

Legislative Commission on Data Practices

October 15, 2025

Written Testimony of Matt Ehling Board Member Minnesotans for Open Government

Minnesotans for Open Government (MNOG) submits the following comments to the Legislative Commission on Data Practices, in order to provide the Commission with an overview of important government data issues identified by our board members.

MNOG has submitted suggestions for potential Commission topics for many years. We are pleased to note that one of the topics we had previously suggested — modifying Minn. Stat. § 13.43 to eliminate disparate treatment of “public official” complaint data — was addressed during the 2025 regular session, thanks to work by Senator Howe and Representative Anderson. Senator Howe, in particular, should be thanked for pursuing this issue over multiple sessions. Now, citizens across Minnesota — and not just residents of large cities and counties — will have access to the same “public” complaint data about public officials.

We are hopeful that the Commission will consider taking up some of the matters below in its upcoming hearings:

Public Access Issues

Attorney General data: Reversing the outcome of *Energy Policy Advocates v. Ellison*

At present, one of the most pressing public access issues facing the legislature is correcting the outcome of the Minnesota Supreme Court’s opinion in *Energy Policy Advocates v. Ellison* (Minn. 2022). In that case, a closely divided (4-to-3) court reversed over forty years of interpretive practice, and allowed the Minnesota Attorney General’s Office to withhold a much greater volume of its data from the public. In his dissenting opinion, Justice Thissen called the majority opinion “Orwellian” for creating an Attorney General-specific version of a defined term, and enabling a form of non-disclosure that the legislature never approved. In the three years since the *Energy Policy Advocates (EPA)* case was decided, MNOG has heard from an increasing number of individuals who can no longer access formerly public data held by the Office of the Attorney General. MNOG believes that it is problematic for one of the most powerful executive branch entities to operate under one of the most restrictive data classifications in the MGDPA. We urge the legislature to reverse the outcome of the *EPA* case through a statutory change.

Beyond the issues with § 13.65, our board members have continued to hear from members of the public who are encountering other public access problems. Examples include environmental advocates who report difficulties accessing data from state regulatory agencies (due to broad use of the “civil investigative” data classification at § 13.39); as well as over-broad use of the “security services” classification at § 13.861 to withhold presumptively public county data, such as contracts and policies.

Implementation of the MGDPA

MNOG has several suggestions for technical reviews of how the Minnesota Government Data Practices Act (MGDPA) is being implemented:

Reviewing how MGDPA copy costs are being assessed

The MGDPA sets out guidance for how costs for copies of government data are to be charged to members of the public¹. The statute sets out “per page” costs for certain amounts of paper copies; and also allows for the assessment of “actual costs” for larger volume requests, as well as for the fulfillment of requests involving electronic data. MNOG has heard from multiple public requesters about variable practices surrounding the assessment of copy costs, including some practices that violate statutory and advisory guidance. Reviewing current practices may be useful for helping the legislature to gain a better understanding of how copy costs are being assessed in the field.

The use of “data portals” to manage MGDPA requests

In recent years, more government entities have begun to use on-line portals designed by third party entities to handle requests submitted under the MGDPA. In some cases, the use of these portals has led to controversy — including in the City of St. Paul, where litigation over a Data Practices request led a Ramsey County judge to rule that the City’s manner of data portal use resulted in violations of the MGDPA (see *City of St. Paul v. Robert Cattanaach*, now before the Minnesota Court of Appeals). Given the profile of the case, it may be worth the Commission’s time to examine current practices surrounding data portal use.

Records Retention

For government data to be accessible to the public, government entities must not only *produce* data they are legally required to disclose, but they must also *retain* data that will be requested in the future. However, the retention of government records is sometimes uneven, and controversies over records retention have arisen over the last few years.

Solutions to record retention problem have been proposed in the past. For instance,

Representative Scott has proposed bills to standardize retention periods for certain governmental correspondence, including e-mails. This proposal was supported by former Legislative Auditor Jim Nobels, due to the fact that the Office of the Legislative Auditor needs to review such documentary material when it undertakes its program evaluation mission. Overseeing records retention is part of the Legislative Auditor's statutory duties, and the legislature might want to examine the current role of the Records Disposition Panel, on which the Legislative Auditor serves, along with the Attorney General and the State Auditor.

Government use of Artificial Intelligence

The adoption of artificial intelligence (AI) technologies by government entities will pose many challenges for government accountability and public understanding of governmental functions, as the technology itself is often highly opaque, and raises many novel policy questions. These questions include whether members of the public will be able to understand when and how government entities use AI systems to generate content, or to make decisions that impact statutory and constitutional rights. For example, some Minnesota police departments have been using AXON's "Draft One" software to "write" police reports based on body camera footage captured by AXON products.

The State of Minnesota's MNIT component has recently propounded detailed guidance for state agency use of AI systems, and the Commission may wish to receive a briefing from MNIT about its approach, as an entry point to this larger discussion.

/ Note that the MGDPA allows costs to be assessed for copies, but the inspection of government data is free of charge.