

Public Record Media,

Plaintiff,

Court File No: _____

vs.

**Minnesota Department of Employment
and Economic Development**

COMPLAINT

Defendant.

Plaintiff Public Record Media, for its complaint against the Minnesota Department of Employment and Economic Development (“DEED”), states and alleges:

INTRODUCTION

At \$810 billion¹, AMAZON.COM.NVDC, Inc. (“Amazon”) is the fourth largest company in the world by market capitalization. It employees over 340,000 people, and had 2017 annual revenue of \$178 billion.

In the Fall of 2017, Amazon issued a request for proposals for a second corporate headquarters, “HQ2,” setting off a scramble among government officials across the United States. All told, 238 cities in 43 states submitted bids for HQ2, offering billions of dollars of incentives in the hopes of securing thousands of new jobs and related economic prosperity promised by the company.²

Minnesota’s HQ2 bid to Amazon (the “Bid”) was prepared and submitted through a collaboration between the Minnesota Department of Employment and Economic Development (“DEED”) and economic development organization Greater MSP³, with input from the state legislature.

¹ As of June 25, 2018. *See* <https://finance.yahoo.com/quote/AMZN/>

² Also in the public discourse have been various expressions of concern about the retail giant, ranging from gentrification, to traffic and prolonged construction, to the company’s record of treatment of workers. *See e.g.*, <https://www.theguardian.com/money/2014/nov/28/being-homeless-is-better-than-working-for-amazon>

³ <https://www.greatersp.org/partner-with-us/about-greater-msp/>

Minnesota's Bid was declined, and the Bid itself remains undisclosed to the public.

Public Record Media (PRM) is a Minnesota non-profit organization that seeks to advance transparency and the democratic process through the use of freedom of information laws. PRM submitted two requests to DEED under the Minnesota Government Data Practices Act (the "DPA") for the Bid and data related thereto. The first request was delivered on October 19, 2017.

Since that date, DEED has produced thousands of pages of data in response – relating to, among other things, its contributions to the editing and review of at least portions of the Bid – but not the Bid itself. PRM has repeatedly inquired as to the Bid, asserting, based on the other data produced, that the agency has had clear access to the Bid data via a file-sharing network with Greater MSP called the "Box."⁴

DEED has not denied that it has access to the contents of the Box. Instead, DEED has stated that the Bid document itself "was never collected, created, received, maintained, or disseminated" by DEED, and has denied its ability to confirm whether the Bid document was or is in the Box.

DEED's internal correspondence, however, indicates the agency's routine and ongoing access to the Box, and to the Bid and/or drafts of the Bid itself. This data is subject to disclosure under the DPA, which defines government data broadly 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."

The data requested by PRM is public, government data that must be disclosed. PRM seeks an order compelling DEED's compliance with the law and enjoining further violations.

PARTIES

1. Plaintiff Public Record Media (PRM) is a non-profit corporation organized under the laws of the State of Minnesota. Plaintiff's mission is to advance "transparency and democracy through the use, application, and enforcement of freedom of information [FOI] laws." Plaintiff provides services which

⁴ The "Box" is a cloud file-sharing network operated by a public company, similar in function to Dropbox or Google Drive.

include (a) making FOI requests to government entities to obtain public, government data; (b) publishing public data on its website at www.publicrecordmedia.org; (c) publishing original articles and reports concerning public data, and; (d) enforcing the requirements of open data laws through legal process when necessary.

2. Defendant Minnesota Department of Employment and Economic Development (DEED) is a component of the executive branch of the State of Minnesota. Defendant is a “government entity” under Minn. Stat. § 13.02, subd. 7a.

JURISDCITION AND VENUE

3. This action arises under the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.

4. This Court has subject matter jurisdiction under Minn. Stat. § 13.08, subd. 4(a) (actions to compel compliance with the Act), and personal jurisdiction because Defendant is located within Ramsey County.

5. Venue is proper under Minn. Stat. § 13.08, subd. 3. The facts giving rise to Plaintiff’s claims occurred in Ramsey County, Defendant is located in Ramsey County, and Plaintiff is located in Ramsey County.

FACTS

6. On September 7, 2017, AMAZON.COM.NVDC, Inc. (“Amazon”) issued a request for proposals (RFP) for a location for a new, second corporate headquarters (“HQ2”). A copy of the RFP with handwritten DEED staff notes is attached as Exhibit A.⁵

7. On or about September 8, 2017, representatives of DEED, including DEED Commissioner Shawntera Hardy, attended a meeting with Minnesota Governor Mark Dayton and representatives of economic development organization “Greater MSP.” The purpose of the meeting was to formulate the

⁵ Exhibits A-Q are copies of public, government data obtained from DEED in response to a request for data made by PRM under the Minnesota Government Data Practices Act.

State of Minnesota's response to Amazon's HQ2 RFP. *See* correspondence attached as Exhibit B.

8. On September 8, 2017, DEED staff member Allison Jones indicated that Governor Mark Dayton had directed DEED and "Greater MSP to develop and submit a proposal in response to Amazon's RFP to establish a second corporate headquarters in North America." *See* correspondence attached as Exhibit C.

9. On or about September 8, 2017, DEED and Greater MSP began working together to respond to the Amazon RFP.

10. On September 11, 2017, Joel Akason of Greater MSP indicated that DEED and Greater MSP would coordinate the submission of one Bid together. *See* correspondence attached as Exhibit D ("there will be one official submission and that is being coordinated by DEED and Greater MSP.")

11. On September 12, 2017, DEED employee Jeff Rossate communicated to Amazon that Minnesota's Bid submission would be via two "co-leads," Jeff Rossate of DEED and Joel Akason of Greater MSP. *See* correspondence attached as Exhibit E.

12. On September 14, 2017, Holly Sullivan of Amazon requested to Jeff Rossate of DEED that DEED execute a nondisclosure agreement. *See* correspondence attached as Exhibit F.

13. On September 15, 2017, Michael Vaughn of DEED delivered modifications to Amazon's nondisclosure agreement made by the Minnesota Attorney General's Office, and stated "this should cover us for data practices purposes." *See id.*

14. On September 21, 2017, Amazon legal counsel Lloyd Chee indicated acceptance of the modifications to Jeff Rossate of DEED and requested a signed version. *See* correspondence attached as Exhibit G ("I've reviewed your requested revisions to our NDA, and they are all acceptable. At your convenience, please finalize the document and send an executed copy to Holly and me.")

15. On or about September 21, 2017, Jeff Rossate of DEED delivered a signed nondisclosure agreement to Amazon, which included the following Section Five, confirming Minnesota law that: "Agency may disclose Confidential Information as required to comply with applicable public disclosure

or open records laws, including the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13.” *See* Exhibit H.

16. In response to DEED’s inquiry, Amazon legal counsel Lloyd Chee wrote, “We typically do not sign such NDAs. But, we can confirm our receipt and acceptance of the NDA.” *See* e-mail attached as Exhibit I.

17. On September 11, 2017, Kevin McKinnon of DEED indicated to representatives of various public and private institutions the review by DEED of certain real estate submittals related to the Bid. *See* correspondence attached as Exhibit J (“Greater MSP is working with the cities/counties on the real estate aspects that will hopefully conclude by the 22nd. After that date we will review the submittals.”)

18. On September 29, 2017, DEED issued a statement from Commissioner Shawntera Hardy indicating to various reporters and editors the review by DEED and Governor Dayton of site submissions related to the Bid. *See* DEED Statement attached as Exhibit K (“This afternoon, Governor Dayton and I met with Greater MSP CEO Michael Langley to discuss potential sites for the state’s bid in the Amazon HQ2 project. In that meeting, Governor Dayton, Mr. Langley and I reviewed site submissions and discussed strategy.”)

19. DEED has maintained and had access to government data via a shared network with Greater MSP through a service called “Box.” “Box” is an account and password-protected cloud-based file sharing service, provided by a publicly traded company in California, similar in functionality to other services including Dropbox or Google Drive.

20. Box allows users to “Collaborate externally with anyone in the world ... Create or edit any file, saved to the cloud in a shared and synced folder ... You've always got the latest file version on hand, making collaborations seamless. And Box saves earlier versions, too, just in case you need to go back.” *See* Box company website at <https://www.box.com/for-individuals-teams>.

21. Between October 6, 2017 and October 16, 2017, DEED staff engaged in multiple data exchanges with Greater MSP related to the Bid, including via the Box.

22. On October 6, 2017, DEED staffer Thu-Mai Ho-Kim indicated to DEED personnel and Valerie Vannett of Greater MSP the placement by DEED of data in a “big project folder” and the uploading by DEED of data to the Box. *See* correspondence attached as Exhibit L (“I went ahead and wrote up a summary for sustainability ... Form the RFI, sustainability is very important to Amazon ... I put the doc in the big project folder. Please review and let me know your comments before I upload it to Box.”) In the same exchange, DEED’s Neal Young also referred to the uploading of the data, indicating general awareness of and access data sharing via the Box. *See id* (“This is great. Go ahead and upload it.”)

23. On October 11, 2017, DEED staffer Kevin McKinnon described the contents of Minnesota’s Bid via e-mail to Ben Golnik and other legislative personnel, indicating DEED’s collection, receipt, or maintenance of the Bid and/or drafts thereof. *See* correspondence attached as Exhibit M.

24. On October 13, 2017, DEED staffer Allison Jones described availability to “walk through the draft final proposal” to Ben Golnik and other Minnesota legislative personnel, indicating DEED’s active participation in assembling the Bid draft and final proposal. *See* e-mail attached as Exhibit N (“DEED and Greater MSP will be putting together a draft of the final proposal over the weekend. If members are interested, Kevin and I are available Monday at 3:00 to walk through the draft final proposal.”)

25. On October 16, 2017, Minnesota Senate staffer Dan Dwight confirmed via e-mail to DEED’s Allison Jones a meeting to “walk through the proposal,” indicating an expectation regarding DEED’s access to and maintenance of the Bid proposal as well as the presentation by DEED of the proposal to legislative staff. *See* e-mail attached as Exhibit O (“Let’s meet at 3 in MSB 2308 to walk through the proposal.”)

26. On October 16, 2017, DEED staffer Thu-Mai Ho-Kim confirmed DEED’s access to the Box, DEED’s access to the Bid, and a general understanding of mutual use of the Box between DEED and Greater MSP, via e-mail to Valerie Vannet of Greater MSP. *See* e-mail attached as Exhibit P (“Hi Val, was looking at the Box files, and it looks like you guys have been busy putting together a final package. It looks good!”)

27. On October 18, 2017, DEED issued a statement from Commissioner Shawntera Hardy confirming the participation by DEED in submitting the Bid to Amazon. *See* DEED Statement attached as Exhibit Q (“Today, the Department of Employment and Economic Development (DEED) and Greater MSP submitted a comprehensive and competitive response to Amazon’s HQ2 Request for Proposal.”)

28. On October 19, 2017, Plaintiff Public Record Media submitted a request to DEED for public, government data under the Minnesota Government Data Practices Act, seeking: “(1) Any and all data submitted by the State of Minnesota to Amazon in response to Amazon's request for proposals (RFP) related to a search for a new corporate headquarters; (2) Any and all data, including any RFPs, submitted by Amazon to the State of Minnesota between January 1, 2017 and October 19, 2017 that relate to Amazon's search for a new corporate headquarters; (3) Any and all correspondence (in written and/or electronic form) between staff of DEED and staff of Greater MSP regarding the State of Minnesota's response to Amazon's RFP related to a search for a new corporate headquarters.” PRM’s October 19, 2017 Request to DEED is attached as Exhibit R (the “October 19 Request”).

29. The October 19 Request was submitted to and received by DEED’s Data Practices Responsible Authority.

30. The October 19 Request asked for the indefinite retention of responsive data, pending resolution of the request.

31. The October 19 Request was received three days after DEED staff had viewed the “final package” via the Box portal, and had met with legislative staff to review the “draft of the final proposal.”

32. On December 7, 2017, Shane Delaney of DEED produced data responsive to Item 1 of PRM’s October 19 request, which consisted of a cover letter to the Amazon proposal from Governor Dayton and legislative leadership, and a two-page summary letter of economic incentive information signed by DEED Commissioner Hardy. In the e-mail accompanying the production (attached as Exhibit S), Mr. Delaney stated “Attached are the responsive materials you requested regarding Minnesota’s submitted proposal to Amazon’s HQ2 RFP. These are the only documents DEED possesses that are responsive to this request. Minnesota’s complete proposal to the Amazon HQ2 RFP was submitted by

Greater MSP, an organization that partnered with DEED on this project... Your additional request of supporting documentation related to this project is still pending.”⁶

33. On January 2, 2018, Shane Delaney of DEED stated “the two documents I sent you last month are the only two documents DEED possesses that were part of the bid.” *See* e-mail attached as Exhibit T.

34. On March 12, 2018, Shane Delaney of DEED stated that DEED considered its production with respect to the October 19 Request complete. *See* e-mail attached as Exhibit U (“Your data request of October 19, 2017 is complete and ready for your inspection.”)

35. The data produced by DEED in response to the October 19 Request -- consisting of three boxes of printed e-mails and other documents -- revealed access by DEED to the Box file-sharing portal, the uploading by DEED staff of data related to the Bid, and the review by DEED staff of the Bid.

36. PRM submitted a second data request to DEED on May 8, 2018, seeking (1) The bid submitted to Amazon on behalf of the State of Minnesota in response to Amazon’s request for proposals related to a second corporate headquarters; and (2) Any and all draft versions of the bid described in Item 1 -- including portions thereof -- collected, created, received, maintained, or disseminated between October 10, 2017 and October 19, 2017. *See* PRM Request to Deed dated May 8, 2018 attached as Exhibit V (the “May 8 Request”).

⁶ PRM has submitted data requests to Greater MSP related to the Bid as well. Like DEED, Greater MSP has declined to produce the Bid. The two entities appear to be engaged in a mutual effort to shield the Amazon Bid via a scheme where neither will admit the full details of the arrangement between them, using alternate theories to justify their own refusal to produce the Bid under the DPA. None of the theories asserted by the cooperating entities alter the fundamental fact in this case that an Amazon bid was prepared and submitted by or on behalf of Minnesota, and that such data is clearly public, government data of significant interest to Minnesotans. In naming DEED as Defendant in this case, PRM notes Minnesota Department of Administration Advisory Opinions 09-022 and 09-003 concerning ultimate responsibility by the government entity for production of public data under the Act. *See* Advisory Opinions 09-022 and 09-003. (“Unless the contract specifies otherwise, the government entity retains ultimate responsibility for responding even if the data are maintained by the private contractor.”) <https://mn.gov/admin/data-practices/data/types/contracting/>

37. Accompanying the May 8 Request, legal counsel for PRM delivered a letter to DEED notifying DEED of the existence of data indicating DEED's access to and use the Box, and PRM's position that the data is public:

Under Minnesota Statutes Chapter 13, "government data" subject to public inspection and copying are defined as "all data collected, created, received, maintained, or disseminated by any government entity regardless of its physical form, storage media, or conditions of use." Through its access to the Box, DEED has the ability to both upload or transmit documents and to review or receive documents created by Greater MSP. Routine access to the Box by DEED staff makes clear that data uploaded to the file-sharing portal is "maintained" by the agency and therefore "government data" under Chapter 13.

See May 8, 2018, Letter from PRM Counsel Haines to DEED, attached as Exhibit W.

38. The May 8 Request was submitted to and received by DEED's Data Practices Responsible Authority.

39. The May 8 Request asked for the indefinite retention of the requested data, pending resolution of the request.

40. On May 31, 2018, Shane Delaney of DEED indicated to PRM that its May 8 Request production was complete and ready for review, and represented that the data "does not contain a copy of the proposal submitted to Amazon on behalf of the State of Minnesota, nor does it contain any draft versions of the proposal. As previously stated, DEED does not possess a copy of the proposal submitted to Amazon." *See* correspondence attached as Exhibit X.

41. On June 6, 2018, PRM indicated to DEED via counsel that PRM had "still not received a response to our May 8 letter describing information that DEED has joint access to that data and is therefore obligated to provide it." *See* e-mail from PRM Counsel Haines to DEED dated June 6, 2018, attached as Exhibit Y.

42. On June 8, 2018, DEED counsel Lee Nelson responded that "the final Amazon bid document, as well as draft versions of final bid document, was never collected, created, received, maintained, or disseminated by the Department of Employment and Economic Development." *See* letter from DEED General Counsel Lee Nelson dated June 8, 2018, attached as Exhibit Z.

43. In an e-mail dated June 8, 2018, counsel for PMR replied, stating, “As I understand it, DEED’s current position is that ‘access’ to data does not necessarily mean that such data is government data under the DPA. Our position is that it does mean that.” *See* email from PRM Counsel Haines to DEED counsel dated June 8, 2018, attached as Exhibit AA.

44. On June 15, 2018, DEED General Counsel Lee Nelson represented that PRM “has been provided copies of all government data responsive to their multiple requests, including any documents which DEED staff either uploaded to or downloaded from the ‘box,’ the file-sharing portal which you reference... Whether the final Amazon proposal was ever in the “box” is unknown by DEED.” *See* Letter from DEED General Counsel Lee Nelson to PRM counsel dated June 15, 2018 attached as Exhibit BB.

45. Data produced by DEED indicates that DEED staff have uploaded documents to the Box, accessed the Box using DEED computer systems or electronic devices, and reviewed drafts of the Bid.

46. The Bid and drafts of the Bid – e.g. housed within the “Box” and/or shared with legislative staff -- were and are received, maintained, and/or disseminated by Defendant, and as such are government data under the DPA.

47. Defendant was obligated to produce the Bid and drafts of the Bid in response to PRM’s requests.

48. Defendant has not produced the Bid and drafts of the Bid or provided written certification or statutory citation to support its failure to produce the data.

49. The Bid is an “official record” under Minnesota Statutes § 15.17, which requires that “all officers and agencies of the state ... shall make and preserve all records necessary to a full and accurate knowledge of their official activities.”

CAUSES OF ACTION

COUNT I

Declaratory Relief (Minn. Stat. Ch. 555)

50. Plaintiff incorporates by reference all allegations as if set forth fully herein.

51. Minnesota Statutes Chapter 555 allows a district court to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

52. Plaintiff seeks a declaration that Defendant's conduct detailed above violates the Minnesota Government Data Practices Act and Minnesota Official Records Act.

COUNT II

Action to Compel Compliance (Minn. Stat. § 13.08, subd. 4)

53. Plaintiff incorporates by reference all allegations as if set forth fully herein.

54. Defendant's conduct violates the Minnesota Government Data Practices Act by failing to produce public, government data in response to proper requests, and by failing to provide written certification and statutory citation for denials of access.

55. Defendant DEED has not produced data responsive to portions of Plaintiff's data requests of October 19, 2017 and May 8, 2018 (the State of Minnesota's proposal responding to Amazon's RFP and drafts thereof). Defendant's failure to produce public, government data for inspection and/or copying is a violation of Minn. Stat. § 13.03.

56. Pursuant to Minn. Stat. § 13.08, subd. 4, Plaintiff is entitled to an order compelling Defendant's compliance with the DPA and Plaintiff's requests, an award of costs, disbursements, attorney's fees, and a civil penalty.

57. Defendant's actions -- including its refusals to provide public, government data in response to proper requests, as well as the making of claims that such data is not held by Defendant, but rather solely by a private party collaborator -- demonstrate an intent to willfully violate Minnesota Statutes, Chapter 13.

58. The State has waived all immunities under the Data Practices Act. *See* Minn. Stat. § 13.08, subd. 1.

COUNT III

Action for Damages (Minn. Stat. § 13.08, subd. 1)

59. Plaintiff incorporates by reference all allegations as if set forth fully herein.

60. Defendant's conduct violates the Minnesota Government Data Practices Act by failing to produce public, government data in response to proper requests, and by failing to provide written certification and statutory citation for denials of access.

61. Defendant's failure to produce public, government data for inspection and/or copying in response to Plaintiff's data requests of October 19, 2017 and May 8, 2018 (the State of Minnesota's proposal responding to Amazon's RFP, and drafts thereof) is a violation of Minn. Stat. § 13.03. Plaintiff is entitled to damages, costs, and attorney's fees pursuant to Minn. Stat. § 13.08, subd. 1.

62. Defendant's actions -- including its refusals to provide public, government data in response to proper requests, as well as the making of claims that such data is not held by Defendant, but rather solely by a private party collaborator -- constitute a willful violate Minnesota Statutes, Chapter 13. Plaintiff is entitled exemplary damages pursuant to Minn. Stat. § 13.08, subd. 1 of not less than \$1,000, nor more than \$15,000.

63. The State has waived all immunities under the Data Practices Act. *See* Minn. Stat. 13.08 Subd. 1.

COUNT IV

Injunction (Minn. Stat. § 13.08, subd. 2)

64. Plaintiff incorporates by reference all allegations as if set forth fully herein.

65. Pursuant to Minn. Stat. § 13.08, subd. 2, "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."

66. Defendant's conduct violates the Minnesota Government Data Practices Act by failing to produce public, government data in response to proper requests, and by failing to provide written certification and statutory citation for denials of access.

67. Defendant's position that it may evade the strict mandates of the Minnesota Government Data Practices Act through the use of cloud file sharing services like Box violates and proposes to violate the Act. Plaintiff seeks order and judgment enjoining this practice.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court grant:

1. Declaratory and inductive relief against Defendants;
2. An order under Minn. Stat. 13.08 subd. 4 compelling compliance by Defendant with the DPA, including without limitation an order directing Defendants to produce a copy of any draft or final Amazon HQ2 bids;
3. An order under Minn. Stat. 13.08 subd. 2 enjoining Defendant from refusal to produce, in response to proper requests made by Plaintiff under Minnesota Statutes Chapter 13, public, government data maintained by Defendant responsive to Plaintiff's Requests of October 19, 2017 and May 8, 2018;
4. An award under Minn. Stat. 13.08 subd. 1 of reasonable costs and attorney's fees for failure to comply with general data practices under Minnesota Chapter 13;
5. An award under Minn. Stat. § 13.08, subd. 1 of exemplary damages of not less than \$1,000, nor more than \$15,000, for willful failure to comply with general data practices under Minnesota Chapter 13;
6. An assessment under Minn. Stat. § 13.08, subd. 4 of a civil penalty of \$1,000, payable by Defendant to the state general fund for failure to substantially comply with general data practices under Minnesota Chapter 13; and
7. Such other, additional, relief as the Court deems appropriate and equitable.

HAINES LAW, PLLC



DATED: June 27, 2018

BY:

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**ATTORNEY FOR PLAINTIFF
PUBLIC RECORD MEDIA**

ACKNOWLEDGEMENT. I acknowledge that sanctions may be imposed pursuant to Minn. Stat. § 549.211

HAINES LAW, PLLC



DATED: June 27, 2018

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