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Legislative Commission on Data Practices
Room G-3, State Capitol

RE: Body Worn Camera

December 10, 2025

Co-Chair Representative Sandra Feist, Representative Co-Chair Peggy Scott, Co-Vice Chair Senator Eric Lucero, Co-Chair Senator Erin Maye Quade, and Commission Members:

In March 2025 I authored an opinion piece in the Star Tribune trying to call attention to growing concern within my office that body worn camera videos – enacted to promote transparency and accountability – were being withheld from the public.¹ My piece was in response to articles regarding a bystander video of police striking a man in the head during an arrest that had gone viral.² The Hennepin County Attorney's Office declined to file charges against the man that was arrested, stating there was no probable cause for the arrest in the first place.³ I felt compelled to join in the conversation to try to highlight how important the bystander video was in that case. Police officers in nearly every jurisdiction in Hennepin County are required to wear body camera videos and record arrests. However, as a defense attorney who practices in Hennepin County, I have witnessed firsthand over the last couple years a concerted effort to stop those videos from ever being shared or circulated. I wrote about the concern that I had that this practice of shielding body camera videos from the public was decreasing transparency, and in turn, presenting an increased risk to public safety. I raised concern that officers would only act with more impunity when they knew that their videos would never be seen by the public.

The Hennepin County Sheriff's Office asserts that any body worn camera video that captures the face of any officer working with its "Violent Offender Task Force" is nonpublic data. As a result, they are refusing to release the videos – even to prosecutors trying to pursue charges in a case.

Less than 3 weeks after my opinion piece was published, my office was contacted by a Good Samaritan who witnessed a violent arrest in Minneapolis. The bystander was driving when he saw two officers with vests that read "Sheriff" get out of an unmarked black pickup truck after pulling over another driver. The officers ordered the driver out of his vehicle and had the driver walk towards the officers' truck. The bystander was so upset he took a video recording of the encounter. The bystander sent an attorney from my office the video. We were quickly able to identify the officers in this bystander video as the same officers involved in the viral video referred to in the articles. My office was also able to identify the man they assaulted in this new video as a 25-year old Black man.⁴

¹ [Law enforcers are getting around the transparency of body-worn cameras](#)

² [Social media video shows Hennepin County sheriff's deputies striking man during arrest](#)

³ [Hennepin County Attorney's Office says deputies who hit man in head lacked probable cause for arrest](#)

⁴ I represented this man, but for his privacy I will not reveal his name. His case has since been dismissed.

Nonpublic portable recording system data becomes public if the subject of the data requests that the data be made accessible to the public.⁵ An exception to this general rule is when the portable recording system data (or BWC video) contains data on an undercover peace officer.⁶

In that case, the identity of the undercover police officer must be redacted before the data is provided as part of a public records request.⁷ However, the identity must only be redacted if the peace officer's identity is protected by statute.⁸ The identity of the officer is protected when the officer is an undercover law enforcement officer as defined in Minn. Stat. § 13.43, subd. 5.⁹ Section 13.43, subd. 5 defines an undercover law enforcement officer as an individual who is assigned to an undercover position. The statute explicitly provides that:

When the individual *is no longer assigned to an undercover position, the data* described in [Minn. Stat. § 13.43] subdivisions 2 and 3 *becomes public* unless the law enforcement agency determines that revealing the data would threaten the personal safety of the officer or jeopardize an active investigation.

Minn. Stat. § 13.43, subd. 5 (emphasis added).

Sometime in 2022 the Hennepin County Sheriff's Office made the determination that revealing the face of *any* officer working with its Violent Offender Task Force would threaten the personal safety of the officer or jeopardize an active investigation. The Sheriff's Office makes this claim regardless of the case, the officer involved, or their level of involvement. There have been no exceptions. We have frequently seen this asserted for officers conducting traffic stops¹⁰. The officers are all wearing police gear and holding themselves out to the public in broad daylight as police officers. Further, the officers often come to court to testify. The officers themselves do nothing to hide or conceal their identity as police from the general public. They are not posing as gang members or drug users working undercover. They are announcing themselves as police, pulling people over, and making arrests. They show their faces to the people they are arresting. They show their faces to the public when they come to court to testify. They can be filmed or photographed by bystanders without exception.

⁵ Minn. Stat. § 13.825, subd. 2(a)(2).

⁶ Minn. Stat. § 13.825, subd. 2(a)(2)(ii).

⁷ Minn. Stat. § 13.825, subd. 2(a)(2)(ii).

⁸ Minn. Stat. § 13.825, subd. 2(a)(2)(ii).

⁹ Minn. Stat. § 13.82, subd. 17(a).

¹⁰ These assertions are particularly concerning when these traffic stops are occurring in Minneapolis. The Minneapolis Police Department is subject to a consent decree which prohibits them from initiating traffic stops for certain minor traffic offenses. (See Paragraph 134 of the Consent Decree, available here: [Signed Consent Decree 7.13.23 tcm1061-584580.pdf](#)). We have noticed an uptick in the Hennepin County Sheriff's Office initiating traffic stops of vehicles in Minneapolis for these minor traffic violations since the Minneapolis Police Department is prohibited from doing so. These are not undercover operations and yet the body camera videos are being given protection because of the undercover officer claims. The consent decree came about in response to misconduct by police and that misconduct was discovered after reviewing body camera videos. See Stipulation and Order, Page 6, Paragraph 6, available here: [Stipulation and Order](#). Concern about whether police are conducting proper traffic stops is so significant that the Hennepin County Attorney recently announced that they will no longer pursue charges stemming from pretextual traffic stops. ([Hennepin County Attorney's Office introduces new strategy, comment period on prosecutions stemming from non-public safety traffic stops | Hennepin County](#)). In their announcement, they noted that these traffic stops had high racial disparities and explicitly stated, "Black drivers are stopped and searched at disproportionately high rates, especially for minor traffic violations that do not create a risk to public safety."

The claim that body worn camera videos being accessible to the public somehow puts them in harms way is completely unsupported. And yet, we have had no way to seek redress of their claim and have been unsuccessful in getting unhindered access to these videos.

The Minnesota Government Data Practices Act (hereinafter “MGDPA”) creates a presumption that all data collected or maintained by the government shall be public unless the data has been explicitly classified as nonpublic, protected nonpublic, private, or confidential.¹¹ Evidence collected by the police in the course of their investigations falls under the wide umbrella of data collected or maintained by the government.

If the MGDPA controlled how discovery was provided in criminal cases, police and prosecutors would have a nightmare trying to do their job. For instance, under the MGDPA, if a bystander is captured on body worn camera video, that bystander must be redacted from the video if the bystander does not consent to its release to the public.¹² This would mean that if the police responded to a murder that occurred at a bus stop in downtown Minneapolis, any person who witnessed the murder could keep their identity confidential and be redacted from the video. This is obviously not the case. Those people are witnesses and get interviewed by police and subpoenaed by both the prosecutor and defense to come testify at trial.

The MGDPA was never intended to affect discovery in a criminal case. The MGDPA itself clearly states that “the dissemination of data by an attorney acting in a professional capacity for a government entity shall be governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility . . .”¹³ Further, the MGDPA makes clear that the police are to give access to all data to the prosecutors.¹⁴ The Minnesota Rules of Criminal Procedure require the prosecutor to then disclose to the defense all information in their control that relates to the case.¹⁵ Information is considered within the control of the prosecutor if it is in the possession or control of anyone who participated in the investigation of the case and reported to the prosecutor’s office (meaning the police).¹⁶

Yet when my client was later charged with obstruction the body camera video of his arrest - necessary evidence in the case, showing whether or not he in fact obstructed that arrest - was not immediately disclosed. It took months of litigation to try to get access to the videos. The Sheriff’s Office insisted that, before the video was disclosed, the prosecutor seek a protective order from the judge prohibiting the video from being played in court unless the officer’s faces were blurred from the video. The Sheriff’s Office relied on the protections within the MGDPA to justify this request. At a hearing the prosecutor explained that the officers would come to court and testify in person, but they wanted their faces blurred from the video so that if the media requested access to the video, they would not be able to show the officer’s identities.

As a defense attorney, I review incredibly sensitive information on a daily basis. Prosecutors are required to – and regularly send me – sexual assault examination reports and photographs, medical records, autopsy reports and photographs, photos depicting gunshot wounds, knife wounds, lacerations, and bruises on the elderly, adults, and children. The professional obligations I have including handling all of

¹¹ Minn. Stat. § 13.03, subd. 1.

¹² Minn. Stat. § 13.825, subd. 2(2)(i).

¹³ Minn. Stat. § 13.393.

¹⁴ Section 13.05, subd. 9 directs that, “A responsible authority shall allow another responsible authority access to data classified as not public only when the access is authorized or required by statute or federal law.”

¹⁵ Minn. R. Crim. P. 9.01, subd. 1.

¹⁶ Minn. R. Crim. P. 9.01, subd. 1a(1).

those items with care. If there was material or information on a case that the prosecutor was concerned would harm someone if it was disclosed to me, they could seek a court order prior to disclosure. They would not need to rely on any language within the MGDPA in seeking that order.

The Minnesota Court of Appeals has determined that discovery in a criminal case is controlled by the rules of criminal procedure, not the MGDPA.¹⁷ The Court of Appeals has already recognized that “[c]omplying with discovery requests is an integral part of the prosecutor’s adversarial role and a function inherent in maintaining criminal actions.”¹⁸ It is because of this that the Court has reasoned that prosecutors are immune from lawsuits alleging that prosecutors violated the MGDPA through their discovery disclosures.¹⁹ The court did that because “the threat of litigation against the county for disclosures made in response to defense discovery requests could deter prosecutors from vigorously and fearlessly performing their duties.”²⁰ The Court therefore extended prosecutorial immunity to them, ensuring that the MGDPA would not be a basis to withhold discovery in a criminal case.²¹

However, the Minnesota Court of Appeals has also determined that district courts can consider privacy interests outlined within the MGDPA in issuing protective orders in criminal cases.²² The MGDPA is not completely irrelevant within the discovery process. The problem is that the MGDPA – meant to increase transparency – is being used to hide information. The Data Practices Act has been in effect since 1982. The entire time the Act has been in place, there has been a provision allowing law enforcement to restrict the *public’s* access to data if it would reveal the identity of an undercover officer.²³

The Minneapolis Police Department previously tried to hide bad conduct of some of its officers behind this provision of the MGDPA. In 2015, three Minneapolis Police Officers sued the City of Minneapolis, the Fourth Judicial District Public Defender’s Office, and the State of Minnesota after their names were made public in conjunction with their police work.²⁴ The officers had been working “undercover” and their actions were called into question in criminal cases. The criminal cases were dismissed based on officer misconduct.²⁵ Afterward, the officers sued trying to argue that they should have been able to keep their identities secret because of the MGDPA (even though at least one of the officers took the stand and testified in one of the criminal cases).²⁶ The lawsuit was dismissed by Judge Laurie Miller.²⁷ There, the Court found that the prosecutor’s disclosure, in the course of discovery, of unredacted materials regarding “undercover officers” did not provide a basis for a claim that the prosecutor violated the MGDPA.²⁸ The court further found that the prosecutor’s actions in providing unredacted discovery was clearly a core

¹⁷ *State v. Johnson*, 659 N.W.2d 819 821 (Minn. App. 2003) (“At oral argument on appeal, the state conceded that the rules of criminal procedure control discovery of the videotape in this case, and agreed with respondent and the district court that the Data Practices Act does not apply to discovery in court cases. We agree.”).

¹⁸ *S.J.S. by L.S. v. Faribault County*, 556 N.W.2d 563, 566 (Minn. App. 1996).

¹⁹ *S.J.S. by L.S. v. Faribault County*, 556 N.W.2d 563, 566 (Minn. App. 1996).

²⁰ *S.J.S. by L.S. v. Faribault County*, 556 N.W.2d 563, 566 (Minn. App. 1996).

²¹ *S.J.S. by L.S. v. Faribault County*, 556 N.W.2d 563, 566 (Minn. App. 1996).

²² *State v. Johnson*, 659 N.W. 2d 819, 822 (Minn. App. 2003).

²³ See Minn. Stat. § 13.82, subd. (10)(a) (1982). Available here:

<https://www.revisor.mn.gov/statutes/1982/cite/13/pdf>.

²⁴ See district court file 27-CV-15-17242.

²⁵ <https://www.startribune.com/prostitution-case-dismissed-because-minneapolis-undercover-officer-inappropriately-touched-woman/322314011/?refresh=true>

²⁶ See again district court file 27-CV-15-17242.

²⁷ See Order from the Honorable Laurie J. Miller, Judge of District Court, filed on April 22, 2016 in district court file 27-CV-15-17242.

²⁸ See page 14 of the Order from the Honorable Laurie J. Miller, Judge of District Court, filed on April 22, 2016 in district court file 27-CV-15-17242.

prosecutorial function.²⁹ The court went on to find that the prosecution was required to disclose unredacted discovery to the defense pursuant to Minn. R. Crim. P. 9.01, subd. 1.³⁰ The Court further found that even though Minn. R. Crim. P. 9.03, subd. 5 authorizes a court to issue a protective order regarding discovery, there's no legal authority that requires the court to issue "a protective order that withholds the identity of undercover officers acting in routine matters . . ."³¹

In the midst of the prosecutions and nationwide protests surrounding the Derek Chauvin trial there were calls to make body camera videos mandatory. On June 3, 2021 – Winston Smith was shot by the police in a parking garage in Minneapolis.³² The public demanded that video and the names of the officers involved in Mr. Smith's death be released. The response was that the officers were working undercover and therefore the government had a right to conceal their identities.³³

The State and local governments allocate millions of dollars to police forces to not only equip their officers with body worn camera videos but to ensure that police forces have sufficient data space to save and maintain the videos. This investment was based on a belief that officers having body worn camera would keep them accountable to the public and to the prosecuting authorities. How ironic that after all of that, the videos are being kept secret from the public and from those depicted in the videos.

Shortly after the refusal to release the video of Winston Smith's death was publicized is when the Hennepin County Sheriff's Office then determined that any officer working with its Violent Offender Task Force was also "undercover." They now use the MGDPA as justification for not providing videos.

We are asking for this commission to reevaluate whether this is a proper use of the protection from public record requests that was contained in Minn. Stat. § 13.43, subd. 5.

It was sound legislative policy to allow law enforcement not to allow the public to discover an undercover officer's identity through a public records request. However, the notion that you could be driving a vehicle, pulled over by police, charged with a crime, and then told you cannot know the name of the law enforcement agent who initiated this encounter because they are undercover is not sound legislative policy. To be refused access to the video of your own arrest after you are charged because the officer – who you saw and told you was a police officer – says they are undercover and need to protect their safety through protecting their identity is not sound legislative policy. Our community is not safer when there is a task force pretending to be undercover. Our community is safer when we can identify who is law enforcement and who isn't and there is an immediate knowledge of that fact when someone is pulled over.

I am now asking this commission to enact sound legislative policy. Please make it clear that:

- (1) the MGDPA does not allow the police to withhold evidence from prosecutors;
- (2) define "undercover law enforcement employee" as:
an employee of a law enforcement department working under the
direction of that department in the course of an investigative operation

²⁹ See page 15 of the Order from the Honorable Laurie J. Miller, Judge of District Court, filed on April 22, 2016 in district court file 27-CV-15-17242.

³⁰ See page 20 of the Order from the Honorable Laurie J. Miller, Judge of District Court, filed on April 22, 2016 in district court file 27-CV-15-17242.

³¹ See page 20 of the Order from the Honorable Laurie J. Miller, Judge of District Court, filed on April 22, 2016 in district court file 27-CV-15-17242. See also Brief of the Attorney General of the State of Minnesota filed on December 29, 2025 in district court file 27-CV-15-17242 arguing that disclosure is mandatory in criminal cases and not affected by the MGDPA and Brief of the Attorney General of the State of Minnesota filed on January 21, 2016 in district court file 27-CV-15-17242 explaining that MGDPA no longer provides protection once an arrest is made.

³² [Smith raised phone, not gun, say attorneys for woman in car](#)

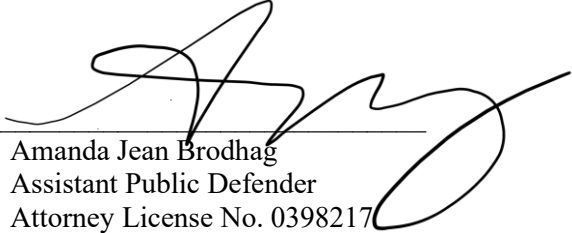
³³ [Names of officers who killed Winston Smith unlikely to ever go public](#)

- by the maintenance of a cover or alias identity and whose connection with their department is concealed from third parties; and
- (3) eliminate the language of Section 13.42, subd. 5 that gives law enforcement's the ability to unilaterally and baselessly decide that revealing data would threaten the personal safety of an officer or jeopardize an active investigation.

RESPECTFULLY SUBMITTED,

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