Legislative Commission on Data Practices

Public Testimony

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Written Comment: Research Context for Enforcement Design Under the Minnesota Government Data Practices Act

Thank you for the opportunity to submit this written comment for the Commission's consideration. This submission is offered as a research-based supplement to my written testimony dated January 22, 2026, in which I identified recurring structural gaps between statutory access rights and functional access under the Minnesota Government Data Practices Act ("MGDPA").

At that meeting, members of the Commission indicated that future discussion of enforcement mechanisms would benefit from grounding in established legal and administrative research. This comment is submitted in response, to provide that context and to assist the Commission in evaluating enforcement design as it considers potential recommendations to the Legislature.

I. Enforcement Design as a Determinant of Functional Access

Legal scholarship on public-records and access-to-information regimes consistently distinguishes between **statutory clarity** and **institutional enforcement capacity**. Research in this area observes that transparency statutes often rely on request-driven disclosure models, in which individual requesters bear the primary burden of initiating and pursuing compliance. Where enforcement mechanisms are limited to advisory interpretation or post hoc litigation, access rights may be well defined in law yet uneven in operation.[1]

Professor David E. Pozen's analysis of U.S. freedom-of-information frameworks emphasizes that such systems are structurally "reactive," with disclosure contingent on ad hoc

[1] See generally David E. Pozen, *Freedom of Information Beyond the Freedom of Information Act*, 165 U. Pa. L. Rev. 1097 (2017) (analyzing structural limits of request-driven transparency regimes).

requests rather than supported by institutionalized compliance mechanisms.[2] This design choice increases the likelihood that delay, partial response, and non-response persist even where legal obligations are clear.

II. Uneven Access and the Emergence of "Transparency Deserts"

Research further indicates that weak or inconsistent enforcement mechanisms can produce **geographically and administratively uneven access** to public information. Professor Christina Koningisor describes this phenomenon as the emergence of "transparency deserts," in which access varies substantially across jurisdictions despite uniform statutory standards.[3]

This scholarship underscores that uneven transparency is not solely attributable to requester sophistication or agency capacity, but is closely tied to enforcement design. Where agencies face limited consequences for noncompliance, statutory access rights may operate unpredictably across communities, undermining both equity and public confidence.[4]

III. Administrative Burden and the Accessibility of Remedies

Administrative-law research provides further insight into why enforcement mechanisms that exist formally may fail in practice. Pamela Herd and Donald P. Moynihan's work on administrative burden explains how **learning costs, compliance costs, and psychological costs** can make the exercise of legal rights functionally inaccessible to ordinary residents.[5]

Applied to data-access laws, this framework suggests that remedies requiring prolonged correspondence, escalation across multiple oversight bodies, or judicial action may impose burdens that effectively deter enforcement. In such systems, the availability of litigation or

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[2] Id. (describing FOIA as a reactive disclosure model dependent on individual demand rather than institutionalized enforcement).
[3] Christina Koningisor, *Transparency Deserts*, 115 Nw. U. L. Rev. 1461 (2020).
[4] Id. (explaining how lack of enforcement mechanisms contributes to uneven transparency outcomes across jurisdictions).
[5] Pamela Herd & Donald P. Moynihan, *Administrative Burden: Policymaking by Other Means* 23–30 (2018).

advisory opinions does not necessarily translate into meaningful remediation, particularly where the underlying objective is timely access rather than retrospective relief.[6]

IV. Implications for Commission Consideration

Taken together, this research underscores a consistent finding across legal and administrative disciplines: **enforcement design is a primary determinant of whether transparency statutes operate as durable governance tools or aspirational commitments**.[7]

For the Legislative Commission on Data Practices, this literature raises questions appropriate for legislative study rather than case-specific resolution, including:

- whether reliance on advisory interpretation alone sufficiently supports operational compliance once noncompliance is identified;
- whether remedies short of litigation are necessary to ensure equitable access across jurisdictions;
- whether enforcement and interpretation functions should be institutionally distinct to promote both legal clarity and remediation.

These questions align directly with the Commission's role in advising the House and Senate on the practical operation of Minnesota's data-practices framework.

Conclusion

This research does not prescribe a single enforcement model for Minnesota. It does, however, provide a well-established analytical basis for examining whether current enforcement structures reliably translate statutory access rights into functional access over time.

I respectfully offer this research context in support of the Commission's ongoing work and its consideration of future topics related to enforcement design under the MGDPA. Thank you for your consideration.

[6] Id. (describing how learning, compliance, and psychological costs deter exercise of statutory rights).
[7] See Pozen, supra note 1; Koningisor, supra note 3; Herd & Moynihan, supra note 5.