

Matt Ehling  
Public Record Media  
2375 University Ave  
Suite 200  
St. Paul, MN 55114



March 29, 2017

Bruce Grodon  
Department of Public Safety  
445 Minnesota Street  
Suite 223  
St. Paul, MN 55101-6223

RE: Redactions in Dakota Access Pipeline data

Dear Mr. Gordon,

Thank you for the records provided in response to Public Record Media's (PRM's) Data Practices Act request regarding costs and logistics related to the Dakota Access Pipeline (DAPL) deployment.

In the e-mail (dated February 17, 2017) that accompanied the document production, you noted that certain data had been withheld pursuant to Minn. Stat. 13.37 subd. 1 and Minn. Stat. 13.82 subd. 25. I am writing today to ask your agency to revisit specific redactions made under those provisions of law.

**Legal authority for withholding government data**

Minn. Stat. 13.37 subd. 1 permits a responsible authority to withhold from public release government data that "would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury." Data withheld under this section is classified as either nonpublic or private data.

Minn. Stat. 13.82 subd. 25 permits a responsible authority to withhold from public release government data that "reflect deliberative processes or investigative techniques of law enforcement agencies" except for "information, reports, or memoranda that have been adopted as the final opinion or justification for a decision of a law enforcement agency." Data withheld under this section is classified as either confidential data on individuals or protected nonpublic data.

**Specific withholding contested - document 1**

Your agency made reactions to various fields of information in a document labeled "Emergency Management Assistance Compact (EMAC) Interstate Mutual Aid Request For Assistance Form REQ-A, 2011." A copy of this document has been provided for your reference.

PRM wishes to contest your agency's determination to withhold the following information:

Page 1

Sub-total cost estimates for travel, personnel, equipment, commodities, and "other."

Page 2

The figures for "*Gvt. Vehicle Costs*" and "*Meals & Tips (Per Diem)*"; all fields in the "*Personnel Costs*" section, including names, unless officer names are protected by Minn. Stat. 13.82 subd. 17 (a).

Page 3

All fields in the "*Personnel Costs*" section, including names, unless officer names are protected by Minn. Stat. 13.82 subd. 17(a).

Page 4

All fields in the "*Personnel Costs*" section, including names, unless officer names are protected by Minn. Stat. 13.82 subd. 17(a); all fields in the "*Commodity Costs*" section; all fields in the "*Equipment Costs*" section.

In regard to certain information in the "*Personnel Costs*" section, data included in the "*Name/ Phone/Email, Reg. Salary Hourly Rate, Fringe Benefit Hourly Rate, OT Salary Hourly Rate and OT Fringe Benefit Hourly Rate*" fields is classified as "public" personnel data under Minn. Stat. 13.43 subd. 2(a)(1). However, data in the "*Name*" field could be withheld under Minn. Stat. 13.82 subd. 17(a) if an officer tasked to the deployment was operating in an undercover capacity.

To the extent that data included in the "*Reg. Hours Worked Per Day, OT Hours Worked Per Day*" fields is data compiled for payroll purposes, that data is public under Minn. Stat. 13.43 subd. 2(a) (8).

Data in the fields labeled "*# Days, Total Daily Cost, and Total Mission Cost*" are public data, since their disclosure would not "enable theft or fraud" per Minn. Stat. 13.37 subd. 1, nor would their disclosure reveal "deliberative processes or investigative techniques of law enforcement agencies" per Minn. Stat. 13.82 subd. 25.

In regard to information in the "*Equipment Costs*" section, data in the fields "*Cost Per Item, Qty, Rate Per Day, Qty, # Days Used and Total Cost*" is public data, since the disclosure of such data is not prohibited by Minn. Stat. 13.37 subd 1, nor by Minn. Stat. 13.82 subd 25. Information listed in the "*Equipment Description*" field is likewise public data, since the release of the data (the identity of equipment maintained by your agency) would not "enable theft or fraud" or reveal investigative techniques. To the extent that any of the equipment described in those fields is surveillance equipment, Minn. Stat. 13.82 subd. 31 affirms that the existence of such equipment is classified as public data. The existence of equipment alone would not reveal investigative techniques protected by Minn. Stat. 13.82 subd 25.

**Specific withholding contested - document 2**

Your agency made reactions to various fields of information in a second document labeled "Emergency Management Assistance Compact (EMAC) Interstate Mutual Aid Request For Assistance Form REQ-A, 2011." A copy of this document has been provided for your reference.

PRM wishes to contest your agency's determination to withhold the following information:

Page 2

Certain information included in the "*Resource Description*" box at the top of the page that corresponds to the numbered bullet points 1 and 3.

To the extent that equipment is described in either bullet point 1 or 3, such data is "public" since the identity of equipment alone would not "enable theft or fraud" or reveal law enforcement investigative techniques, and thus be covered by Minn. Stat. 13.37 subd. 1 or Minn. Stat. 13.82 subd. 25. In addition, if the equipment described is surveillance equipment, Minn. Stat. 13.82 subd. 31 affirms that the existence of such equipment is classified as public data.

**Specific withholding contested - document 3**

Your agency made reactions to various fields of information in a second document labeled "Emergency Management Assistance Compact (EMAC) Interstate Mutual Aid Request For Assistance Form REQ-A, 2011." A copy of this document has been provided for your reference.

PRM wishes to contest your agency's determination to withhold the following information:

Page 2

Certain information included in the "*Resource Description*" box at the bottom of the page that corresponds to the numbered bullet points 1 and 3.

To the extent that equipment is described in either bullet point 1 or 3, such data is "public" since the identity of equipment alone would not "enable theft or fraud" or reveal law enforcement investigative techniques, and thus be covered by Minn. Stat. 13.37 subd. 1 or Minn. Stat. 13.82 subd. 25. In addition, if the equipment described is surveillance equipment, Minn. Stat. 13.82 subd. 31 affirms that the existence of such equipment is classified as public data.

Page 3-4

All fields in the "*Equipment Costs*" section, and all fields in the "*Commodity Costs*" section.

Data that identify equipment used, commodities utilized, or costs incurred during the DAPL deployment would not constitute data that could be withheld under Minn. 13.37 subd. 1 or Minn. Stat. 13.82 subd. 25. If any equipment described is surveillance equipment, Minn. Stat. 13.82 subd. 31 affirms that the existence of such equipment is classified as public data.

Page 4-5

Information recorded in the fields of the "*Personnel Roster*" section is "public" data under Minn. Stat. 13.43.

**Specific withholding contested - document 4-6**

Your agency made reactions to various fields of information in three related documents labeled "Intergovernmental Agreement (IGA) Non-Governmental Organization Agreement (NGO) Trial Agreement (TA)." Copies of these documents have been provided for your reference.

PRM wishes to contest your agency's determination to withhold the following information:

Page 1, all three documents

Information that pertains to "customary work hours" as noted in the final paragraph of the "Introduction" section is presumptively public data, and cannot be withheld under either Minn. Stat. 13.37 subd. 1 or Minn. Stat. 13.82 subd. 25.

Page 2, all three documents

To the extent that information withheld from the "Reimbursement" section consists of data relating to employee salaries, the value and nature of fringe benefits, or any added remuneration, such data is "public" personnel data under Minn. Stat. 13.43 subd. 2(a)(1).

**Request for "short statement" regarding security information designation**

To the extent that your agency has withheld information from responsive documents as "security data," Minn. Stat. 13.37 subd. 2(b) states that your agency must provide a "short description" of the reason for the withholding upon request. Please constitute this letter as a request for a "short description explaining the necessity" of the security data classification as it has been applied to the documents provided, after the redactions have been re-evaluated.

Please let me know if you have further questions about the issues raised in this letter. I can be reached by telephone at 651-556-1381 or by U.S. post.

Sincerely,

/s/Matt Ehling  
Public Record Media

cc: Mike Kaszuba