

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Rick Abbott, et al. & MN **ORDER OF DISMISSAL** Crime LLC,

Complainants,

vs.

Rochester Police Department,

Respondent.

This matter is pending before Administrative Law Judge Suzanne Todnem for a probable cause determination regarding a Data Practices Complaint (Complaint) filed by Rick Abbott, et al. and MN Crime LLC (Complainants) on August 12, 2024. Complainants allege that the Rochester Police Department (Respondent or RPD) violated the Minnesota Government Data Practices Act (MGDPA or Act).¹ The record related to the probable cause determination closed upon the filing of Respondent's response on September 3, 2024.

Complainants appear on their own behalf and without legal counsel. Brent R. Carlsen, Deputy Rochester City Attorney - Civil, appears on behalf of Respondent.

Based on the record, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge issues the following:

ORDER

The Complaint is **DISMISSED**.

Dated: September 25, 2024



SUZANNE TODNEM
Administrative Law Judge

¹ Minn. Stat. §§ 13.01-.99 (2024).

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minn. Stat. § 13.085, subd. 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings no later than five business days after the Complainant receives notice that the Complaint has been dismissed for failure to present sufficient facts to believe that a violation of Minn. Stat. §§ 13.01-.99 has occurred. If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear material error and grants the petition, the Chief Administrative Law Judge will schedule the complaint for a hearing under Minn. Stat. § 13.085, subd. 4.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 13.085, subd. 5(d), and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69 (2024).

MEMORANDUM

Complainants requested data from Respondent related to an incident that occurred on May 18, 2024, including access to or a copy of data captured on the portable recording system of a law enforcement officer.² Complainant asserts that the “data from the portable recording system (bodycam) are public due to a peace officer using force resulting in [great bodily harm]/death”.³ Respondent did not provide the requested data. Under Minn. Stat. § 13.085, subd. 2, the Administrative Law Judge must now make a preliminary determination as to whether sufficient facts exist to believe that a violation of the MGDPA has occurred.

² A portable recording system is a “device worn by a peace officer that is capable of both video and audio recording of the officer’s activities and interactions with others or collecting digital multimedia evidence as part of an investigation.” Minn. Stat. § 13.825, subd. 1(b)(1).

³ Complaint at 3-4 (Aug. 12, 2024). Complainants have pursued a claim here related only to this portion of their broader data request.

I. Background

On May 18, 2024, Minnesota State Trooper Shane Elroy Roper (Roper) was employed by and working a shift for the Minnesota State Patrol.⁴ While operating his squad car during his shift that day, Roper and two other vehicles were involved in a fatal vehicle crash in Rochester, Minnesota.⁵ Respondent is the primary investigative agency for the fatal crash.⁶ Complainants believe Roper's portable recording system was active

at the time of the crash.⁷ On July 9, 2024, Roper was charged with nine criminal counts, including five felonies.⁸

On July 31, 2024, Complainants requested that Respondent provide "any/all digital media (in-car, dashcam, BWC) and reports available" involving Roper related to the May 18, 2024, incident.⁹ Complainants stated that they "believe this falls under public data at this point being a use of force incident (including BWC, see statute attached) unless [they are] interpreting incorrectly."¹⁰ Respondent responded to the data request the same day stating, "[t]he evidence is not releasable at this time under MN state statute 13.82."¹¹ Respondent did not identify the specific subdivision of that statute it believed applied to make the data not public. Respondent has now specified that it contends that the requested data are criminal investigative data under Minn. Stat. §13.82, subd. 7.

II. Probable Cause Standard

A complaint alleging a violation of the MGDPA may be filed with the Office of Administrative Hearings.¹² Upon the filing of a data practices complaint, an administrative law judge must conduct a probable cause review.¹³ If the judge determines that the complaint and any timely response do not present sufficient facts to believe that a violation occurred, the complaint must be dismissed.¹⁴ However, if the judge determines that the

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Complaint at attached Criminal Complaint (55-CR-24-4513).

⁹ Rochester Police Dep't Response (Response) at 1 (Sept. 3, 2024).

¹⁰ *Id.* It should be noted that the MGDPA does not require that a person requesting data specify a legal basis for the data to be classified as public. A government agency must provide responsive public data even if no basis for public classification is identified and even if any identified basis is incorrect.

¹¹ *Id.*

¹² Minn. Stat. § 13.085, subd. 2.

¹³ *Id.*, subd. 3(a).

¹⁴ *Id.*

¹⁵ *Id.*

complaint and response present sufficient facts to believe that a violation of the MGDPA has occurred, the judge must schedule a hearing.¹⁵

The purpose of a probable cause determination is to ascertain whether, given the facts submitted by the parties, it is fair and reasonable to hear the matter on the merits.¹⁵ A judge's function in a probable cause determination is simply to assess whether the initial facts establish a reasonable belief that a governmental entity committed a data practices violation.

III. Analysis

A. *General Standards Under the MGDPA*

The MGDPA provides that all government data collected, created, or maintained by a government entity shall be public unless classified by statute or federal law as nonpublic or protected nonpublic, or with respect to data on individuals, as private or

confidential.¹⁶ The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use.¹⁷

Upon request, a responsible authority or designee shall provide copies of public data.¹⁸ If the government entity determines that the requested data is not public or otherwise classified so as to deny the requesting person access, the agency must inform the person of the determination orally or in writing, and cite the particular statutory section, temporary classification, or provision of federal law on which the determination is based.¹⁹

B. *Portable Recording System Data*

Complainants allege that Respondent violated the MGDPA by failing to provide the requested data, and they seek access to or a copy of the data captured on Roper's portable recording system, with the exception of content offensive to common sensibilities. Complainants contend Roper used force in the incident on May 18, 2024, that resulted in substantial bodily harm or death, and that the data are public under Minn. Stat. § 13.825. Complainants also suggest that the data should be released pursuant to Minn. Stat. § 13.825, subd. 2(d), since it has been more than 14 days since the crash occurred.

Respondent raises several arguments in response. First, Respondent challenges the sufficiency of the Complaint on its face. Respondent maintains that Complainant has

¹⁵ *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

¹⁶ Minn. Stat. § 13.03, subd. 1.

¹⁷ *Id.*

¹⁸ *Id.*, subd. 3(c).

¹⁹ Minn. Stat. § 13.03, subd. 3(f).

alleged a violation of Minn. Stat. § 13.82 without offering enough facts or legal argument to support a finding of probable cause. Respondent identified Minn. Stat. § 13.82 as the basis for denying Complainants the requested data, but it did not specify any portion of that statute as the legal authority for its decision.²⁰ Complainants could not provide more robust facts and argument because they had only Respondent's general statement to work with to pursue a claim. The Complaint identifies the data at issue and articulates the reason that Complainants believe that the data should have been provided. The Complaint is sufficient on its face.

Respondent makes two additional substantive arguments. Respondent contends that the requested data cannot be released because a pending criminal case related to the incident has been filed and is currently active, and Respondent has assumed primary investigative responsibility in the matter. As a result, Respondent contends that the data are active criminal investigative data classified as confidential or protected nonpublic data under Minn. Stat. § 13.82, subd. 7. Respondent further contends that Minn. Stat. § 13.825 does not apply because Respondent disputes that Roper engaged in a use of force on May 18, 2024.

1. The Data Are Active Criminal Investigative Data

Pursuant to Minn. Stat. § 13.82, subd. 7, criminal investigative data collected or created by a law enforcement agency in order to prepare a case against a person, whether known or unknown, for the commission of a crime or other offense for which the agency has primary investigative responsibility, are confidential or protected nonpublic while the investigation is active.²¹ With limited exceptions, criminal investigative data is public when it becomes inactive.²² A law enforcement investigation becomes inactive upon the occurrence of any of the following events:

- (a) a decision by the agency or appropriate prosecutorial authority not to pursue the case;
- (b) expiration of the time to bring a charge or file a complaint under the applicable statute of limitations, or 30 years after the commission of the offense, whichever comes earliest; or

²⁰ Under Minn. Stat. § 13.03, subd. 3(f), if a government agency determines that requested data is classified so that it may not be provided it must notify the requester and "shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based."

²¹ This provision does not apply to certain law enforcement data. Arrest data is public at all times in the hands of the originating agency, data regarding requests for service are public, as are response and incident data. See Minn. Stat. § 13.82, subds. 2-3, 6.

²² Minn. Stat. § 13.82 subd. 7.

- (c) exhaustion of or expiration of all rights of appeal by a person convicted on the basis of the investigative data.²³

Respondent has primary investigative responsibility for the relevant incident and data at issue.²⁴ A criminal complaint related to the fatal crash involving Roper was filed in the Third Judicial District Court on July 9, 2024, and the case remains active.²⁵ At this time, none of the events that would make the data inactive have occurred. Therefore, the data, if it exists,²⁶ is active criminal investigative data and is not public. If a recording captured by Roper's portable recording system is presented in court as evidence, it will become public at that time.²⁷

2. The Data are Not Available from Respondent Under Minn. Stat. § 13.825, subd. 7

Portable recording system data is classified as private data on individuals or nonpublic data, with certain exceptions.²⁸ Portable recording system data is public when the data "record, describe, or otherwise document actions and circumstances surrounding . . . the use of force by a peace officer that results in substantial bodily harm."³⁰ Substantial bodily harm is defined as "bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or

impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member."²⁹ Minnesota law also provides a definition for the use of force by a police officer, stating that "reasonable force may be used upon or towards the person of another without the other's consent" by law enforcement:

- (i) in effecting a lawful arrest; or
- (ii) in the execution of legal process; or
- (iii) in enforcing an order of the court; or
- (iv) in executing any other duty imposed upon the public officer by law.³⁰

The Administrative Law Judge need not address whether a use of force occurred in the May 18 incident. Even if the exception applied to the fatal vehicle crash, in

²³ *Id.*, subd. 7(a)-(c).

²⁴ Response at 2.

²⁵ Complaint at attached Criminal Complaint; Response at 1.

²⁶ The record does not reveal whether Roper's portable recording system was actually engaged and recording at the time of the incident.

²⁷ Minn. Stat. § 13.82, subd. 7.

²⁸ Minn. Stat. § 13.825 subd. 2(a).

³⁰ *Id.*, subd. 2(a)(1).

²⁹ Minn. Stat. § 609.02 subd. 7a (2024).

³⁰ Minn. Stat. § 609.06 subd. 1(1)(i)-(iv) (2024).

Respondent's hands, the data are currently not public criminal investigative data.³¹ As a result, the Administrative Law Judge cannot find that there is probable cause to believe Respondent's refusal to provide the data violated the MGDPA.

3. Portable Recording System Data Held by Other Agencies

Complainants allude to another exception that classifies portable record system data as public when an individual dies as a result of a use of force by a peace officer.³² In such a situation:

an involved officer's law enforcement agency³³ shall release all portable recording system data, redacted no more than what is required by law, documenting the incident no later than 14 days after the incident, unless the chief law enforcement officer asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by section 13.82, subdivision 7.³⁴

Complainants assert that over 14 days have passed since the fatal crash, thereby triggering the applicability of this exception.³⁵ This section of the statute does not apply here. Respondent is not "the involved officer's law enforcement agency." Roper's law enforcement agency is the Minnesota State Patrol. The Minnesota State Patrol is not a party to this case and this matter does not involve a data request made to that agency.

IV. Relief Under Minn. Stat. § 13.085

Complainants request an award of attorneys' fees. If a complainant substantially prevails on the merits of an action brought under Minn. Stat. § 13.085, there is a rebuttable presumption they are entitled to an award of reasonable attorney fees. In this case, Complainants did not substantially prevail, so no presumption of an attorney fee award applies.³⁶ A complainant that does not substantially prevail is entitled to receive a refund of the filing fee, less any costs incurred by the Office of Administrative Hearings in conducting the matter. The costs of this proceeding exceed the filing fee. As a result, no refund can be made. Complainants also request the imposition of a civil penalty. Because this Order determines probable cause does not exist, a civil penalty cannot be imposed.

³¹ Minn. Stat. § 13.825, subd. 2(a)(3).

³² Complaint at 3; Minn. Stat. § 13.825 subd. 2(d).

³³ A law enforcement agency includes units of state government that are "authorized by law to grant full powers of arrest and to charge a person with the duties of preventing and detecting crime and enforcing the general criminal laws of the state." See Minn. Stat. § 626.23 subd. 1(f)(1) (2024).

³⁴ Minn. Stat. § 13.825 subd. 2(d).

³⁵ Complaint at 3. See Minn. Stat. § 13.825 subd. 2(d).

³⁶ Furthermore, Complainants appear to be self-represented.

V. Conclusion

Complainants did not establish probable cause to believe that Respondent violated the MGDPA by failing to produce the portable recording system data requested regarding the fatal crash on May 18, 2024.

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