STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**
Case Type: Other Civil

MINNESOTA COALITION ON GOVERNMENT INFORMATION,

Plaintiff,

v.

CITY OF MINNEAPOLIS; CASEY J. CARL, in his official capacity as Clerk for the City of Minneapolis; NIKKI ODOM, in her official capacity as Chief Human Resources Officer for the City of Minneapolis; MINNEAPOLIS POLICE DEPARTMENT; and BRIAN O'HARA, in his official capacity as Chief of Police for the Minneapolis Police Department.

Defendants.

Judge: The Hon. Karen A. Janisch
Court File No.: 27-CV-21-7237

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING DEFENDANTS' AND INTERVENOR'S CROSS-MOTIONS FOR SUMMARY JUDGMENT

ORDER

This matter came before the Honorable Karen A. Janisch, on June 26, 2024, at 8:45 a.m., pursuant to the motion of Plaintiff Minnesota Coalition on Government Information ("MNCOGI") for partial summary judgment and cross-motions for summary judgment filed by Defendants and Intervenor. Appearances were noted on the record. Based upon the submissions of the parties, the arguments, and the files in this matter, the Court finds as follows:

1. The Minnesota Government Data Practices Act ("MGDPA") "regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities" and "establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public." *See* Minn. Stat. Ann. § 13.01.

2. Minn. Stat. § 13.08, Subd. 1, provides that "a responsible authority or government entity which violates any provision of [the MGDPA] is liable to a person . . . who suffers any damage as a result of the violation, and the person damaged . . . may bring an action against the responsible authority or government entity to cover any damages sustained, plus costs and reasonable attorney fees." That section further states that, "[i]n the case of a willful violation, the government entity shall, in addition, be liable to exemplary damages of not less than $1,000, nor more than $15,000 for each violation." *Id*.

3. Minn. Stat. § 13.08, Subd. 2, provides that "[a] responsible authority or government entity which violates or proposes to violate [the MGDPA] may be enjoined by the district court" and that "[t]he court may 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]." "[T]he purpose of an injunction is to prevent specific ongoing practices or anticipated acts that violate the statute." *Adams v. Harpstead*, 947 N.W.2d 838, 845 (Minn. Ct. App. 2020).

4. Minn. Stat. § 13.08, Subd. 4, provides that, in an action to compel compliance like this one, "in addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved person seeking to enforce the person's rights under this chapter or obtain access to data … may recover costs and disbursements, including reasonable attorney's fees, as determined by the court." It also provides, "If the court issues an order to compel compliance under this subdivision, the court may impose a civil penalty of up to $1,000 against the government entity."

5. MNCOGI is a "person" as defined by the MGDPA. *See* Minn. Stat. Ann. § 13.02, subd. 10.

6. Each of the Defendants qualify as either a "responsible authority" or "government entity" as defined by the MGDPA. *See* Minn. Stat. Ann. § 13.02, subd. 7a (defining "Government Entity"); *id.*, subd. 16 (defining "Responsible Authority").

7. On February 20, 2021, MNCOGI submitted a data request (the "Request") to Defendants pursuant to the MGDPA. MNCOGI Summ. J. Ex. 2.

8. MNCOGI's Request had four parts:

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 on the Minneapolis Police Department's use of neck restraints;

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."

Id.

9. As evidenced by its plain language—and as conceded by Defendant Casey Carl—Part 4 of MNCOGI's had two subparts: Plaintiff sought both (a) "[a]ll data, dating from January 1, 2011, to present, in which coaching is described as a form of discipline," as well as (b) "[a]ll data, dating from January 1, 2011, to present, in which coaching is . . . acknowledged by a supervisor or the Chief of Police to constitute a form of discipline." *Id.*; *see also* MNCOGI Summ. J. Ex. G (Carl Tr.) at 30:22-32:7 (admitting Part 4 can be read as two standalone requests).

10. Whereas Part 4 sought data related to Defendants' use of coaching more generally, Parts 1 through 3 sought officer-specific coaching data, or what the parties agree is "personnel data" under Minn. Stat. §13.43. That statute makes public "[t]he final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body." Minn. Stat. Ann. § 13.43 subd. 2(a)(5).

11. However, with the exception of data on Chauvin, MNCOGI's Request did not explicitly seek officer-specific personnel data related to Defendants' coaching of minor, A-level

misconduct. Rather, Parts 2 and 3 of MNCOGI's Request were limited to data reflecting Defendants' coaching of more serious violations for misconduct at the B level or above—including, for example, excessive use of force violations—that, under Defendants' policies, are considered "disciplinary."

12. On its face, MNCOGI's Request seeks public data.

13. In response to MNCOGI's Request, Defendants claimed, first, that "no responsive records" existed and, second, that even if they did, they would be exempt as personnel records under Minn. Stat. 13.43.

14. Defendants did not cite any exemption as a basis for withholding nonpersonnel data of the sort that might be responsive to Part 4 of MNCOGI's Request. MNCOGI Summ. J. Ex. 3.

15. Defendants spent approximately three minutes considering MNCOGI's Request before summarily closing it. *Compare* MNCOGI Summ. J. Ex. 326, *with* MNCOGI Summ. J. Ex. 327. Departing from their standard procedure, *see* MNCOGI Summ. J. Ex. G (Carl Tr.) at 29:1-19, Defendants took no steps to verify whether responsive records actually did or did not exist, let alone review, redact, or disclose responsive public data as required under the MGDPA. MNCOGI Summ. J. Ex. E (Zenzen transcript) at 17:13-18:8, 22:14-28:4, 34:19-23, 57:22-58:4, 68:18-69:3, 76:3-77:20, 93:21-23.

16. Defendants later admitted they denied MNCOGI's Request based solely on its subject: coaching. *Id.* at 50:1-4, 52:13-22, 53:13-55:23.

17. This total abdication of duty is alone a violation of the MGDPA, as Defendants' Responsible Authority admitted. MNCOGI Summ. J. Ex. G (Carl Transcript) at 54:11-55:8.

18. Moreover, as revealed in discovery, Defendants' response to MNCOGI's Request was not accurate. Defendants did, in fact, possess responsive data, including:

a. Public, nonpersonnel data that characterize coaching as discipline, *see* MNCOGI Summ. J. Exs. 5, 7, 9, 10, 11, 133, 156, 167, 209, 213, 306, and 308, which are responsive to Part 4 of MNCOGI's Request;

b. Determination letters in which the Chief told officers that "as discipline" for

misconduct they would receive coaching and/or that further misconduct would result in discipline "more severe" than coaching, *see* MNCOGI Summ. J. Exs. 12, 13, 14, 15, 17, 20, 23, 88, 92, which are responsive to Part 4 of MNCOGI's Request;

c. A February 2020 determination letter imposing coaching as the sole consequence for a sustained B-level violation, *see* MNCOGI Summ. J. Ex. 13, which is responsive to Part 3 of MNCOGI's request;

d. A determination letter in which [redacted] received coaching, *see* MNCOGI Summ. J. Ex. 17, which is responsive to Part [redacted] of MNCOGI's Request;

e. Letters in which an officer received a recognized form of discipline plus coaching, *see* MNCOGI Summ. J. Exs. 16, 72, 73, 75, 312, 313, 314, 323, 324, 325, which are responsive to Part 4 of MNCOGI's Request; and

f. Grievances in Defendants' possession in which the Federation described coaching as discipline, *see* MNCOGI Summ. J. Exs. 76, 86, 87, 140, 215, which are responsive to Part 4 of MNCOGI's Request.

19. Defendants did not produce any of the above-referenced public data in response to MNCOGI's Request.

20. None of the data listed in ¶ 18, *supra*, is exempt from public disclosure under Minn. Stat. § 13.43. The nonpersonnel data listed in ¶ 18(a), *supra*, is not even subject to § 13.43. As for the personnel data, it constitutes or relates to final disposition of disciplinary action and is thus public.

21. By failing to disclose the data listed in ¶ 18, *supra*, in response to Plaintiff's Request, Defendants violated the MGDPA.

22. In addition to the data listed in ¶ 18, *supra*, Defendants produced during discovery a number of settlement agreements in which coaching was imposed as final discipline for misconduct at the B level or above. *See* MNCOGI Summ. J. Ex. 18, 77, 79; *see also* MNCOGI Summ. J. Ex. 96 (imposing a warning to settle a grievance).

23. Although these documents did not exist at the time MNCOGI made its Request, Defendants admit that settlement agreements between the City and its police officers are public. *See* MNCOGI Summ. J. Ex. 80; *see also* MNCOGI Summ. J. Ex. E (Zenzen Tr.) at 59:2-14. In addition,

these particular settlement agreements are public because they reflect the final disposition of disciplinary action.

24. Defendants also produced in discovery several documents where officers, in addition to more severe disciplinary action, were ordered to attend training as discipline for the sustained misconduct. *See* MNCOGI Summ. J. Exs. 45, 46, 74, 310, 311, 315, 316.

25. According to Defendants' corporate designee, when coaching or training is imposed as part of "a written reprimand with education-based discipline," then "the education is part of the disciplinary outcome." *See* MNCOGI Summ. J. Ex. F (Schoenberger Tr.) at 120:1-121:17.

26. Moreover, the City has, on several occasions, publicly released documents on police misconduct cases where it has not redacted the reference to "education-based discipline" when it was imposed with another form of disciplinary action. *See, e.g.*, MNCOGI Summ. J. Exs. 305 at 4 (the officer "was referred to the MPD Training Division and has completed refresher training in De-escalation [redacted] and Report Writing"), 328 ("Additionally, you are to complete training[.]"), 301 at 3-4, 302 at 3, 303 at 3, 304 at 4.

27. Plaintiff acknowledges that the settlement agreements referenced in ¶ 22, *supra,* are outside the scope of its Request because they were created after it submitted the Request, and that the determination letters referenced in ¶ 24, *supra,* are not responsive to its Request because they refer to "training" rather than "coaching."

28. Nevertheless, Defendants improperly marked these settlement agreements and determination letters as "Confidential" when producing them in discovery—yet another indication that, absent a court order, Defendants will continue to improperly classify public data.

29. As a result of Defendants' violations of the MGDPA—including their refusal to disclose public data responsive to MNCOGI's Request, forcing MNCOGI to defend its rights under the MGDPA by instituting this lawsuit—MNCOGI is an aggrieved party entitled, at a minimum, to nominal damages and injunctive and declaratory relief, plus costs and reasonable attorney fees.

30. The Court does not decide and reserves for trial the amount of MNCOGI's compensatory damages and any civil penalty, as well as the question of whether Defendants' violation was willful such that they are liable for exemplary damages.

31. The Court also reserves for trial whether additional, documented instances of coaching for misconduct at the B level or above (beyond those identified herein) constitute the final disposition of disciplinary action and, given disputed issues of fact surrounding this issue, reserves for after trial a decision on the nature and scope of prospective injunctive relief.

* * *

Finding no genuine issues of dispute concerning the facts material to MNCOGI's motion for partial summary judgment, IT IS ORDERED that:

1. MNCOGI's partial motion for summary judgment is GRANTED;

2. Defendants' cross-motion is DENIED;

3. Intervenor's cross-motion is DENIED;

4. MNCOGI Summ. J. Exhibits 5, 7, 9, 10, 11, 133, 156, 167, 209, 213, 306, and 308 are responsive to Plaintiff's request and constitute public government data under the MGDPA, pursuant to Minn. Stat. § 13.03, subd. 1, for which there is no exemption. None of these documents were designated "Confidential" when produced in discovery and Plaintiff is therefore free to distribute them.

5. MNCOGI Summ. J. Exhibits 12, 13, 14, 15, 16, 17, 20, 23, 72, 73, 74, 75, 76, 86, 87, 88, 92, 140, 215, 312, 313, 314, 323, 324, and 325 are responsive to Plaintiff's request and constitute public government data under the MGDPA, pursuant to Minn. Stat. § 13.43, subd. 2(a)(5).

6. With regard to those documents in ¶ 5, Defendants are hereby ordered:

    a. to publicly disclose the documents to MNCOGI, and to publicly file the documents with this Court (i.e., without redactions), no later than one week after this Order;

    b. with regard to the actions reflected in the documents, to publicly disclose to MNCOGI the specific reasons for the actions and data documenting the basis of the actions, excluding data that would identify confidential sources who are employees of the public body, *see* Minn. Stat. § 13.43 subd. 2(a)(5), and to publicly file all such data with this Court, no later than one week after this Order;

7. MNCOGI Summ. J. Exhibits 45, 46, 74, 77, 79, 96, 310, 311, 315, and 316, though technically not responsive to Plaintiff's Request, constitute public government data under the MGDPA pursuant to Minn. Stat. § 13.43, subds. 2(a)(5), (6).

8. With regard to those documents in ¶ 7, Defendants are hereby ordered:

   a. to publicly disclose the documents to MNCOGI, and to publicly file the documents with this Court (i.e., without redactions), no later than one week after this Order;

   b. with regard to the actions reflected in the documents, to publicly disclose to MNCOGI the specific reasons for the actions and data documenting the basis of the actions, excluding data that would identify confidential sources who are employees of the public body, *see* Minn. Stat. § 13.43 subd. 2(a)(5), and to publicly file all such data with this Court, no later than one week after this Order;

9. Defendants are also ordered to search for all documents that are the same or similar to those listed in ¶¶ 5, 7, *supra*, dating from January 1, 2011, through the date of this Order and to disclose those documents to MNCOGI pursuant to the Amended Protective Order dated May 9, 2024 so that the parties can meet and confer in good faith about whether those documents can and should be publicly disclosed or whether they will be subject to adjudication at trial.

10. MNCOGI is entitled to, at minimum, an award of nominal damages for Defendants' violation of the MGDPA in an amount to be determined after trial.

11. Plaintiff is entitled to its legal costs and reasonable attorneys' fees, the amount to be determined after trial once a final judgment is entered in this case.

SO ORDERED AND SIGNED this _____, 2024

BY THE COURT

_____
Honorable Karen A. Janisch
Judge of the Hennepin County District Court