT/27-CR-20-12949_States-Notice-of-Intent-to-Offer-Other-Evidence.pdf.

⁴³ Thao Notice at 2.

⁴⁴ Thao Notice at 3.

⁴⁵ David Chanen, *Trouble signs showed up early in the career of fired Minneapolis police*

knowing whether coaching was imposed on the five complaints “closed without discipline.”

48. It is, thus, no comfort to the community when spokespeople for the City Defendants, such as MPD Deputy Chief Amelia Huffman, OPCR Director Imani Jafaar, and Assistant City Attorney Trina Chernos, claim that “coaching”—the label for discipline which puts these records beyond public reach—is reserved only for the lowest-level policy violations.⁴⁶ Nor are those claims accurate.

49. For example, despite former officer Thao having been written up eight times in his first year for dishonesty and/or taking shortcuts to avoid work—presumably D-level offenses under the MPD’s Discipline Matrix⁴⁷—the City Defendants produced no disciplinary records for Thao (or any other officers) in response to MNCOGI’s public records requests.

50. Similarly, data the City Defendants provide to the PCOC for review—published online for public access—definitively contradicts the City Defendants’ assertion that coaching is reserved only for the lowest-level policy violations. For example, in the following three instances, where a policy violation was found and the MPD Discipline Matrix establishes the offense as a B- or C-level infraction requiring suspension, the City Defendants imposed

officer Tou Thao, STARTRIBUNE (Sept. 26, 2020), <https://www.startribune.com/trouble-signs-showed-up-early-in-the-career-of-fired-minneapolis-police-officer-tou-thao/572551651/?refresh=true>.

⁴⁶ *May 11, 2021 Police Conduct Oversight Commission*, *supra* n.5 (according to Deputy Chief Huffman, “Only the most low level policy violations would become eligible for coaching referral.”); Mannix, *supra* n.3 (City spokesperson, Casper Hill, calls coaching “a valuable tool” to “swiftly address” low-level behavioral problems.); Bjorhus & Sawyer, *supra* n.5 (according to Director of the OPCR, Imani Jafaar, “[o]nly A-level violations . . . are eligible for coaching”).

⁴⁷ According to the MPD’s Discipline Matrix, violation of the “Truthfulness” policy, § 5-101.01, is a D-level offense, the baseline discipline for which is termination. Ex. 3 at 2.

coaching:

PCOC Meeting Date	Incident Description	Violation Level	Baseline Discipline
January 2017	When Complainant was pulled over for driving after revocation, he did not receive his wallet back from the officer; MPD P&P § 10-401 (“Responsibility for Inventory of Property and Evidence”) violation sustained	C	40 Hour Suspension
May 2018	An officer failed to attend mandatory in-service training; MPD P&P § 2-500 (“MPD In-Service Training”) violation sustained	B	10 Hour Suspension
March 2020	Officers forced Complainant to fill out forms, and she felt threatened by their comments; MPD P&P § 5-105(C)(1) (“Professional Code of Conduct”) violation sustained	B	10 Hour Suspension

See Ex. 11 (Table), Lines 2, 6, 15.

51. The PCOC data also establishes that, even when the Joint Supervisors recommend discipline, the Chief of Police routinely either downgrades sustained policy violations to the A level so that coaching can be imposed or he approves coaching for more egregious infractions despite the prohibition on coaching for B-, C-, and D-level violations of the Policy Manual. Either way, the data remains non-public pursuant to the City’s designation that coaching is non-disciplinary:

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PCOC Meeting Date	Incident Description	Violation Level	Baseline Discipline
June 2019	Over 15-20 minutes, officers permitted an individual to strike Complainant’s apartment door, to the point where the damage to the property resulted in Complainant being evicted; the case was investigated and the Review Panel recommended the Chief sustain the violation; the Chief sustained the offense at the A level and sent the case to coaching	A-D	N/A
March 2020	Officer failed to keep sirens on for a continuous manner during a code 3 response; the case was investigated, and the Review Panel recommended the Chief sustain the violation; the Chief referred the case to coaching	B	10 Hour Suspension

Id., Lines 10, 14.

52. According to MPD Deputy Chief Huffman, where anything worse than an A-level violation is substantiated, coaching is unavailable as a consequence. In other words, even as they stand by their right to secretly “coach” certain violations, the City Defendants freely admit that consequences for B, C, and D-level violations are disciplinary in nature.⁴⁸ Yet, Ms. Knudsen denied MNCOGI’s request for coaching data for B-, C-, and D-level violations, *supra* ¶¶ 38-39, claiming that the data MNCOGI requested is private because “[c]oaching is not discipline.” As is clear from the PCOC data, however, MPD is imposing coaching for sustained violations above the A level.⁴⁹

53. Meanwhile, the violations for which Chief Arradondo *does* impose discipline

⁴⁸ *May 11, 2021 Police Conduct Oversight Commission, supra* n.5 (“[W]hile A violations are not considered disciplinary, . . . a B-level violation . . . *is* disciplinary.” (emphasis added)).

⁴⁹ *See supra* ¶ 50.

are telling. For example, after the murder of George Floyd, GQ Magazine published online an article in which an anonymous MPD officer criticized her own department for its toxic culture and lack of discipline imposed for officer misconduct.⁵⁰ This officer's identity was later discovered, and in December 2020, Chief Arradondo issued a written reprimand against her.⁵¹ In the now-public disciplinary decision, the Chief found a B-level violation of MPD Policy § 6-202, "Responsibility of MPD Employees," for this officer's decision to speak to the press without permission.⁵²

54. "There must be public confidence in law enforcement, and to ignore [misconduct meritorious of discipline] could only serve to undermine public confidence in that office." *Moe*, 450 N.W.2d at 370. Public confidence in the City Defendants, in particular the Minneapolis Police Department, is down, with just 25% of Minneapolis residents holding a favorable opinion of the department.⁵³ Now, more than ever, is the time for open and transparent government and a government committed to their obligations under the law.

55. This is particularly true in light of Derek Chauvin's convictions for the murder

⁵⁰ Laura Bassett, *A Minneapolis Police Officer Opens Up About the Toxic Culture Inside the Department*, GQ (June 10, 2020), <https://www.gq.com/story/minneapolis-police-officer-interview>.

⁵¹ Colleen Ryan – Chief Discipline Memorandum at 1, *available at* <https://www.minneapolismn.gov/media/-www-content-assets/documents/Colleen-Ryan.pdf> (attached hereto as Ex. 12).

⁵² *Id.* The Policy Manual indicates that a § 6-202 violation can range from an A-level violation through a D-level violation, *see* Ex. 4, Policy Manual.

⁵³ Jon Collins, *Poll: Only a quarter of Mpls. Residents favor city's Police Department*, MPR News (Aug. 16, 2020), <https://www.mprnews.org/story/2020/08/16/poll-only-a-quarter-of-mpls-residents-favor-citys-police-department>.

of George Floyd and the settlement agreement reached in the civil lawsuit brought by the Floyd family against the City Defendants. Had the City Defendants, as the Attorney General said, simply “prevented the problem,” the City Defendants may not have cost Minneapolis taxpayers \$27 million, just two years after the City Defendants agreed to a \$20 million settlement for the 2017 murder of Justine Ruszczyk Damond by another MPD officer.⁵⁴

56. These deaths, and the record-setting settlements that resulted, *were* preventable. As the Stinson Study, *supra* ¶ 45 & n.37, explains, low-level misconduct is predictive of officers’ potential to escalate to criminal, even deadly, conduct in the future.

57. Thus, one mechanism by which to prevent police murders is identifying problem officers before their misconduct can escalate. Yet the City Defendants have proven that not only will they remain willfully blind to the misconduct of problem officers, but that they will bury these officers’ disciplinary data away from the public by calling it “coaching.” This data belongs to the public, especially when the City Defendants have abdicated their accountability function. The public is ready to take up this accountability mantle if only the City Defendants complied with their obligations under the MGDPA rather than subvert its purpose by playing semantic games.

58. Unfortunately, the City Defendants have made it clear that they do not intend to comply with their statutory obligations without the Court’s intervention. Upon information and belief, a senior city official in the Department of Civil Rights acknowledged that the MPD Chief of Police, Defendant Arradondo, deliberately imposes coaching to avoid the City

⁵⁴ The City of Minneapolis is self-insured. As such, its taxpayers contribute to the City’s self-insurance fund from which it pays out settlements.

Defendants' obligations under the MGDPA. Further, late last year, the City Defendants, in concert, amended the MPD Policy & Procedure Manual to perpetuate the fiction that, by calling the discipline imposed for a sustained policy violation "coaching," it means it is no longer discipline; the City Defendants did so by deleting the mandate that discipline "shall" be imposed for a sustained policy violation and inserting the "coaching" provision.⁵⁵

59. Accordingly, MNCOGI now brings this action pursuant to the MGDPA in an effort to increase government transparency, accountability, and reform. The City Defendants should not be permitted to skirt a law that requires disclosure of disciplinary data of MPD employees simply by creatively naming the corrective action taken "coaching" as opposed to "discipline" or a "warning." MNCOGI respectfully requests that the Court order the City Defendants to comply with their statutory obligations.

60. Until the community is given some measure of transparency and accountability, the relationship between the police, the City, and the community cannot begin to be repaired.

CAUSES OF ACTION

COUNT I Action to Compel Compliance Minn. Stat. § 13.08, subd. 4

61. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as if fully set forth herein.

62. On February 20, 2021, MNCOGI requested from the City Defendants various data related to the coaching of MPD officers, a request properly made under the MGDPA.

⁵⁵ See *supra* n.20 & Ex. 6.

Ex. 8. The data responsive to MNCOGI’s request is either not personnel data at all, in the case of Request No. 4, or is *public* personnel data—“the final disposition of any disciplinary action”—pursuant to Minn. Stat. § 13.43, subd. 2(a)(5).

63. On March 26, 2021, the City Defendants denied MNCOGI’s request, for the sole reason that, in their opinion, “[c]oaching is not discipline.” Ex. 9. The City Defendants’ denial of access to public data violated the MGDPA, and the violation was willful.

64. MNCOGI was and continues to be harmed by the City Defendants’ willful violation of the MGDPA.

65. Pursuant to Minn. Stat. § 13.08, subd. 4, MNCOGI is therefore entitled to an order compelling the City Defendants’ compliance with the MGDPA—specifically, that the requested public data be swiftly produced for no more than cost.

66. The City Defendants’ violation of the MGDPA also entitles MNCOGI to an award of costs and disbursements, including reasonable attorneys’ fees, and justifies assessment of a civil penalty against the City Defendants. Minn. Stat. § 13.08, subd. 4.

COUNT II
Action for Damages
Minn. Stat. § 13.08, subd. 1

67. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as if fully set forth herein.

68. MNCOGI has suffered and continues to suffer damage, in an amount to be proven at trial, as a result of the City Defendants’ violation of the MGDPA.

69. MNCOGI’s damages include those accrued through the wrongful denial of its right to access public government data, and the time, costs, and reasonable attorneys’ fees

incurred to challenge the City Defendants' unlawful conduct.

70. The City Defendants' violation of the MGDPA was willful.

71. Because the City Defendants' violation of the MGDPA was willful, the City Defendants are liable for exemplary damages of not less than \$1,000, nor more than \$15,000 for each violation. Minn. Stat. § 13.08, subd. 1.

COUNT III
Action for Mandatory Injunctive Relief
Minn. Stat. § 13.08, subd. 2

72. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as if fully set forth herein.

73. The City Defendants have violated and propose to continue violating the MGDPA. Accordingly, MNCOGI seeks that the Court enjoin the City Defendants pursuant to Minn. Stat. § 13.08, subd. 2.

74. MNCOGI requests that the Court "make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate" the MGDPA, Minn. Stat. § 13.08, subd. 2, including, but not limited to,

- a. Requiring the City Defendants to establish internal compliance procedures that comport with the Court's determination that coaching for B-, C-, or D-level violations, or multiple A-level violations which have resulted in an enhancement in corrective action, is a form of discipline, and as such, it is public government data under the MGDPA;
- b. Requiring the City Defendants to automatically load the data for all sustained violations which satisfy subparagraph (a), *supra*, on a publicly accessible

- database, such as the OPCR public data portal;
- c. Requiring the City Defendants to reinstate the provisions of the Policy Manual which mandated the imposition of discipline for a sustained violation and to remove Section 2-112; and
 - d. Any such other injunctive relief the Court deems necessary to ensure the City Defendants' compliance with the MGDPA.

COUNT IV
Declaratory Judgment
Minn. Stat. § 555.01 *et seq.*

75. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as if fully set forth herein.

76. Under Minn. Stat. § 555.01, Plaintiff is entitled to declaratory judgment interpreting the MGDPA and the parties' respective rights and obligations thereunder.

77. MNCOGI is seeks judgment declaring that “coaching,” when imposed for a sustained B-, C-, D-level violation, or multiple A-level violations that have been enhanced, is discipline.

78. MNCOGI seeks judgment declaring that such data is, therefore, public pursuant to Minn. Stat. § 13.43, subd. 2(a)(5).

79. MNCOGI seeks judgment declaring that the City Defendants' failure to produce this public data to MNCOGI upon request constitutes a violation of the MGDPA.

80. MNCOGI seeks judgment declaring that the City Defendants' violation of the MGDPA was willful. Minn. Stat. § 13.08, subd. 1.

81. MNCOGI seeks judgment declaring that the City Defendants have an obligation

under the MGDPA to provide the requested data to MNCOGI in a suitable electronic medium for no more than cost.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. declaratory relief, pursuant to Minn. Stat. § 555.01, as described herein;
- B. injunctive relief, pursuant to Minn. Stat. § 13.08, subd. 2, as described herein;
- C. an order compelling the City Defendants' compliance with the MDGPA, pursuant to Minn. Stat. § 13.08, subd. 4, including providing to MNCOGI electronic copies of the requested data for no more than cost;
- D. an award of compensatory damages in an amount to be determined at trial;
- E. an award of exemplary damages, pursuant to Minn. Stat. § 13.08, subd. 1, for the City Defendants' willful violation of the MGDPA;
- F. an assessment of a civil penalty against the City Defendants, pursuant to Minn. Stat. § 13.08, subd. 4;
- G. fees, costs, and disbursements, including reasonable attorneys' fees, pursuant to Minn. Stat. § 13.08, subsd. 1, 4, and other applicable law; and
- H. all such other relief as the Court may deem necessary and just.

Dated: June 3, 2021

**AMERICAN CIVIL LIBERTIES UNION OF
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ACKNOWLEDGMENT

The undersigned hereby acknowledge that, pursuant to Minn. Stat. § 549.211, subd. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned have violated Minn. Stat. § 549.211, subd. 2.

Dated: June 3, 2021

**AMERICAN CIVIL LIBERTIES UNION OF
MINNESOTA**

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