

MINNESOTA COALITION ON GOVERNMENT INFORMATION

LCC Subcommittee on Data Practices

January 30, 2020

Testimony of Matt Ehling, MNCOGI board member

Thank you Mister Chairman, Members, Senators. Matt Ehling, Minnesota Coalition on Government Information. We would like to begin by thanking Senator Limmer and Representative Lesch for the opportunity to explore the issue of cloud data, and its interaction with Chapter 13.

As this subcommittee is aware, our organization raised concerns about the district court order in the Amazon bid case, and its potential to negatively impact public access to cloud-based data used by government entities. The district court order held that certain data related to the State of Minnesota's Amazon bid - which was maintained in a cloud-based file-sharing system for use by a state agency - was not "government data" subject to the Data Practices Act. We strongly disagreed with the district court on this matter, as the statute's broad statutory definition of "government data" clearly reached the draft, Amazon bid-related data at the center of that case.

Even though the court's order was not precedential, MNCOGI was interested in finding possible statutory "comfort language" to re-iterate that cloud-based data used by the government was indeed covered by Chapter 13, as a way of avoiding future confusion about this issue, and ensuring that the district court order was not relied on for interpretative guidance going forward.

With the encouragement of this sub-committee's leadership, MNCOGI met about this issue with other interested parties, including representatives of government entities from cities, counties, and the Data Practices Office, as well as the Minnesota Newspaper Association, and other data requesters and advocates. This working group met four separate times, and discussed possible statutory language, as well as the overall use of cloud-based data by the government. We would like to thank all the working group participants for a useful discussion that was conducted in good faith.

At the end of this process, the parties were unable to find common agreement on specific statutory language, but they did come to a key conceptual agreement, and also arrived at specific factual findings that are relevant to this issue. As part of the materials for this hearing, we have submitted notes on the outcome of this process.

Those notes set out some important facts covered during the four meetings, including the fact that government entities in Minnesota are - today - utilizing cloud-based systems as part of their data management activities. These activities include, for

instance, the use of third-party applications like the Microsoft 365 Office suite to handle tasks such as document creation and storage, and e-mail management. This commercial, cloud-based service necessarily collects and maintains data on remote servers, as opposed to solely on government computers. Reviewing examples like these resulted in the common observation by all parties that "government data" under Chapter 13 is "government data," no matter where or how it is stored. This observation is also supported by guidance from a string of Data Practices Advisory opinions, as well as by case law.

Another important finding that arose from the meetings was that government entity representatives reported that they were - today - turning over cloud-based data subject to Chapter 13 in response to data requests. This, we feel, is an important fact to enter into the record of this subcommittee.

You can find other relevant details in the meeting summary that we have submitted, so rather than continuing, I would like to yield the floor to other participants in the working group for their own observations, if they would like to make any. After that Mister Chairman, we would request a brief opportunity to make some closing comments on our own behalf.

BREAK FOR OTHER TESTIMONY

Thank you Mister Chairman. In closing, we would like to make some comments purely on behalf of our own organization. While comfort language regarding cloud-based data used by the government was not developed through this process, MNCOGI would note for the record that such data is still covered by Chapter 13. Although additional explanatory language would have been helpful, its absence does not alter the meaning or effect of the underlying statute, which was written to broadly cover the government's interaction with the data it uses to conduct its business - no matter where that data is housed. We stand ready to defend that proposition in court, if this issue ever arises again.

In light of this, MNCOGI has entered into the legislative record an analysis of the district court order in the Amazon case, which details the interpretive flaws of that decision, and notes that the application of existing legal authorities should have led to a different conclusion regarding the cloud-based data at issue. This document was co-authored by myself and Don Gemberling, the former director of the Department of Administration's Information Policy Analysis Division. Mr. Gemberling worked professionally with the Data Practices Act from its inception in the 1970s, through 2005, and was responsible for drafting, revising, interpreting, and implementing its provisions. He continues to participate in the statute's development as a member of

MNCOGI. Mr. Gemberling has asked to make some brief closing comments about the district court order.