

MINNESOTA COALITION ON GOVERNMENT INFORMATION (MNCOGI)

BACKGROUND ON HF 1316 (ADDING CERTAIN AUDIO/VIDEO RECORDINGS TO MINN. STAT. 13.43)

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GENERAL BACKGROUND

- Video recordings of government employees are collected for various reasons. Bus video (public safety, oversight); squad car “dash cameras” (oversight, evidence, public safety); body cameras (oversight, evidence, public safety).
- Video does not have its own, generalized classification category in the Data Practices Act. Thus, most video is presumptively “public” data, with certain exceptions.
- In the case of dash cameras, the legislature was very specific about its intention to make the video available to the public. In Minn. Stat. 626.9517 subd. 3, the text states that a law enforcement agency shall make video recordings of traffic stops “available to the driver of the stopped vehicle.” In addition, the legislature did not change the classification of dash camera video, meaning that the data continues to remain accessible to the public at large. The legislature has also not changed the classification of a wide variety of other video, such as bus and transit surveillance video.
- Body camera footage has exceptions to public access set out in Minn. Stat. 13.825, which was adopted last year.
- At issue in HF 1316 is an expansion of the types of “personnel data” made explicitly public under 13.43. The personnel data section is different from most other parts of Chapter 13, in that all personnel data is classified as “private” except for a specific list of “public” data.
- The Minnesota Supreme Court decision in *KSTP v. Metropolitan Council* - a case which involved bus video footage classified by Metro Transit as “personnel data” - is the reason for the introduction of HF 1316.

CASE BACKGROUND

The change sought by HF 1316 stems from a ruling by the Minnesota Supreme Court in the *KSTP TV v. Metropolitan Transit* case.

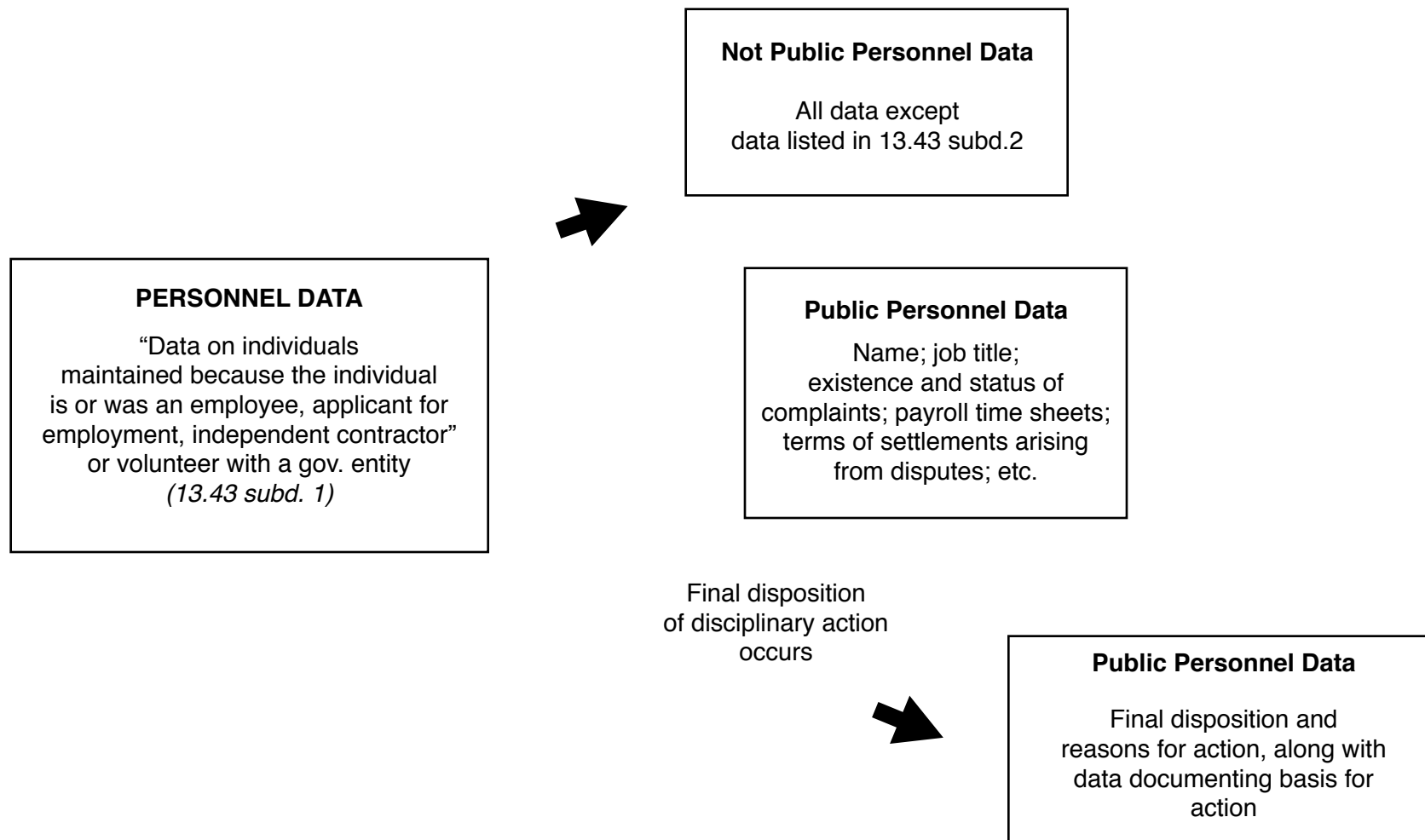
- In 2015, KSTP TV requested access to bus video of an altercation between a passenger and a Metro Transit bus driver. Metro Transit denied access to the video, claiming that it was “personnel data” under 13.43. Metro Transit had opened an investigation into the driver’s

conduct, but did not impose a penalty. Thus, Metro Transit said that the data was not public as defined by 13.43. However, later in court, Metro Transit conceded that the data would have been otherwise available to the public had it not been for the personnel investigation.

- KSTP TV argued that the video was not “personnel data,” and should be released as public data. KSTP TV took the case to the Office of Administrative Hearings, and then to the Minnesota Court of Appeals, both of which ruled in its favor. At the Minnesota Supreme Court, the court held that the bus video was public data when maintained for “multiple purposes” on the bus hard drive. However, the same video, when copied onto a DVD and placed in a personnel file, would be “personnel data” and only accessible if a complaint was sustained under Minn. Stat. 13.43 subd 2(a)(5). In practicality, if “public” video was wiped from the bus hard drive - and the only copy that remained was in the personnel file - it would then be inaccessible in most circumstances, even though the copy that had been destroyed was public data. In the aftermath of the *KSTP* case, Metro Transit ultimately gave the bus video to KSTP, since they had maintained the copy of the footage on the bus hard drive. However, if they had destroyed that copy, Metro Transit would have been able to keep the video from the public under the terms of the Supreme Court ruling.
- HF 1316 seeks to remove this discrepancy by clarifying Minn. Stat. 13.43 to include certain audio and video recordings of government employees and contractors in the list of specifically “public” data under 13.43.
- HF 1316 intends to leave in place the current classification for body camera data in Minnesota Statutes 13.825, meaning that body camera video maintained as “personnel data” would only be available after a complaint had been sustained.

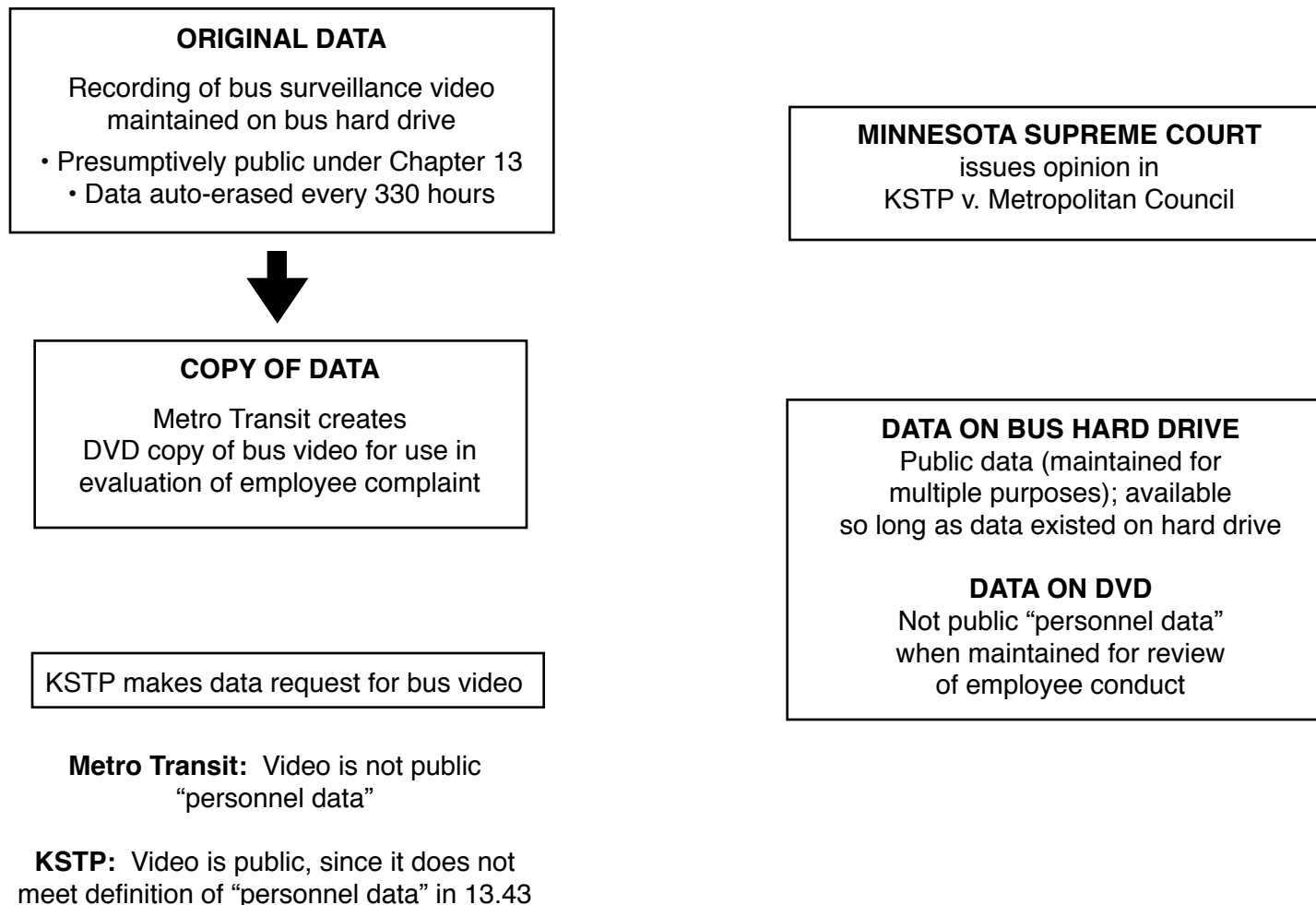
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DATA CLASSIFICATION - PERSONNEL DATA



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BACKGROUND - KSTP v. Metropolitan Council (Minnesota Supreme Court opinion)



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CHALLENGES IN IMPLEMENTING *KSTP v. METROPOLITAIN COUNCIL DECISION*

- Court's decision in *KSTP* is not reflected in text of Personnel Data section of Chapter 13 (Minn. Stat. 13.43).
- Text of Chapter 13 is used as a common reference for answering questions about data classification issues and responding to data requests. Not all government entities may be familiar with *KSTP* decision, leading to uncertainty about classification status of certain videos when data requests are filed.
- Court opinion makes public access to video contingent upon whether the "public" (multiple purpose) copy of the video has been retained by the government entity.
- If the "public" copy of a video is destroyed, the same video could be maintained as "not public" data indefinitely when labeled as "personnel data."

WHAT HF 1316 DOES

- Adds a public classification for certain video recordings that contain images of government employees to Minn. Stat. 13.43 ("Personnel Data" section of Chapter 13).
- Encourages government transparency by ensuring that otherwise public data (transit video, squad car video) cannot be hidden from public view by converting it to "personnel data" and discarding other publicly accessible copies.

WHAT HF 1316 DOES NOT DO

- Does not create a new category of public data on government employees. The data at the heart of the bill (transit video, squad car video) is presumptively public data at its inception.

PROPOSED AMENDMENTS TO HF 1316

- In discussions held during 2017 legislative session, proposals emerged to more closely tailor language of HF 1316 to cover video footage at the heart of bill - public surveillance video, transit video, squad car video, etc.

SUGGESTED AMENDMENT TO HF 1316

(Modify HF 1316 as follows:)

2.11 (9) ~~audiovisual video, audio, or other recordings~~ recordings of government employees, independent contractors, or volunteers that document activity occurring in a publicly accessible place, unless the data is subject to section 13.825, in which case the data is treated in accordance with the requirements of that section. ~~is classified as not public under section 13.825 or any other applicable law.~~