

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Tony Webster,

Plaintiff,

v.

The City of Bloomington,

Defendant.

Case Type: Other Civil  
Court File No.: 27-CV-15-10552  
Judge: Hon. Laurie Miller

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL**

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Plaintiff Tony Webster asks the Court to order Defendant City of Bloomington's compliance with the Minnesota Government Data Practices Act.

**Introduction**

The City of Bloomington refuses to comply with Minnesota law. The Minnesota Government Data Practices Act (the "Act"), Minnesota's freedom of information law, requires government entities like the City to provide the public with access to inspect all data it collects, creates, receives, maintains, or disseminates, regardless of its physical form, storage media, or conditions of use, and to keep that data in an arrangement and condition as to make that data easily accessible for convenient use. MINN. STAT. § 13.01, *et seq.* Despite the Act's broad presumption of public access, the City denied Tony Webster's ("Webster") request made under the Act for access to inspect data pertaining to a protest organized by the group Black Lives Matter Minneapolis at the Mall of America and the City's response to it, a subject that has attracted significant national

media attention. The City denied Webster's request explicitly in written correspondence, and also by failing to provide adequate access to inspect responsive data. The City also attempted to intimidate Webster and discourage him from exercising his rights under the Act.

The Act mandates expedited judicial review of the City's denial, and authorizes the Court to issue "any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate" the Act. *Id.* § 13.08.

Accordingly, Webster respectfully requests that the Court issue an order compelling the City's compliance with the Act<sup>1</sup>, specifically by providing Webster with the following relief:

- (1) Allowing Webster access to inspect all data responsive to his Request, but not previously made available for inspection, including all metadata, and any other category of responsive data, regardless of its format or description;
- (2) Allowing Webster access to all data previously offered to him for inspection, in the form that it was originally provided; and
- (3) Allowing Webster to inspect responsive data made available pursuant to (1) and (2) above using his own equipment or, alternatively, by requiring the City to provide necessary and sufficient equipment or software to inspect responsive data.

Webster further requests that the Court require the City to identify any data responsive to Webster's request which may have been lost or deleted and to provide, for in camera review, any data Defendant believes is classified so as to deny Webster access to inspect.

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<sup>1</sup> Webster's right to this relief is well founded in the Act, but should the Court determine that this motion is properly decided under Minn. R. Civ. P. 56, there are no material facts in dispute that would prevent entry of summary judgment at this stage. In an abundance of caution, Webster has submitted and authenticated through a supporting affidavit ample support for an order finding that the City violated the Act and compelling the City's production of data responsive to Webster's request.

## Background

### A. Plaintiff Tony Webster's Advocacy for Transparent Government

Webster is a public records researcher, software engineer, and an active member of a national movement advocating for open data and more transparency in government. (Compl. ¶ 16; Affidavit of Tony Webster (“Webster Aff.”) ¶ 1.) He regularly requests government data, under state and federal statutes, making use of it for journalistic purposes and to benefit the public. (Compl. ¶ 17; Webster Aff. ¶¶ 2–4.) For example, using government data Webster created a web application that sends job listings to veterans and another that alerts a car owner whose vehicle has been towed about the towing and the location of their vehicle. (*Id.*) He also published Minneapolis restaurant health-code violation information for online searching and used a data request to highlight data privacy concerns with new law enforcement technology. (*Id.*)

### B. Webster's Request

On December 23, 2014, Webster requested access to inspect data collected or maintained by the City pertaining to a protest at the Mall of America in Bloomington, Minnesota. (Compl., Ex. A (“Request”); Webster Aff. ¶ 5.) The protest was organized by the group Black Lives Matter Minneapolis and attracted significant national media attention. *Id.* Webster asked to inspect responsive data in its original form, specifying that his request was for news gathering and research. (Request at 2.)<sup>2</sup> Webster asked to inspect all responsive data up through July 15, 2015. (Request at 6.) Webster also

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<sup>2</sup> Pagination provided for exhibits to the Complaint are based on the page numbers assigned to all exhibits, noted on the lower-right-hand corner of each exhibit.

requested that the City preserve and retain responsive data. (*Id.*) To the extent the City classified data as nonpublic and denied Webster access to inspect, the Request asked the City to disclose the basis for this classification, as is required by law. (*Id.*)

### **C. The City's Response**

The City responded to Webster's request by first investigating Webster's background with the intent of tailoring its response, by improperly delaying its collection of responsive government data and ultimately, by presenting Webster with an incomplete set of data, not allowing him to inspect the entirety of the data collected, and refusing Webster access to inspect most of the responsive electronic data maintained in its original form, and on information and belief, withholding, concealing, and destroying responsive data without disclosing that it was doing so or providing any legal basis for doing so. The City also attempted to intimidate Webster to discourage him from exercising his rights under the Act.

#### **1. The City improperly investigated Webster's background**

The City initially responded to Webster's Request by inappropriately researching his background and personal information. Within days of his December 23rd request, the City investigated whether he was a registered voter, what he did for a living, and reviewed his social media presence. (Webster Aff. ¶ 9). However, it was not until February 9, 2015 that the City Clerk sent an email to the heads of all City departments asking them to "indicate whether or not [their] department has any responsive data regarding the Black Lives Matter protest . . . ." (Compl. Ex. C; Webster Aff. ¶ 10.)

**2. The City allowed Webster to view an incomplete set of data on February 20 and March 6, 2015**

On February 12, 2015, the City Clerk sent an email to Webster offering him access to inspect a fraction of data responsive to six of the twenty-two categories of requested information. (Webster Aff. ¶ 11.) The City made some data available for inspection on February 20, 2015. However, when Webster attempted to inspect responsive email data, the City only allowed Webster to view the responsive email and email attachments on a City computer screen with multiple technical limitations and restrictions in place that prevented his full inspection of the data. (Compl., Ex. F; Webster Aff. ¶ 12.) The City's computer lacked speakers to review the audio or video files and did not have software that would allow for the examination of all metadata for image files. (Webster Aff. ¶ 12.) Moreover, some document files attached to emails would not open on the City computer. (*Id.*; Compl., Ex. F.) Webster informed the City that he had brought his own equipment, which did not have technical limitations and asked that he be allowed to fully inspect all the responsive data with that equipment. (Webster Aff. ¶ 13.) However, the City did not allow Webster to inspect the responsive data using his own equipment. (*Id.*) He was not allowed to download or print the data. (*Id.*) Webster raised these concerns with the City during his February 20 inspection, and again on February 23, 2015. (Compl. ¶ 44; Webster Aff. ¶ 15.)

On March 6, 2015, the City allowed Webster to continue viewing some of the government email data responsive to his Request on a computer screen. (Compl. ¶ 51; Webster Aff. ¶ 19.) After initially telling Webster that he could not print copies of the

data, the City gave Webster access to a printer and allowed him to print a select number of emails. (*Id.*) However, when the emails were printed, the formatting changed, text was obscured, and attachment image quality was degraded. (*Id.*) Webster was not allowed to inspect or print the full metadata for any of the email or email attachment files he viewed. (*Id.*) Consequently, Webster was also denied access to print or inspect metadata for the audio, video, and multimedia files attached to emails. (*Id.*) While the City did allow Webster to inspect and copy certain other electronic files – but not email or email attachments – in their original form on a hard drive using Webster’s own equipment, some of the video files on this hard drive could not be accessed for reasons the City could not explain. (Compl. ¶ 52; Webster Aff. ¶ 24.)

In addition to withholding responsive data, Webster found evidence during his inspections that the City may have also destroyed or concealed government data responsive to his requests that related to the Black Lives Matter protest. Webster found that some computer files had changed size between the February 20 and March 6 inspections. (Compl. ¶ 63; Webster Aff. ¶ 22.) He discovered one document attached to an email, a City’s meeting agenda related to the Black Lives Matter protest, had been substantially altered and large portions of the document was deleted between inspections. (Compl. Ex. I; Webster Aff. ¶ 23.) Webster also discovered gaps in the sequence of digital photos offered for inspection, which would indicate that at least one photograph was removed or concealed without notifying Webster that any data was being withheld or classified as other than public. (Compl. ¶¶ 68-69; Webster Aff. ¶ 25.) When Webster

informed the City Clerk of these discrepancies and missing data, she denied that any data had been modified or deleted between inspections. (Webster Aff. ¶ 26.)

### **3. The City's denial letters**

On March 4, 2015, Webster received letters from the Bloomington City Attorney and the Bloomington City Clerk denying him access to electronic documents in their original form and to all metadata for responsive electronic data. (Compl. Exs. D & E; Webster Aff. ¶ 16.) The City Attorney's letter misleadingly cited to an overturned appellate decision from an Arizona court, falsely claiming that Arizona law supported her claim that "[t]here is no authority for the proposition that you are entitled to electronic access to documents in their original form for the purpose of accessing metadata." (Compl. Ex. D.) The City Clerk's letter offered Webster the choice between receiving responsive email and email attachment files in hard copy or PDF format; neither option contained the responsive metadata associated with the electronic data. Despite knowing that Webster ultimately wished to inspect the data, the City Clerk also informed Webster that he would have to pay \$1,008 for this data. (*Id.* Ex. E.)

Although Webster responded to these letters the same day in a detailed letter asserting his rights under the Act (Compl. Ex. F; Webster Aff. ¶ 17), the City maintained its position and continued to deny Webster access to inspect the responsive data in its original form. In light of the City's continued denial of his Request, Webster determined that he needed legal counsel to enforce his rights under the Act. (Compl. ¶ 75; Webster Aff. ¶ 28.) On June 10, in response to a letter from Webster's counsel demanding that the City comply with the Act, the City Attorney stated that the City would not allow Webster

to inspect *any* data because it now, for the first time, claimed that Webster’s requests were made to harass the City in retaliation for its decision to criminally prosecute some of the Black Lives Matter protestors. (*Id.* ¶¶ 77–78.) Significantly, there is no provision in the Act that conditions the disclosure of data based on how it will be used by the requester or the public. The City Attorney also, for the first time, claimed that “data that may be used as evidence in the trials of the Black Lives Matters defendants will not be made available to the public until those trials have concluded,” citing the Act’s provisions allowing a governmental entity to withhold certain types of “investigative data” used to prepare a criminal case. *See* MINN. STAT. § 13.82, subd. 7.

#### **4. Use of the data for journalistic and research purposes**

From the limited data that Webster was able to inspect he discovered documents that have generated substantial public interest. Documents relating to the City’s response to the Protest have been the basis of multiple news stories attracting local and national media attention. (Compl. ¶ 85; Webster Aff. ¶ 30.) Press coverage includes stories about the FBI’s Joint Terrorism Task Force tracking Black Lives Matter activists<sup>3</sup> and exposing that the Mall of America used a fake Facebook account to ‘friend’ protest organizers for surveillance and monitoring.<sup>4</sup>

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<sup>3</sup> Lee Fang, *Why Was an FBI Joint Terrorism Task Force Tracking a Black Lives Matter Protest?* THE INTERCEPT (Mar. 12, 2015) (*available at* <https://firstlook.org/theintercept/2015/03/12/fbi-appeared-use-informant-track-black-lives-matter-protest/>) (last visited July 7, 2015).

<sup>4</sup> Lee Fang, *Mall of America Security Catfished Black Lives Matter Activists, Documents Show*, THE INTERCEPT (Mar. 18, 2015) (*available at* <https://firstlook.org/theintercept/2015/03/18/mall-americas-intelligence-analyst-catfished-black-lives-matter-activists-collect-information/>) (last visited July 7, 2015); *see also* *Mall of America wanted to trespass pro-Black Lives Matter Lush employees for 6 month*, KMSP-TV (posted Mar. 10, 2015, updated Apr. 12, 2015) (*available at* <http://www.myfoxtwincities.com/story/28353262/mall-of-america-wanted-to-trespass-pro-black-lives-matter-lush-employees-for-6-months>) (last visited July 7, 2015).



## Argument

The Court should enforce the City's statutory obligations under the Minnesota Government Data Practices Act. The data at issue is unquestionably public. Although the Request's purpose is immaterial to the Court's analysis under the Act, the public's interest in accessing this data is all the more significant because the information pertains to the City's reaction to the Black Lives Matter protest, including the high-profile prosecutions of Protest organizers and participants, and because the Request was made and verily used for research and journalistic purposes. Any attempt by the City to deny Webster's Request because of the City's speculation of how he intends to use the data violates the Act. Moreover, there is nothing on the record indicating Webster intended to or did harass the City with his Request; the City only made these baseless accusations six months after Webster made his Request, and as a justification for the City's refusal to comply with the Act.

Both the letter and the spirit of the Act require the City to provide Webster access to inspect the full set of responsive data. It has admittedly not done so. Webster respectfully requests the Court's assistance in securing the City's immediate and continuing compliance with the Act, furthering Minnesota's fundamental and well-established commitment to ensuring open public-access to government operations. *Nat'l Council on Teacher Quality v. Minnesota State Colleges & Universities*, 837 N.W.2d 314, 319 (Minn. Ct. App. 2013) ("The purpose of the act is to facilitate public data accessibility."); *Prairie Island Indian Cmty. v. Minn. Dep't of Pub. Safety*, 658 N.W.2d

876, 883–84 (Minn.App.2003) (noting Minnesota’s “fundamental commitment to making the operations of our public institutions open to the public”).

**A. Webster has Standing to Seek the Requested Relief Under the Act**

If a government agency fails to comply with the Act, the statute expressly provides an expedited mechanism to compel that agency’s compliance with its obligations. MINN. STAT. § 13.08, subd. 4. The Act allows a person seeking to enforce his or her rights to bring an action in district court to compel compliance with the Act, which the court shall hear “as soon as possible.” *Id.* The Act further provides that “for actions under this subdivision, 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 bring an action in district court to compel compliance with this chapter . . . .” *See also id.*, subd. 2 (“A responsible authority or government entity which violates or proposes to violate this chapter may be enjoined by the district court. The 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 this chapter.”).

Webster has standing under the Act to challenge the City’s denial of access and is entitled to the relief requested in this motion. His Request was properly made because it was directed to Bloomington’s designated “responsible authority.” MINN. STAT. § 13.03, subd. 3 (“Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places, and, upon request, shall be informed of the data’s meaning.”). Webster suffered damages as a result of the City’s violation because, among other things, he was denied access to information

responsive to his data-access Request. MINN. STAT. § 13.08, subd. 1 (“[A] responsible authority or government entity which violates any provision of this chapter is liable to a person or representative of a decedent who suffers any damage as a result of the violation . . . .”). While Webster’s damages and the City’s continued compliance will likely be the subject of continuing litigation before the Court, granting Webster’s initial request for access to the responsive data is consistent with the Act’s presumption of public access and its provisions requiring expedited judicial review.

**B. The Court Should Compel the City to Immediately Allow Webster to Fully Inspect the Data Provided for Inspection on February 20 and March 6, 2015**

The Minnesota Government Data Practices Act strongly favors public access to government data. The Act “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.” MINN. STAT. § 13.01, subd. 3. Members of the public “shall be permitted to inspect and copy public government data at reasonable times and places, and, upon request, shall be informed of the data's meaning.” § 13.03, subd. 3 (a). The government agency is not allowed to charge a fee for inspecting data. (*Id.*)

There is no dispute that the City is subject to the Act’s requirements. § 13.02, subd. 11. The Act directs that this Court must presume that all government data is public unless the City identifies a specific statutory reason for withholding data. MINN. STAT. § 13.01, subd. 3; § 13.03, subd. 1 (“All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by

statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential.”).

The Act clearly states the City’s obligation to provide Webster with access to inspect the data he requested. *See* MINN. STAT. § 645.08(1) (“In construing the statutes of this state, the following canons of interpretation are to govern . . . (1) words and phrases are construed according to rules of grammar and according to their common and approved usage . . .”). The City has not identified a statute or temporary classification that allows or justifies its withholding of responsive government data, including metadata for electronic records, requested by Webster. *See* MINN. STAT. § 13.03, subd. 3 (f). Measured against the Act’s unambiguous statutory language and broad public-access rights established by the Act, the City’s refusal to provide data responsive to Webster’s request is a clear and unjustifiable violation of Minnesota law.

**1. Webster’s Request applies to all government data, including metadata**

a. Metadata is government data

Metadata is part of every electronic document, whether a photograph, video, audio file, email, text document, or any other electronic data. Metadata details how an electronic document came into existence, the context of the document, and how it has changed over time. An electronic document’s metadata provides meaning, context, and other important information about that document that is critical to understanding and interpreting the document or data. It is not a separate component of an electronic document; it is part of the document itself. Courts have specifically recognized this idea

and required government entities to provide access to metadata in response to government-records requests. *See, e.g., Lake v. City of Phoenix*, 218 P.3d 1004, 1007 (Ariz. 2009) (en banc) (“The metadata in an electronic document is part of the underlying document; it does not stand on its own. When a public officer uses a computer to make a public record, the metadata forms part of the document as much as the words on the page.”).

The plain language of Minnesota’s Act clearly requires that metadata be treated like any other form of data. Minnesota courts interpret statutes according to their plain meaning. *Graves v. Wayman*, 859 N.W.2d 791, 798 (Minn. 2015) (internal citation omitted) (“When a statute is clear and unambiguous, we apply the statute's plain meaning and interpret the words and phrases in the statute according to their plain and ordinary meanings.”). The Act defines “government data” to include “*all data* collected, created, received, maintained or disseminated by any government entity *regardless of its physical form*, storage media or conditions of use.” MINN. STAT § 13.02, subd. 7 (emphasis added). The Act nowhere conditions or limits access to inspect government data on the physical form of that data. *See* MINN. STAT. §13. While the Act specifies a select number of substantive categories of data that can be withheld as nonpublic under the Act, there is no such delineation in the Act specifying that certain forms of government data are nonpublic under the law. *See id.*

Moreover, along with inspection and copying of government data, the Act expressly states that the person requesting access to the government data “shall be informed of the data’s meaning.” MINN. STAT § 13.03, subd. 3 (a). Without allowing full

access to the metadata for photographs, emails, videos, and other electronic documents, the City is withholding critical components of government data that explain the data's meaning. The City's restrictions on Webster's access to responsive data rendered many of the data unintelligible or unusable. For instance, a significant number of the email files Webster was allowed to view on the City's computer included attached photographic, audio, and other multimedia files. For much of the data, it was impossible for Webster to determine when these files were created, how they were created, when they may have been changed or moved, and – because the City's computer could not play audio during one of the inspections and lacked other essential software – what the files contained.

The Act's plain language requires that the City provide the metadata of an electronic document to fully inform the public of the data's meaning. Withholding meaningful metadata is contradictory to the unambiguous language and intent of the statutory language.

b. The City's refusal to provide all responsive metadata is unsupported by law

The City's argument that it need not allow Webster to inspect responsive metadata lacks support in any "federal law, a state statute, or a temporary classification of data" and is contrary to several persuasive decisions by other state courts. *See* MINN. STAT. § 13.01, subd. 3. By refusing to allow Webster to inspect electronic documents in their original form, the City foreclosed his access to the metadata, which is an inextricable part of the responsive data.

The City denied Webster access to inspect the relevant data in its original form without citation to Minnesota law or the Act. (*See* Compl. Ex. D; Webster Aff. ¶ 16.) The City’s refusal was based entirely on an erroneous reading of the *Lake v. City of Phoenix* decision; the City relied on an Arizona appellate court’s restricted reading of the Arizona statute, a reading that was reversed and overruled by the Arizona Supreme Court on appeal. 207 P.3d 725 (Ariz. Ct. App.), *vacated in part*, 218 P.3d 1004 (Ariz. 2009) (vacating appeals court decision and applying Arizona law to require disclosure of metadata associated with documents possessed by city’s police department). Directly contradicting the City’s assertions, the Arizona Supreme Court held that when a public record is maintained in an electronic format, the electronic version—including any embedded metadata—is subject to disclosure. *Lake*, 218 P.3d at 1008. The Court concluded that an electronic document’s metadata is itself an integral part of the underlying document that “does not stand alone.” *Id.* at 1007.

The City’s position is also contrary to decisions issued by other courts that have addressed the issue, including courts in Washington, New York, and Illinois. *O’Neill v. City of Shoreline*, 240 P.3d 1149, 1153-54 (Wash. 2010) (applying Washington law to compel production of metadata of email sent by city council member); *Irwin v. Onondaga Cnty. Res. Agency*, 72 A.D.3d 314, 316 (N.Y. App. Div. 2010) (applying New York law to compel production of metadata associated with photographs); *Fagel v. DOT*, 991 N.E.2d 365, 372-73 (Ill. App. Ct. 2013) (applying Illinois law to compel state agency to produce Excel document in native form). Decisions by these sister-state courts were based on statutes containing similarly broad definitions of public information and nearly

identical language to Minnesota’s own freedom of information law. *Compare* MINN. STAT. §§ 13.01–13.02 (requiring “government data” to be accessible to the public “regardless of its physical form, storage media or conditions of use”), *with* Ariz. Rev. Stat. §§ 39-121.01(d)(1), 41-151.18 (requiring public access to government records, “regardless of physical form or characteristics”); 5 Ill. Comp. Stat. 140/2(c) (requiring “public records” to be accessible “regardless of physical form or characteristics”), N.Y. Pub. Off. Law §§ 84, 86(4) (requiring public access to government records and defining a “record” as “any information kept, held, filed, produced or reproduced . . . in any physical form whatsoever”); *and* Wash. Rev. Code §§ 42.56.010, 42.56.080 (requiring government records to be available for public inspection “regardless of physical form or characteristics”).

The growing body of law requiring governmental entities to maintain and provide access to metadata for government data acknowledges the importance of a document’s metadata given society’s increased dependence on electronic documents. Much of the important information about a particular record exists only in the metadata. For instance, an MP3 file of a song contains the song’s audio – which you can listen to, or “inspect,” on any computer with speakers – but it also contains metadata indicating the artist, title, album, and other information. Without the metadata, a music library on a computer cannot be identified, sorted, categorized, or segregated. Prior to the prevalence of digital photographs, as another example, the date and location of an image would be routinely written on the back of film photographic prints, information that is vital to the



understanding and context of the image. That same information exists in metadata in digital images.

**2. The City must allow Webster to fully inspect all responsive data in their original native format**

In order to allow a full inspection of responsive government data, including metadata, responsive data must be produced for inspection in its original native form and be available for inspection using technology that allows the requester to inspect all the responsive data, including metadata. To date, the City has failed to allow for such full inspection of the data responsive to Webster's Request.

The Act provides for the production of "data collected, created, received, maintained or disseminated by any government entity *regardless of its physical form, storage media or conditions of use,*" MINN. STAT. § 13.02, subd. 7 (emphasis added). Moreover, the act specifically requires government entities – including the City – to produce responsive data "in electronic form." *Id.* § 13.03, subd. 3(e). When the data is stored in electronic form and made available to the public on a remote access basis, "inspection includes . . . the ability to print copies of or download the data on the public's own computer equipment." *Id.* § 13.03, subd. 3(b).

Webster requested access to inspect responsive data in their original native form. Although the City collected a significant amount of electronically stored information in response to Webster's request, it intentionally prevented Webster from fully inspecting the data, including responsive metadata, by denying Webster's access to fully examine the data in its original "electronic form." *See id.* § 13.03, subd. 3(e). As discussed above,

the metadata is an inextricable part of the responsive data because it provides meaning, context, and other important information associated with the photographs, videos, emails, and the other files among those responsive records. The City's refusal to provide Webster data in its original form clearly violated the Act by denying Webster access to responsive data and a full understanding of its meaning. *See id.* § 13.03; *see also Lake*, 218 P.3d at 1004; *O'Neill*, 240 P.3d at 1153-54; *Irwin*, 72 A.D.3d at 316; *Fagel*, 991 N.E.2d at 372-73.

Moreover, the City violated the Act by failing to provide inspection tools with sufficient technology to access all the responsive data in its original form and by refusing to allow Webster to use his own equipment to inspect the metadata. The Act requires the City to allow Webster to fully inspect the responsive government data, including where remote access is available, the ability to "download the data on the public's own computer equipment." *See id.* § 13.03, subd. 3(b). Of the limited selection of electronic files that the City did allow Webster to inspect in their original format, the City improperly declined to provide inspection tools with technology that allowed full access to the responsive government data. Although Webster informed the City that his equipment was technologically equipped to allow a full inspection of the responsive electronic data, the City also refused to allow him to inspect the data using his own equipment. By denying Webster use of technologically sufficient inspection tools, the City illegally denied Webster access to inspect responsive electronic data to which he was legally entitled. To comply with the Act, the City should have allowed Webster to

inspect the data in its native format by downloading the data to his own computer equipment.

### **3. The City cannot retroactively classify data as investigative data**

The City may argue, as the City Attorney has previously asserted, that it can deny Webster further access to the data presented to him on February 20 and March 6, 2015 because the City Attorney's June 10, 2015 letter stated, for the first time, that "data that may be used as evidence in the trials of the Black Lives Matters defendants will not be made available to the public until those trials have concluded." The City may claim that this statement operated as a classification of the data presented at earlier inspections as nonpublic or protected nonpublic data. Nothing in the Act allows a government agency to retroactively classify this data. *See* MINN. STAT. §§ 13.03 and 13.82. Nor does the Act contain any rights allowing the City to claw-back data it has already made available to the public pursuant to Minnesota law. *See id.*

While the Act contains an exception allowing law enforcement agencies to withhold specific types of criminal investigative data, that exception is narrow and subject to judicial review. *See* MINN. STAT. § 13.82. Criminal investigative data is data that is collected or created by a law enforcement agency to prepare a criminal case, except for "arrest data," "request for service data," or "response or incident data," terms that are defined terms under the Act. *Id.*, subds. 2, 3, and 6. In order for the data to be classified as nonpublic, the data must be collected or created by the law enforcement agency with primary investigative responsibility and the investigation must be active. *Id.*, subd. 7. Even properly classified criminal investigative data may be disclosed if "the

benefit to the person bringing the action or to the public outweighs any harm to the public, to the agency or to any person identified in the data.” *Id.* Moreover, once any investigative data is presented as evidence in court, it “shall be public.” *Id.* Here, the City has already made portions of the responsive data public. It cannot now claim that those data are protected from disclosure.

Furthermore, the Act provides that the disputed data “shall” be examined by the court in camera. *Id.* Any attempt by the City to retroactively classify the data presented to Webster on February 20 and March 6, 2015 would be unsupported by Minnesota law. However, if the City insists on such a classification, it must carefully segregate the individual elements of data that fall within this narrow exception and provide it to the Court for in camera review. To the extent the City classifies other responsive data as nonpublic and withholds it from inspection, including data withheld from Webster’s inspection on February 20 and March 6, 2015, it must also submit that data to the Court for in camera review.

### **Conclusion**

Exercising his rights under Minnesota Government Data Practices Act, Webster requested access to inspect data pertaining to a matter of significant interest to the public and to local and national journalists who have been reporting on the story, many using some of the limited government data that the City allowed Webster to see. Despite the City’s clear statutory obligations, the City intentionally withheld, concealed, and improperly denied access to responsive data. The City’s repeated failure to provide Webster with the responsive government data he entitled to inspect violates both the

letter and spirit of the Act. Webster respectfully requests the Court's assistance in compelling the City's compliance with the Act, and asks that this Court order the City to provide Webster with access to inspect all data responsive to his Request.

Dated: September 9, 2015

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