

**Legislative Commission on Data Practices and Personal Privacy**  
**Minnesotans for Open Government**  
**Written Testimony of Matt Ehling, Board Member - December 11, 2025**

**Minnesota Government Data Practices Act: Enforcement (Agenda Item #5)**

Co-chairs Feist and Scott, and members of the Commission,

Minnesotans for Open Government (MNOG) submits the following written comments on agenda item #5 (Minnesota Government Data Practices Act: Enforcement).

**Executive Summary**

The Minnesota Government Data Practices Act (MGDPA) is the state’s “open records” law, allowing members of the public and press, as well as lawmakers, the ability to request government data directly from government entities, in the interest of ensuring that the public is informed about actions undertaken by the government that public taxpayers fund.

However, government entities do not always comply with requests submitted under the MGDPA. Each year, MNOG board members receive feedback from citizens, journalists, and lawmakers about problems they have encountered with MGDPA compliance. Under the MGDPA, such failures to comply can be remedied in a variety of ways — at least two of which involve legal processes initiated by data requesters.\*\*

Some of the existing remedies — including the ability for courts to assess “exemplary damages” for “willful” violations of the MGDPA — are in the process of being interpreted by courts in the *City of St. Paul, Minnesota v. Robert Cattnach* case.\*\*\* The Minnesota Legislature should remain appraised of the outcome of this case, and ensure that damages awards remain available to members of the public who are improperly denied access to government data. **This is particularly the case since Hennepin County attempted to eliminate damages awards for non-data subject public data requesters through legislation introduced in 2024.\*\*\*\*** At minimum, the Legislature should ensure that government entities are not successful in attempts to repeal existing compliance measures. Beyond that, ways in which to improve MGDPA compliance can be studied.

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*\*Minnesotans for Open Government is a non-partisan, nonprofit organization with an all-volunteer board of directors that focuses on government transparency issues.*

*\*\*The MGDPA’s private right of action — § 13.08 — can also be used to address violations of the statute’s privacy features. MNOG’s comments, however, are specific to public data access.*

*\*\*\*MNOG will be filing an amicus brief at the Minnesota Court of Appeals in support of Robert Cattnach in this matter. Mr. Cattnach formerly served on the board of MNOG.*

*\*\*\*\*Hennepin County advocated for a 2024-era change to eliminate awards for damages for public data requesters, but removed such language in follow-up legislation introduced in 2025.*

## **Extended Comments**

### **Violations of the MGDPA (regarding access to public data)**

In the context of providing access to public data, a violation of the MGDPA occurs when:

- Access to data is not provided in an “appropriate” or “prompt” manner, per § 13.03, subd. 2(a);
- A government entity withholds data that is classified as “public”;
- A government entity engages in other conduct that fails to comply with the MGDPA’s, statutory requirements, leading to the above outcomes, including by failing to “keep data in an arrangement and condition to make it easily accessible for convenient use.”

### **Addressing violations of the MGDPA**

If public requesters (including members of the press, citizens, as well as legislators\*) are improperly denied access to government data (or are otherwise confronted with violations of the MGDPA), the following enforcement mechanisms are available. Each has benefits and possible drawbacks:

#### **Advisory Opinion (Minn. Stat. § 13.072)**

A person who disagrees with an action taken by a government entity in relation to the MGDPA may seek a non-binding advisory opinion from the Commissioner of Administration. The Commissioner “may give a written opinion regarding the person's rights as a subject of government data or right to have access to government data.” Opinions issued by the Commissioner are “not binding on [a] government entity” but “must be given deference by a court or other tribunal in a proceeding involving the data.”

- PROS:
- No cost to requester
  - If the Commissioner disagrees with the government entity, the opinion will serve as public notice that the entity has not complied with the MGDPA.
  - If an opinion favors a requester, and the requester subsequently goes to court on the same issue, a court must “give deference” to the opinion.
- CONS:
- Non-binding on the government entity.
  - Issuance of an opinion is not required, if one is requested.

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*\*Under the MGDPA, Minnesota legislators are treated the same as other public requesters in regard to their data request rights. Over time, MNOG board members have received calls from legislators from both parties, frustrated with denials from government entities.*

**Private right of action (Minn. Stat. § 13.08)**

If a person has been confronted with a violation of the MGDPA, they have a potential remedy available through the private right of action established by § 13.08.

§ 13.08 actions must be brought in district court, and they allow a person to seek access to public data through an “action to compel compliance.” If a court issues an order to compel compliance, it may assess a civil penalty of up to \$1000 against the government entity. A person may also seek injunctive relief, declaratory relief, as well as damages.

If a court finds that a government entity has engaged in a “willful” violation, the court may award “exemplary damages” of “not less than \$1000, nor more than \$15,000 for each violation.” A successful § 13.08 action may result in the recovery of costs and reasonable attorney’s fees. (Note, attorney fee awards are not mandatory, but “may” be awarded.)

Also: “If the court determines that an action brought under this subdivision is frivolous and without merit and a basis in fact, it may award reasonable costs and attorney fees to the responsible authority.”

PROS: • § 13.08 allows courts to mandate relief of various kinds, if a lawsuit succeeds.  
• § 13.08 includes punitive mechanisms to sanction government entities that violate the MGDPA.

CONS: • District court litigation is time intensive.  
• District court litigation often requires an attorney, which can be expensive unless the attorney agrees to work pro-bono, or under some form of contingent compensation arrangement.

**Administrative Remedy (Minn. Stat. § 13.085)**

Over two decades ago, the Minnesota Legislature created a “hybrid” enforcement option, available through the Office of Administrative Hearings. Under § 13.085, a person who has been denied access to public data may file a complaint in administrative court, seeking an order to compel compliance after paying a \$1000 filing fee. If a court finds in the person’s favor, the court may order the production of data; impose a civil penalty against the government entity of up to \$300; order an award of attorney’s fees of up to \$5000; and refund the filing fee, minus \$50.

PROS: • § 13.085 allows OAH to mandate relief of various kinds, if the action succeeds.  
• § 13.08 includes punitive mechanisms to sanction government entities that violate the MGDPA.  
• Easier process to navigate for self-represented requester.

CONS: • \$1000 filing fee deters many potential requesters from filing.

## **City of St. Paul, Minnesota v. Robert Cattanach**

### **At Issue: Exemplary Damages Awards**

A court's ability to award "exemplary damages" to public data requesters is at issue in the ongoing litigation between St. Paul resident and data requester Robert Cattanach, and the City of St. Paul. Under the MGDPA, if a court finds that a government entity's violation of the MGDPA is "willful," the court can impose awards of "exemplary damages" (between \$1000 and \$15,000 per violation) as a punitive measure, intended to deter problematic governmental conduct (such as an entity's failure to provide requested, public data).

During the district court proceedings, Judge Patrick Diamond\* found 14 MGDPA violations by the City of St. Paul that were "willful" and thus sufficient to trigger "exemplary damages" awards. The City of St. Paul has appealed the district court's order, and the case is set to be heard by the Minnesota Court of Appeals.

Judge Diamond's order in the *Cattanach* case addressed the nature of "willfulness" in MGDPA violations:

"Willfulness should, instead be construed in light of the legislative purpose of the exemplary damages provision to secure government entity compliance with the openness and transparency provisions of the MGDPA. In light of this purpose, willfulness as described in section 13.08 subdivision 1 requires a showing of something more than mistake or inadvertence, but not actual malice. "Willfulness," in this context, requires a MGDPA plaintiff to show something more than that the government entity relied on a colorable legal claim that the data at issue is properly classified as not public. In contrast, in light of the legislative purposes of openness and transparency, a government entity that simply refuses, without basis, to respond to a request (even if the refusal is accomplished in a friendly way) willfully violates the MGDPA. Similarly, affirmatively adopting a policy that refuses to conduct a search the MGDPA requires is also willful. Failure to produce a document based on mistake or inadvertence would not be willful. In sum, the point of the MGDPA is that citizens are entitled to know government data says. That cannot happen if there is no responsibility or accountability if the government adopts policies that it will not do complete searches or simply will not promptly respond to certain legitimate requests."

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*\*Judge Diamond passed away unexpectedly in early 2025, and was posthumously awarded the John R. Finnegan Freedom of Information Award by MNOG.*

Judge Diamond’s order also discussed the nature of the “exemplary damages” awards that are available under the MGDPA:

“MGDPA section 13.08 subdivision 1 provides that “[i]n the case of a willful violation the government entity shall, in addition, be liable to exemplary damages of not less than \$1,000, nor more than \$15,000 for each violation. The phrase “for each violation” is not defined. Yet, construing a statute, the court is to ascertain and effectuate the intention of the legislature and to avoid absurd results and unjust consequences. *See, e.g., American Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000). In this regard, the intention of the legislature in enacting the MGDPA was to promote openness and transparency in Minnesota government by making government data presumptively accessible to the public. *Cf.* Minn. Stat. §13.03 subd. 1 (All government data shall be public unless classified otherwise). Section 13.08 subdivision 1 seeks to promote that end by authorizing an award of exemplary damages. Reading the phrase “for each violation” narrowly to limit exemplary damages to each discrete policy violation, without regard to the number of requests the policy violation reaches, is at odds with the statutory purpose because it treats a broad policies or procedures that result in significant inappropriate searches or delays on a par with narrow policies or procedures affecting few requests. For example, a government entity that adopts a policy of simply refusing all data practices requests no matter meritorious, would under a narrow, policy based, interpretation be liable for a single exemplary damages award. On the other hand, an interpretation that authorizes multiple exemplary damage awards relating to the same request, seems duplicative insofar as multiple procedural violations causing a single response that is not appropriate or not prompt likely carry the same impact on transparency or openness in government as a single procedural violation. Taking into account the intention of the legislature and avoiding absurd results, the better reading of the phrase “for each violation” allows exemplary damages to be awarded for each data request in which one or more procedural violations occur.”

The value of the *Cattanach* case lies in the level of detail with which Judge Diamond set out the compliance and transparency rationale behind the “exemplary damages” provision of the MGDPA. His order correctly recognizes that if the MGDPA does not have robust mechanisms to ensure compliance, then government entities will have no incentive to abide by the statute — leaving the public in the dark about important governmental matters.

**The Minnesota Legislature enacted the “exemplary damages” provision of the MGDPA (as well as its other compliance features) with the explicit intention of providing the public with robust mechanisms for challenging improper government actions. MNOG believes that the Legislature should continue to defend those same provisions against governmental attempts to remove them, or water them down.**

## Importance of Compliance Measures

MNOG believes that it is vital to have enforcement mechanisms included in “open records” statutes\*, since legal action — and other measures which compel governmental compliance — are sometimes the only way to force government entities to produce certain records or data sets.

For example, Minnesota non-profit journalism organization Public Record Media (PRM)\*\* went to court in 2012 to seek correspondence between the Minnesota Department of Human Services and the federal agency CMS, after PRM learned that CMS would not respond to letters from Minnesota State Senator John Marty that detailed his concerns over how Minnesota’s Medicaid Waiver programs were being managed by the state. E-mails obtained through litigation showed that Minnesota’s then-Medicaid director had told CMS that he “did not want to participate in a conference call” with Senator Marty, and also asked that CMS “stop meeting with this group” (i.e., Senator Marty, his staff, and others).

process and the STCs. Responding to this request, DSDW arranged a second conference call for August 2<sup>nd</sup>. While Senator Marty was unable to participate in this second call, Barbara Jacobs from his staff was in attendance. The stakeholders had four areas of concern: (1) the need for a truly independent third party audit of MN’s 1115; (2) what happened during renewal negotiations between CMS and MN; (3) were any STC changes due to the stakeholders’ concerns; and (4) what is the significance of requiring the HMOs to file financial statements with CMS? CMS agreed to try to facilitate a call between the State Medicaid agency and the stakeholders.

On August 24<sup>th</sup> DSDW received a follow-up letter via email (dated 8/9/2011) from the stakeholders following up on their four questions from the Aug. 2<sup>nd</sup> conference call. On September 6<sup>th</sup> DSDW received via email a letter from Senator Marty following up on the August 2<sup>nd</sup> conference call. In this letter, Senator Marty continues to express concern regarding the mismanagement of the PMAP program. During later September/early October, DSDW worked with the State to try to arrange another conference call, one that would include the SMD (David Godfrey) or one of his representatives. David requested to speak with Vikki on the subject; following that conversation we learned that he did not want to participate in a conference call and asked that we stop meeting with this group. Barb Jacobs reached out in November 3<sup>rd</sup> via phone to inquire about the status of a response to Sen. Marty’s 9/6 letter and the stakeholders 8/9 letter; no response was generated, pending further consideration of how best to address the situation given the State’s rejection of a joint call and that DSDW has already discussed the stakeholders areas of concern during the August 2<sup>nd</sup> call.

\*Both the MGDPA and the federal FOIA law have a private right of action.

\*\*PRM is a separate non-profit journalism organization on whose board MNOG board member Matt Ehling also serves.

### **Improving Compliance: Possibilities**

Over the history of the MGPDA, additional compliance measures have been added to the statute over time, such as the advisory opinion provisions of § 13.072. Other measures have also been proposed, such as:

- Making awards of attorneys fees to prevailing data requesters in § 13.08 proceedings mandatory, rather than at the discretion of the court (changing “may” recover to “shall” recover in § 13.08 subd. 4);
- Creating binding advisory opinions;
- Creating a state-level entity that has MGDPA enforcement authority over government entities, based on the Canadian “commission” model;
- Reducing the \$1000 OAH filing fee.