STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER FIRST JUDICIAL DISTRICT

Scott Jensen,

Plaintiff,

-v-

Keith Ellison, Office of the Minnesota Attorney General,

Defendants.

Court File No. 10-CV-23-565

ORDER

The above-entitled matter came on before the Honorable Janet L. Barke Cain for cross summary judgment motions on January 9, 2024, at the Carver County Courthouse, in the City of Chaska, State of Minnesota.

Plaintiff was represented by James Dickey, Esq. and Greg Joseph, Esq. Defendants were represented by Minnesota Assistant Attorney General Michael McSherry.

Plaintiff and Defendant brought cross motions for summary judgment in this matter. In addition, Defendants bought a motion to strike that portion of Plaintiff's brief that exceeded the 12,000-word limit imposed by the agreement of the parties and the Court. Plaintiff requests all relief sought in their Amended Complaint. Defendants request dismissal of Plaintiff's claims. The Court took this matter under advisement following hearing.

Now, therefore, based upon the evidence before the Court, arguments of the parties, and the file and proceedings herein,

IT IS HEREBY ORDERED:

1) Plaintiff's motion for summary judgment is **denied in part and granted in part**.

2) Defendants' motion for summary judgment is **denied in part and granted in part.**

3) Defendants' motion to strike is **denied**.

4) Defendants shall produce the documents delineated in the attached memorandum (specifically IC document numbers 3019, 3644, 3645, 3653, 3656, 3661, 3664, 5232, 5360, 5409, and 5425) to Plaintiff within ten (10) business days of the filing of this Order.

5) Plaintiff's request for a declaration that the procedures in place by Defendants for processing MGDPA requests and producing data in response to them violate the MGDPA and Plaintiff's rights thereunder because they are insufficient to ensure appropriate and prompt access to public data is **denied**. Plaintiff's request for a declaration that the destruction policy of the Microsoft Teams data causes destruction of government data in an unreasonably short period of time is summarily **denied** and Prayer for Relief b) contained in the Amended Complaint filed June 28, 2023, is **dismissed with prejudice**.

6) Plaintiff's request for a permanent injunction preventing Defendants from using alleged improper procedures to maintain data and respond to Plaintiff's data requests (and others like him) is summarily **denied** and Prayer for Relief c) contained in the Amended Complaint filed June 28, 2023, is **dismissed with prejudice**.

7) Plaintiff's request for an order that Defendants reform their procedures to comply with the MGDPA is summarily **denied** and Prayer for Relief d) contained in the Amended Complaint filed June 28, 2023, is **dismissed with prejudice**.

8) Plaintiff's request for award damages, including actual damages, exemplary damages, a civil penalty, and reasonable attorney's fees, costs and disbursements, to Plaintiff is

reserved.

9) This matter is set for Jury Trial beginning **November 12, 2024, at 8:30 a.m.** The parties are reminded that mandatory ADR must be attempted and completed before trial.

10) The attached memorandum is incorporated by reference and contains additional Findings and Conclusions.

BY THE COURT:

Cain, Janet
2024.03.28
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Dated: _____, 2024.

_____
Janet L. Barke Cain
Judge of District Court

MEMORANDUM

FACTUAL BACKGROUND:

On June 28, 2023, Plaintiff filed an Amended Complaint under the Minnesota Government Data Practices Act ("MGDPA") requesting, in relevant part: the production and release of certain data requested by Plaintiff held by Defendants; a declaration that the procedures in place by Defendants for processing MGDPA requests and producing data in response to them violate the MGDPA and Plaintiff's rights thereunder because they are insufficient to ensure appropriate and prompt access to public data and the Microsoft teams data policy causes destruction of government data in an unreasonably short period of time; a permanent injunction preventing Defendants from using alleged improper procedures to maintain data and respond to Plaintiff's data requests (and others like him); order Defendant's reform their procedures to comply with the MGDPA; and award damages, including actual damages, exemplary damages, a civil penalty, and reasonable attorney's fees, costs and disbursements, to Plaintiff. Plaintiff requests all relief sought in their Amended Complaint. Defendants request dismissal of Plaintiff's claims. Defendants also request the Court strike that portion of Plaintiff's submissions that exceeded 12,000 words pursuant to the agreement of the parties and direction of the Court. The Court will note at the outset that the motion to strike is denied because there is no showing of prejudice to Defendants. In addition, Defendants were allowed to submit a reply memorandum responding to Plaintiff's submissions in this matter and were able to address any additional matters at that time.

The Minnesota Medical Practice Act ("MMPA") governs the granting and use of a license to practice medicine in Minnesota. Minn. Stat. § 147.001, subd. 2. The legislature

enacted the MMPA "[i]n the interest of public health, safety, and welfare, and to protect the public from the unprofessional, improper, incompetent, and unlawful practice of medicine" and created the Board of Medical Practice ("the Board") to effectuate that purpose. Id.; Minn. Stat. § 147.01, subd. 1. Defendants Keith Ellison and the Office of the Attorney General ("the OAG," collectively), serve as "the attorney for [the Board] in all matters pertaining to [its] official duties." Minn. Stat. § 8.06.

As with all health-related licensing boards, the process by which the Board of Medical Practice receives and resolves complaints against its licensees is governed by Minn. Stat. § 214.103. When the Board receives a complaint against a doctor subject to its regulatory jurisdiction, the Board must resolve the complaint. Minn. Stat. § 214.103, subd. 2. The Board's executive director or a designated board member must first determine whether the complaint falls within its regulatory jurisdiction. The Board must refer a complaint to the OAG that, upon a determination that the complaint is jurisdictional:

> (1) requires investigation before the executive director or the designated board member may resolve the complaint;
>
> (2) attempts at resolution for disciplinary action, or the initiation of a contested case hearing, is appropriate;
>
> (3) an agreement for corrective action is warranted; or
>
> (4) the complaint should be dismissed, consistent with subdivision 8.

Id., subd. 4. If the Board determines that investigation is necessary before resolving a complaint, "the executive director shall forward the complaint and any additional information to" the OAG. Id., subd. 5(a). Next, the OAG "shall evaluate the communications forwarded and investigate as appropriate." Id.

The executive director or board member (and not the OAG) also has discretion to attempt to resolve complaints:

> At any time after receipt of a complaint, the executive director or the designated board member may attempt to resolve the complaint with the regulated person. The available means for resolution include a conference or any other written or oral communication with the regulated person. A conference may be held for the purposes of investigation, negotiation, education, or conciliation… The results of attempts at resolution with the regulated person may include a recommendation to the board for disciplinary action, an agreement between the executive director or the designated board member and the regulated person for corrective action, or the dismissal of a complaint.

Id., subd. 6(a). Whenever the Board attempts to resolve a complaint that may result in disciplinary action, the statute directs the OAG to represent the Board in all attempts at resolution. Id., subd. 6(a)(1). Whenever the Board attempts to resolve a complaint that may result in corrective action, the statute requires the OAG to represent the Board in "all attempts at resolution," if requested by the executive director or a designated board member. Id., subd. 6(a)(2).

Plaintiff, Dr. Scott Jensen, is a medical doctor licensed by the Board and subject to its regulatory jurisdiction. Between 2020 and 2021, and during the midst of the then-ongoing COVID-19 pandemic, the Board received a series of complaints against Plaintiff regarding, among other things, his public statements on various COVID-related topics—the virus's threat, masking efficacy and policies, vaccine efficacy, and governmental responses to the pandemic.

The Board notified Plaintiff of the first two complaints via confidential correspondence in June 2020. The notice summarized the allegations, outlined the complaint-review process, and invited Plaintiff to submit a written response. In July 2020, the Board informed Plaintiff that the Board had conducted an investigation of the two complaints, reviewed the facts, and decided to dismiss the complaints and close its investigation. In September 2020, the Board notified Plaintiff that it received a complaint alleging that he spread false and misleading information and

was a danger to public health. In October 2020, the Board notified Plaintiff that the Board had investigated and dismissed the complaint. In April 2021, the Board notified Plaintiff that it received a complaint alleging that he was minimizing COVID-19 deaths on social media. The notice advised Plaintiff that the Board dismissed the complaint without further consideration. In August 2021, the Board notified Plaintiff that it received a complaint alleging that Plaintiff was involved in a legal proceeding seeking a temporary restraining order against the vaccination of children under 16. In September 2021, the Board notified Plaintiff that it had investigated and dismissed the complaint.

In October 2021, the Board sent Plaintiff notice of more complaints it received alleging that Plaintiff was spreading misinformation, calling for civil disobedience, declining to wear masks in patient-care settings, recommending that children not mask at school, politicizing public health, claiming that hospitals and doctors were falsifying death records, promoting ivermectin to treat COVID-19 symptoms, and promoting the benefits of natural immunity over vaccines. The Board invited Plaintiff to submit a response and Plaintiff submitted a response in November 2021. The Board received additional complaints against Plaintiff through June 2022.

In January 2023, the OAG served Plaintiff by mail with the Board's notice of conference and additional materials by cover letter stating that the service was on behalf of the Board Complaint Review Committee. The Board's notice summarized the allegations contained in the numerous complaints, advised Plaintiff that the Board Committee was seeking data from Plaintiff, and afforded Plaintiff an opportunity to reply. The notice was accompanied by a separate explanatory letter explaining that the conference was intended to provide a basis for a discussion between Plaintiff and the Board Committee and to allow Plaintiff to provide the Board Committee additional information. It should be noted that the Board was the sole entity

that conducted investigations regarding the allegations and complaints against Plaintiff and the Board's referrals to the OAG were made for the purpose of legal representation pursuant to statute. In March 2023 all complaints against Plaintiff were dismissed and the Board closed its investigations.

In the first few months of 2023 Plaintiff made some social media posts regarding the Board's involvement with Plaintiff and which elicited a limited response from the public both defending Plaintiff and lashing out at members of the Board and the OAG. Some of the statements made by the public were particularly disparaging to the Board and the OAG, and included vulgar, crass and entirely disrespectful language toward certain Board and OAG members. However, no direct threats were made to either the Board, the OAG, or any specific individuals.

In April 2023, Plaintiff announced via social media that he would be filing a lawsuit against the Board and the OAG for alleged free-speech violations. On April 20, 2023, Plaintiff's attorney submitted a data request to the OAG on Plaintiff's behalf pursuant to the MGDPA, Minn. Stat. §§ 13.01-.90. Plaintiff requested access to all documents from March 9, 2020, to present with the phrase 'Scott Jensen'", and all documents dated from March 9, 2020, to present in which Scott Jensen is the subject of the data.

On May 4, 2023, ten business days later, the OAG responded by providing Plaintiff with 5,507 pages of data, copies of nine audio clips, and access to inspect 11,220 pages of other data. The OAG withheld various data and cited its statutory bases for withholding. In relevant part, the OAG cited: Minn. Stat. § 13.65, subd. 1(b) (communication and non-investigative files regarding administrative or policy data not evidencing final public action); Minn. Stat. § 13.65, subd. 1(c) (consumer complaint data); Minn. Stat. § 13.601, subd. 2 (communication with

elected officials as private data on individuals); Minn. Stat. § 13.43, subd. 4 (private personnel data); Minn. Stat. § 13.37, subd. 2(a) (security information); Minn. Stat. § 13.39, subd. 2(a) (active civil investigative data); and Minn. Stat. § 13.393 (attorney data). The OAG also explained data classified as either nonpublic or as private data about individuals other than Plaintiff, and of which Plaintiff is not the data subject (*e.g.*, data containing incidental mentions of 'Scott Jensen'), were withheld pursuant to these sections of the MGDPA.

Plaintiff responded on May 10, 2023, contended that data were improperly withheld, asked the OAG to identify what data were withheld as security information, demanded that the OAG justify its various bases for withholding, and asked the OAG to identify its retention policy for Microsoft Teams data. The OAG replied that security information involved a small set of data about individually identifiable OAG employee withheld because OAG staff received harassing and/or threatening calls following posts by Plaintiff on social media and asserted that the republication of certain data by Plaintiff on social media would likely substantially jeopardize the security of individuals and subject staff to harassment and/or threats by followers/viewers. The OAG also explained that Microsoft Teams messages are typically retained for 30 days but may be retained for longer periods. Plaintiff then sued Defendants in June 2023 pursuant to a Summons, Complaint, and Amended Complaint.

LEGAL ARGUMENT:

Summary judgment, pursuant to Minn. R. Civ. Pro. 56.03, is appropriate only when there is no genuine issue of material fact in dispute, and where a determination of the applicable law will resolve the controversy. Gaspord v. Washington County Planning Commission, 252 N.W. 2d 590 (1977). A party requesting summary judgment will carry its burden by showing there is no evidence

to support the non-movant's case. Celotex Corporation v. Mytle Nell Catrett, 106 S.Ct. 2548 (1986). Summary judgment should be employed only where it is perfectly clear that no issue of fact is involved and that it is neither desirable nor necessary to inquire into facts that might clarify application of law. Donnay v. Boulware, 144 N.W.2d 711 (1966).

The purpose of summary judgment is not to resolve issues of fact, but to determine if they exist. Brenner v. Nordby, 306 N.W.2d 126, 127 (Minn. 1981). All doubts and inferences must be resolved against the moving party. Nord v. Herreid, 305 N.W.2d 337, 339 (Minn. 1981). Summary judgment should not be granted if reasonable persons might reach different conclusions after reviewing the evidence. Jonathan v. Kvaal, 403 N.W.2d 256, 259 (Minn.Ct.App. 1987), rev. denied (Minn. May 20, 1987); Anderson v. Twin City Rapid Transit Co., 84 N.W.2d 593, 605 (1957). Summary judgment has been called "an extraordinary remedy - a blunt instrument to be used only where it is clearly applicable." Katzner v. Kelleher Construction, 535 N.W.2d 825, 828 (Minn.Ct.App. 1995) aff'd 545 N.W.2d 378 (Minn. 1996).

The duty of a trial court in determining whether to grant summary judgment has been clearly summarized by the Minnesota Supreme Court as follows:

> A motion for summary judgment may be granted pursuant to Rule 56.03 only if, after taking the view of the evidence most favorable to the nonmoving party, the movant has clearly sustained his burden of showing that there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law. It is essential to bear in mind that the moving party has the burden of proof and that the nonmoving party has the benefit of the view of the evidence which is the most favorable to him.

Kemp v. Allis-Chalmers Corp., 390 N.W.2d 848, 850 (Minn.Ct.App. 1986) (quoting Sauter v. Sauter, 244 Minn. 482, 484-85, 70 N.W-2d 351, 353 (1955)). In addition to the nonmoving party having the benefit of the view of the evidence which is most favorable to him, all the evidence of the nonmoving party is to be believed and all justifiable inferences are to be drawn

in a light most favorable to the nonmoving party. Appletree Square 1 LTD. v. W.R. Grace & Co., 815 F.Supp. 1266, 1270 (D.Minn. 1993).

A material fact issue has been described as one which, depending on its resolution, will affect the result or outcome of the case. Northwestern National Casualty Co. v. Khosa, Inc., 520 N.W.2d 771, 773 (Minn.Ct.App. 1994). "Any doubt as to the existence of a genuine issue of material fact must be resolved in favor of finding that a fact issue exists." Steinhilber v. Prairie Pine Mutual Insurance Co., 533 N.W.2d 92, 93 (Minn.Ct.App. 1995). If, after reviewing the evidence, the trial court determines that reasonable persons might reach different conclusions, then summary judgment should not be granted. Northland Insurance Co. v. Bennett, 533 N.W.2d 867, 871 (Minn.Ct.App. 1995).

The MGDPA "regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities." Minn. Stat. § 13.01, subd. 3. Upon a proper request, the law also affords certain rights to inspect, copy, or receive copies of government data depending on their classification. See Minn. Stat. §§ 13.03, subd. 3, .04, subd. 3.

Government data are presumptively public unless otherwise classified as not public. Minn. Stat. § 13.01, subd. 3. "Public" data are accessible to any member of the public upon request. See Minn. Stat. §§ 13.02, subds. 14-15 (defining public-data types). "Not public data" are subject to more limited rights of access and include data classified "as confidential, private, nonpublic, or protected nonpublic." Minn. Stat. § 13.02, subd. 8a. "Private data on individuals" and "nonpublic data" are not accessible to the general public but are accessible to the subject of the data. See Minn. Stat. §§ 13.02, subds. 9, 12 (defining data types). "Confidential data on individuals" and "protected nonpublic data" are not accessible to the general public or the subject

of the data. Id., subds. 3, 13 (defining data types). Attorney data, with some exceptions, are meanwhile exempt from the MGDPA's disclosure requirements. See Minn. Stat. § 13.393.

An "individual" (a natural person) has additional rights to inspect and receive copies of public or private data about the individual within ten business days of a proper request. See Minn. Stat. §§ 13.02, subd. 8 (defining "individual"), .04, subd. 3 (establishing access rights). When a government entity denies access to data in response to a data request, it must inform the requester of its statutory bases for withholding. Minn. Stat. § 13.03, subd. 3(f).

The MGDPA imposes a duty to inform a requesting person of any legal basis to withhold data:

> If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall inform the requesting person of the determination either orally at the time of the request, or in writing as soon after that time as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based.

Minn. Stat. § 13.03, subd. 3(f). Accordingly, a written response "inform[ing] the requesting person of the determination" and citing "the specific statutory section[s]" for withholding is sufficient. Generally, government entities have no statutory duty to explain the underlying context or reasoning supporting the determination. Of the various statutory bases cited by the OAG to withhold data from Plaintiff, the only basis requiring any further "justification" relates to the OAG's withholding security information. See Minn. Stat. § 13.37, subd. 2(b) (requiring a government entity to offer a "short description explaining the necessity for [a security information] classification" upon request).

The OAG complied with these duties. The OAG's initial response identified each statutory basis for withholding. Its letter reply provided Plaintiff with an explanation as to why it

withheld a small subset of data as security information. The OAG met their statutory obligations.

The Court will next address the actual data withheld by the OAG following the data request of Plaintiff and discuss each subset of data at issue. The Court reviewed each document. With some of the data, the OAG asserts multiple rationale for withholding. "[T]he [MGDPA] classification system 'often results in more than one category and classification for every piece' of government data." Energy Policy Advocates v. Ellison, 980 W.W.2d 146, 162 (Minn. 2022), quoting Margaret Westin, *The Minnesota Government Data Practices Act: A Practitioner's Guide and Observations on Access to Government Information*, 22 Wm. Mitchell L. rev. 839, 869 (1996).

The vast majority of the data withheld by the OAG from Plaintiff was pursuant to Minn. Stat. § 13.393 – the Attorney Data portion. As referenced, *supra*, some of this data was also withheld pursuant to additional subsets of the MGDPA. The Court finds that the majority of the data withheld under § 13.393 were properly withheld, and will address the exceptions to this finding, *infra*.

The Court will not address each and every bit of data, other than to find that the majority of § 13.393 data was properly withheld. The data properly withheld related to the activities of attorneys acting in their professional capacities for government entities: representing government entities in their official activities; receiving requests for, and offering, legal advice; and preparing for actual or anticipated litigation. Accordingly, the majority of § 13.393 data are exempt from the MGDPA's disclosure requirements pursuant to the statute's language, precedential caselaw, and the commissioner's guidance.

Attorney data are exempt from the MGDPA's general provisions as follows:

> Notwithstanding the provisions of this chapter and section 15.17, the use, collection, storage, and 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; provided that this section shall not be construed to affect the applicability of any statute, other than this chapter and section 15.17, which specifically requires or prohibits disclosure of specific information by the attorney, nor shall this section be construed to relieve any responsible authority, other than the attorney, from duties and responsibilities pursuant to this chapter and section 15.17.

Minn. Stat. § 13.393. Thus, data collected, stored, and disseminated by attorneys "acting in a professional capacity for a government entity" are not subject to the MGDPA's disclosure requirements, provided the statute does not "relieve any responsible authority, *other than the attorney*, from duties and responsibilities" under the MGDPA. Id. (emphasis added).

The Minnesota Court of Appeals has held that: (1) the MGDPA does not govern requests for data submitted to government attorneys for data maintained while acting in a professional capacity for a government entity (although other statues, rules or professional standards may apply); and (2) the MGDPA "does not expose government attorneys to liability for their alleged failure to provide data under the MGDPA." Scheffler v. City of Anoka, 890 N.W.2d 437, 450-51 (Minn. Ct. App. 2017). This is true without regard to the classification otherwise applicable to data maintained by attorneys. Id. at 450-51 (explaining that attorneys' "'use, collection, storage, and dissemination' of the supplemental [police] report was governed by the 'statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility,' not by the MGDPA").

Relatedly, the Minnesota Supreme Court has explained that § 13.393 is "specific to" government attorneys and "the use of data by attorneys 'acting in a professional capacity for a government entity.'" Energy Policy Advocates v. Ellison, 980 N.W.2d 146, 151-52, 154 (Minn.

2022) (quoting Minn. Stat. § 13.393); see also Kobluk v. Univ. of Minn., 574 N.W.2d 436, 440 n.5 (Minn. 1998) (clarifying that Section 13.30, later renumbered to Section 13.393, operates to "define[] the scope of a government attorney's duties under the [MGDPA]."

The Commissioner of Administration has given similar guidance concerning requests to government-attorney entities. Specifically, "When a government entity relies upon section 13.393 to exempt data from the requirements of Chapter 13, the entity should ensure the attorney maintaining the data is acting in a professional capacity for the entity and[1] there is an applicable statute, rule, and/or professional standard concerning discovery, production of documents, introduction of evidence, or professional responsibility that otherwise governs the data in the hands of the government attorney." Op. Comm'r Admin. 22-007 (Nov. 23, 2022) (emphasis added).[2]

Consistent with the statute's plain language, precedential caselaw, and the commissioner's guidance, the MGDPA's disclosure requirements do not apply to data created, collected, or maintained by the OAG in its attorney capacity; such data are instead governed by statutes, rules, and professional standards specific to attorneys. As is relevant here, such statutes, rules, and professional standards include the attorney-confidentiality rule, the attorney-client privilege, and the work-product doctrine.

Minnesota Rule of Professional Conduct 1.6(a) provides that "a lawyer shall not knowingly reveal information pertaining to the representation of a client" unless the disclosure is

[1] So even though a government attorney is not subject to the MGDPA if acting within their professional capacity, the government attorney still must abide by the applicable statue/rule/professional standard regarding discovery requests.

[2] The MGDPA permits the Commissioner of the Department of Administration to issue advisory opinions regarding data-practices matters. See Minn. Stat. § 13.072, subd. 1(a). Compliance with advisory opinions affords government entities with immunity against certain liabilities. Id., subd. 2.

permitted pursuant to one of 11 enumerated exceptions. See Minn. R. Prof. Conduct 1.6(b).[3] Rule 1.6 is a rule specific to attorneys and concerns the "dissemination of data by an attorney acting in a professional capacity for a government entity." Minn. Stat. § 13.393. Minn. R. Prof. Conduct 1.6(a) applies to the OAG in its capacity as legal counsel. See Minn. Stat. § 8.06.

Separately, the attorney-client privilege is codified at Minn. Stat. § 595.02, subd. 1(b), and applies to both attorney and non-attorney government entities. The attorney-client privilege applies as follows:

> (1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

Energy Policy Advocates, 980 N.W.2d at 152 (citation and quotation marks omitted). The privilege extends to communications within public law offices. Id. at 155-56.

The work-product doctrine is codified in Minn. R. Crim. P. 9.01, subd. 3, and Minn. R. Civ. P. 26.02(d), and applies to both attorney and non-attorney government entities. The work-product doctrine exempts from disclosure "an attorney's opinions, conclusions, mental impressions, trial strategy, and legal theories in materials prepared in anticipation of litigation." Energy Policy Advocates, 980 N.W.2d at 152.

The record and law support the OAG's application of § 13.393 to the vast majority of the disputed data, which: (1) concern the OAG's legal representation of government entities (attorney confidentiality pursuant to Minn. R. Prof. Conduct 1.6(a)); (2) comprise attorney-client

[3] Paragraph (b) is permissive and provides that "[A] lawyer may reveal information relating to the representation of a client if . . ." one of 11 enumerated exceptions applies. Thus, government attorneys may disclose various data subject to 13.393 in response to a data request, but are not required to, so long as an exception applies (*e.g.*, information disclosed with the client's informed consent, Minn. R. Prof. Conduct 1.6(b)(1); nonprivileged information the client has not requested the attorney to hold inviolate and the disclosure of which would not harm the client's interests, Minn. R. Prof. Conduct 1.6(b)(2)).

privileged communications, both internally and with clients, (Minn. Stat. § 595.02, subd. 1(b)); and/or (3) constitute attorney work product (Minn. R. Civ. P. 26.02(d)).

It is worth noting that pursuant to Minn. Stat. § 8.06, Minn. Stat. § 214.103, and as established by the record, the OAG served as legal counsel to the Board during the Board's investigations of Plaintiff's matter. The OAG did not undertake any independent investigation regarding the complaints against Plaintiff, and the Board did not request any such investigation. The Board referred the matter to the OAG solely for the purpose of legal representation. And the Court's review of the data at issue does not show any other result.

The same is true of a majority of other data concerning Plaintiff's threatened legal action. These data include: internally privileged communications in which OAG staff that identify, circulate, and discuss information pertaining to Plaintiff's threatened legal action against the OAG and the Board; attorney-client privileged communications between the OAG and the Board regarding Plaintiff's threatened litigation; and internally privileged communications regarding the preservation of data relevant to Plaintiff's threatened litigation.

There is additional data that does not pertain directly to Plaintiff's Board matter or threatened litigation. Certain data concern the OAG's representation of the Board in matters entirely unrelated to Plaintiff, but which were responsive to Plaintiff's request only insofar as he sought entire documents in which his name appeared. Other data are internally privileged attorney communications regarding Plaintiff's data request. Miscellaneous data withheld pursuant to § 13.393 include items such as internally privileged discussions of unrelated potential litigation, client advice for government entities other than the Board, and attorney communications regarding multi-state investigations. Notably, because of the breadth of Plaintiff's data request, many of these documents were responsive only by attachments or the

inclusion of Plaintiff's name earlier in email threads, contents of which were disclosed to Plaintiff as noted in the OAG's withholding log.

In summary, with regard to the majority of the data at issue, OAG properly withheld data created, collected, or maintained by attorneys acting in their professional capacity for government entities. The dissemination of such data is not required by the MGDPA and is instead governed by the attorney-confidentiality rule, the attorney-client privilege, and the work-product doctrine.

The Court will address the other MGDPA subsets before turning to those documents that shall be turned over to Plaintiff held by the OAG. Regarding Minn. Stat. § 13.39, subd. 2(a) data (active civil investigative data), all of the data withheld pursuant to that subset were appropriately withheld by the OAG.

Minn. Stat. § 13.39, subd. 2(a), provides that:

> [D]ata collected by a government entity as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which are retained in anticipation of a pending civil legal action, are classified as protected nonpublic data pursuant to section 13.02, subdivision 13, in the case of data not on individuals and confidential pursuant to section 13.02, subdivision 3, in the case of data on individuals.

Data withheld by the OAG pursuant to Minn. Stat. § 13.39, subd. 2(a), satisfy these criteria. Primarily, these data concern Plaintiff public threats of litigation against the OAG and the Board. They include communications regarding Plaintiff's litigation threats and retaining relevant information. In the alternative to § 13.393, these data qualify as active civil investigative data collected as part of an investigation undertaken in response to Plaintiff's announced intent to sue the OAG and the Board. Relatedly, certain internal communications regarding Plaintiff's data request are encompassed under the umbrella of active civil investigative data as they followed Plaintiff's threats of litigation and were subject to the OAG's

efforts to retain data relevant to the anticipated litigation. Finally, other documents have no real relation to Plaintiff and were properly withheld. In summary, various data were collected by the OAG as part of active investigations, one of which was undertaken in anticipation of Plaintiff's threatened civil action against the OAG.

Plaintiff alleges that the OAG wrongfully denied him access as a data subject to various data classified as not public pursuant to Minn. Stat. § 13.43, subd. 4; Minn. Stat. § 13.601, subd. 2; and Minn. Stat. § 13.65, subds. 1(b), (c). Plaintiff claims these data were improperly withheld on the theory that he is the individual subject of all documents containing mention of him because they were accessible through an electronic search.

The OAG's "communications and non-investigative files regarding administrative or policy matters which do not evidence final public actions" are classified as "private data on individuals." Minn. Stat. § 13.65, subd. 1(b).[4] The OAG's "consumer complaint data . . . including consumers' complaints against businesses and follow-up investigative materials" are classified as "private data on individuals." Minn. Stat. § 13.65, subd. 1(c). Relatedly, correspondence between individuals and elected officials is classified as "private data on individuals." Minn. Stat. § 13.601, subd. 2. "Government data on individuals maintained because the individual is or was an employee of . . . a government entity" is "personnel data" and classified as private unless otherwise classified as public." Minn. Stat. § 13.43, subds. 1, 4.

Plaintiff asserts that data with his name in it comprise "data on individuals" and that he is entitled to access the data as an individual data subject. See Minn. Stat. § 13.04, subd. 3. Plaintiff's theory derives from the statutory definition of "data on individuals," which means:

[4] Data classified pursuant to Minn. Stat. § 13.65, subd. 1 are "private" regardless of whether the data are about an "individual." Energy Policy Advocates, 980 N.W.2d at 149. The commissioner has also opined that correspondence related to policy projects qualify as Section 13.65, subd. 1(b) data. See Op. Comm'r Admin. 94-047 (Oct. 28, 1994) (modified in part by Energy Policy Advocates).

> [A]ll government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

Minn. Stat. § 13.02, subd. 5. Plaintiff's theory is that the second requirement regarding access is fatal to the withholding of any data where the name "Scott Jensen" appears because the data were specifically accessed using that name.

"Data on individuals" is first defined as "government data in which any individual is or can be identified as the subject of that data." Minn. Stat. § 13.02, subd. 5 (emphasis added). For purposes of the MGDPA, an individual data subject includes individuals who are part of the factual focus of the data. See Edina Educ. Ass'n v. Bd. of Ed. of Ind. Sch. Dist. 273, 562 N.W.2d 306, 311 (Minn. Ct. App. 1997). "[I]ncidental identification of individuals within data does not make it 'data on individuals.'" Id. There may be multiple individuals within any piece of data that may be identified as the subject of the data. See Burks v. Metropolitan Council, 884 N.W.2d 338, 342 (Minn. 2016) ("so long as at least one individual is identifiable as a subject, it does not mater that other individuals may be identifiable as well").

The Court has looked at all of the documents at issue through the lens of Plaintiff's right to access data where he is the subject of the data, understanding that there may be multiple subjects within any particular data set, and data where Plaintiff is merely an incidental component to the data Plaintiff has no right to access. With the exception of those documents the Court is releasing to Plaintiff, which include data where Plaintiff is the subject of the data and cannot be withheld pursuant to any other subsets within the MGDPA, the Court finds Plaintiff is not allowed access to the remaining documents due to subject matter – or some other MGDPA subset.

The Court will more fully address the "security information" data at issue that the Court is releasing to Plaintiff, *infra*. The OAG withheld a small subset of data in five documents as "security information" based on its determination that Plaintiff's republication of data would likely substantially jeopardize the security of individuals and subject staff to harassment and/or threats.

"Security information" are either private or nonpublic. Minn. Stat. § 13.37, subd. 2(a). Government entities may designate data as security information upon a determination that their disclosure "would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury." Minn. Stat. § 13.37, subd. 1(a). The statute affords government entities "broad discretion to address security concerns." Op. Comm'r Admin. 13-010 (Apr. 11, 2013). The commissioner has explained that "when government entities exercise this discretion, they must have reason to believe that public disclosure would 'likely lead to substantial jeopardy.'" Op. Comm'r Admin. 21-006 (Oct. 21, 2021) (citing Ops. Comm'r Admin 01-029 (Feb. 27, 2001), 02-014 (Apr. 5, 2002)). The Commissioner of Administration has determined that a government entity may properly withhold data as security information on the basis of "harassing, abusive, threatening and aggressive behaviors." Op. Comm'r Admin. 00-071 (Dec. 13, 2000) (but see, *infra*).

The OAG argues four (4) of the relevant documents/data elements are private personnel data about individuals: (1) an email and (2) response concerning an employee's status following Plaintiff's social-media posts; (3) a message regarding a staff member's receipt of "hate calls"; and (4) a portion of a text message expressing concern for a staff member given the potential for harassing contact. The fifth document is a message between co-chairs of the OAG's Safety and

Security Committee regarding the OAG's security policies and harassing conduct directed toward staff.

Plaintiff posted information regarding his then-pending Board matter on social media and included individual contact information for various state employees. Plaintiff warned that because of the Board's actions, dissenting voices will be crushed and extinguished and the same thing happening to him can happen to anybody. Plaintiff's postings spurred contacts from a limited number of individuals referring to state employees as godless fags, Minnesota Gestapo, pieces of shit, absolute human scum, fucking cunts, witches, stupid bitches, and fucking nuts. The public postings characterized Board and OAG personnel, in part, as either communists or nazis, accused the OAG of attempting a behind-the-scenes Marxist takeover of the country, warned personnel of their impending deaths due to vaccinations, and accused the OAG and the Board of complicity in criminal enterprises and/or murder.

Again, to justify withholding data because they are security information, Defendants must show that releasing the data "would be likely to jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury." Minn. Stat. § 13.37, subd 1(a). Further, if these bits of data can be redacted, they should be—there is no basis for withholding entire documents when the potential insecurity can be avoided by redaction. See, *e.g.* KSTP-TV v. Ramsey County, 806 N.W.2d 785, 789-90 (Minn. 2011) ("[T]he MGDPA protects data, not documents. . . . A single document may contain data that is data on individuals and data not on individuals; therefore, a single ballot may contain both private and nonpublic data."

The OAG does not meet their burden, under Minn. Stat. § 13.37, subd 1(a) – even though some of the data may be withheld pursuant to another subset of the MGDPA. Again, the Court

has reviewed each document and cannot find that any of the data (more comprehensively discussed, *infra*) rise to the level of "security information" that can be withheld pursuant to Minn. Stat. § 13.37, subd 1(a) and is enough to overcome the presumption under the MGDPA that data is presumed public and accessible.

Defendants rely on the Commissioner of Administration's opinions to argue that they have broad discretion to invoke the security-information exception to disclosure and that '"harassing, abusive, threatening and aggressive behaviors'" sufficiently evidence substantial jeopardy. See Op. Comm'r Admin. 00-071 (Dec. 13, 2000). But the Commissioner concedes that the Commissioner cannot determine what "substantial jeopardy" means. See Op. Comm'r Admin. 00-071 (Dec. 13, 2000) ("The problem is that the Legislature, by not defining substantially jeopardize, has provided government entities with a great deal of discretion in determining whether or not they can rightfully withhold data.").

Further, this Court should not give deference to a government entity's determination of "substantially jeopardize" because the courts have not done so. See, *e.g.*, St. Otto's Home v. Minn. Dep't of Human Servs., 437 N.W.2d 35, 39-40 (Minn. 1989) (on matters of statutory interpretation, "reviewing courts are not bound by the decision of the agency and need not defer to agency expertise"); Cmtys. United Against Police Brutality v. City of Minneapolis, No. A09-1972, 2010 Minn. App. Unpub. LEXIS 467, at *8 n.3 (May 25, 2010) ("While we defer to the commissioner in areas within the commissioner's expertise, interpretation of case law is a matter within the courts' expertise."). And even the Office of Administrative Hearings has held that the government agency holding the data must "be able to identify that 'specific concerns have been raised about individual safety,' [and] generalized concerns about community discomfort or personal reputational interests are not sufficient." *In the Matter of Minn. Dep't of Nat. Resources Special*

Permit No. 16868 (Dec. 12, 2012) Issued to Lynn Rogers, No. OAH 84-2001-30915, 2014 Minn. ENV LEXIS 18, at *27 (Feb. 12, 2014).

Moreover, the Commissioner's opinion on which Defendants rely concerned an individual who had "a long history of engaging in harassing, abusive, threatening and aggressive behavior toward State of Minnesota employees." Op. Comm'r Admin. 00-071 (Dec. 13, 2000). There is no evidence that the limited members of the public who made the comments at issue to the Board and OAG generally or to specific people within those entities fall into this category.

This Court will not defer to the Commissioner's opinion on "substantial jeopardy" and must find that Defendants have not met the substantial jeopardy standard under applicable case law. The Minnesota Court of Appeals has articulated this standard as a "substantial risk to the safety of persons and property." Nw. Publ'ns, Inc. v. Bloomington, 499 N.W.2d 509, 511 (Minn. Ct. App. 1993). The plain language of the statute requires this, as it only addresses actual threats of harm to persons or property in the form of physical injury or trespass. Minn. Stat. § 13.37. Language, however morally repulsive, cannot evidence substantial jeopardy absent a true threat. "'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." Virginia v. Black, 538 U.S. 343, 359 (2003) (citing Watts v. United States, 394 U.S. 705, 708 (1969) ("political hyperbole" is not a true threat)).

While the verbal abuse directed at state employees by third parties is well beyond inappropriate, none of the data reviewed by this Court contain any true threats, and First Amendment principals, coupled with the MGDPA presumption that data is accessible by the public, do not preclude the release of the data under Minn. Stat. § 13.37, subd 1(a) alone. To the extent there is nonpublic information contained in any of the § 13.37 data, that information can be

redacted to remove those items of information actually mentioned by the statute, like email addresses. See Minn. Stat. § 13.37, subd. 1(a); Nw. Publ'ns, Inc., 499 N.W.2d at 511 ("an entire document may be withheld only when the public and nonpublic information are so inextricably intertwined that segregating the material would impose a significant financial burden and leave the remaining parts of the document with little informational value").

The Court will now address the procedures utilized by the OAG in responding to Plaintiff's data requests along with the retention claim regarding Microsoft Teams. Plaintiff claims that the OAG's data-practices procedures failed to ensure appropriate and prompt compliance with the MGDPA's requirements, and Plaintiff asks the Court to enjoin and reform the OAG's procedures.

Plaintiff's claim rests on an alleged violation of the MGDPA's requirement that government entities "establish procedures, consistent with [Chapter 13], to ensure that requests for government data are received and complied with in an appropriate and prompt manner." Minn. Stat. § 13.03, subd. 2(a). As explained, *supra*, the MGDPA imposes certain duties regarding the nature and timeliness of responses to data requests: (1) a duty to respond within ten business days to requests for access to data by the individual subject of data (Minn. Stat. § 13.04, subd. 3); (2) an obligation to cite in writing the statutory bases supporting a determination to withhold data in response to a request (Minn. Stat. § 13.03, subd. 3(f)); and (3) a duty to explain the basis for a security-information determination upon request (Minn. Stat. § 13.37, subd. 2(b)).

The OAG complied with its procedural obligations by responding to Plaintiff's request and affording him access to data within ten business days, providing Plaintiff with a written response citing the statutory bases upon which it determined to withhold data, and at Plaintiff's request, explained their reason for classifying a small subset of data as security information.

The claim is entirely dissimilar from the type of claim *properly* actionable under Section 13.03, subd. 2(a). In Webster v. Hennepin County, the Supreme Court considered whether a county's established procedures were sufficient to insure an appropriate and prompt response to a data request when the county's response came several months after the initial request. 910 N.W.2d 420, 424-25 (Minn. 2018). The county conceded that its response was not prompt and based on that concession, the court explained that the county's procedures obviously failed to insure an appropriate and prompt response. Id. at 431-32.

The OAG's policies and procedures ensured an appropriate and prompt response. Plaintiff's claim identifies no relevant deficiency and rests on a separate claim regarding the alleged misclassification of data – of which the Court takes no position other than to reiterate that the data classification system under the MGDPA can allow for crossover amongst various subsets and can include multiple subsets for a particular piece of data. Again "the [MGDPA] classification system 'often results in more than one category and classification for every piece' of government data." Energy Policy Advocates v. Ellison, 980 W.W.2d 146, 162 (Minn. 2022) citations omitted. There is no genuine issue of material fact regarding any alleged violation of Minn. Stat. § 13.03, subd. 2(a), making summary judgment appropriate, and any such claim fails as a matter of law and is dismissed with prejudice.

Plaintiff further alleges that the OAG has destroyed and not kept Microsoft Teams data shared among OAG employees which would be responsive to Plaintiff's data request because of the OAG's 30-day Microsoft Teams data retention policy, in violation of the MGDPA. Plaintiff asks the Court to declare that the 30-day period violates the MGDPA by causing destruction of government data in an unreasonably short period of time.

To the extent Plaintiff alleges that Teams data were improperly destroyed following Plaintiff's request, it is undisputed that the OAG conducted an initial data search on the date of Plaintiff's request. This data search included a search of Teams data, and as such, all responsive data were preserved.

To the extent Plaintiff alleges that the OAG was, and is, obligated to maintain Teams messages for *any* period of time, the claim fails. The OAG's practice of retaining Teams messages for a period of 30 days comports with its obligations to maintain official records for a minimum period prescribed by the OAG's records retention schedule.

The MGDPA does not prescribe any length of time that the OAG must maintain its data. Instead, different laws govern retention. While the MGDPA regulates "the collection, creation, storage, maintenance, dissemination, and access to government data," a government entity's obligations regarding the maintenance and destruction of data are governed by a combination of the Official Records Act, Minn. Stat. § 15.17, which governs the creation and maintenance of official records, and the Government Records Act, Minn. Stat. § 138.17, which governs the retention and destruction of official records.

The Official Records Act requires government entities to "make and preserve all records necessary to a full and accurate knowledge of their official activities." Minn. Stat. § 15.17, subd. 1. The Minnesota Supreme Court has explained that not every piece of data is an official record because "official activities" concern "official actions" rather than the process leading to those actions. Kottschade v. Lundberg[5], 160 N.W.2d 135, 137-38 (Minn. 1968), *superseded by*

[5] Despite Plaintiff's argument to the contrary, Kottschade remains binding precedent to determine what data qualify as official records that must be created and retained per retention schedules. These records are limited to "information pertaining to an official decision" and exclude "information relating to the process by which such a decision was reached." Kottschade, 160 N.W.2d at 137. The MGDPA did not abrogate Kottschade; rather, it replaced the Official Records Act's access provision without defining official records. See Halva v. Minn. State Colls. & Univs., 953 N.W.2d 496, 506 (Minn. 2021).

statute on other grounds by Minn. Stat. ch. 13. "[A]ll that need be kept of record is information pertaining to an official decision, and not information relating to the process by which such a decision was reached." Id. at 138.[6]

Similarly, the Government Records Act excludes from its definition of "records" any "data and information that does not become part of an official transaction." Minn. Stat. § 138.17, subd. 1(b)(4). For government records which do document an official transaction, the Government Records Act requires government entities to retain such records for a period identified in the entity's records retention schedule, after which the data can be permissibly destroyed. Id., subd. 7.

All official records are government data, but not all data are official records. Thus, not all government data are subject to a retention schedule, and not all government data need to be maintained for a specific period of time. Teams messages are not *de facto* official records subject to retention periods. Retaining Teams messages as a matter of course for 30 days does not result in the destruction of official records. Teams messages are a format of data only – the content of that data would govern the retention of that data.

What constitutes an "official record" subject to §§ 15.17 and 138.17 depends on the whether the data document official decisions or official transactions. See Kottschade, 160 N.W.2d 137-38. Only official records, in whatever format they are maintained, are subject to a retention schedule. There is no genuine issue of material fact regarding the OAG's retention of Teams messages, making summary judgment appropriate, and any claim fails as a matter of law and is dismissed with prejudice.

[6] The supreme court has indicated that a failure to preserve official records subject to the Official Records Act is actionable under the MGDPA. Halva, 953 N.W.2d at 506-07.

The Court now will address data the OAG is required to turn over to Plaintiff because no subsets of the MGDPA and no statutes, rules or professional standards apply which would preclude access by Plaintiff to said data. The Court will address each data source as delineated by its *in camera* ("IC") document number as contained in the Joint Addendum to Briefs and *In Camera* Submissions filed January 4, 2024. The Court notes that all of the data the Court will be addressing, *infra*, are OAG internal communications, and within all of the data Scott Jensen is the subject of the data.

1) IC 3019. March 15, 2022, internal OAG email sent from an employee to themselves regarding a bill before the Senate possibly regarding "the whole Scott Jensen stuff." The OAG asserts withholding disclosure of this data on § 13.393 (Attorney/Client) grounds.

2) IC 3644. January 21, 2023, internal OAG email referencing a Scott Jensen video. The emailer from OAG provides a glib comment regarding the fame of the situation and "dealing with the paparazzi". The OAG asserts withholding disclosure of this data on §§ 13.37 (Security Information) and 13.43 (Private Personal Data) grounds.

3) IC 3645. January 21, 2023, responsive internal OAG email to IC 3644. The emailer from OAG again provides a glib response regarding "the limelight" of the situation and makes a tongue-in-cheek reference to the MNLARS issue dealt with previously by the OAG. The OAG asserts withholding disclosure of this data on §§ 13.37 (Security Information) and 13.43 (Private Personal Data) grounds.

4) IC 3653. February 1, 2023, internal OAG email referencing certain voicemails about Scott Jensen and "name calling". The emailer from OAG indicates they were sending the email regarding derogatory voicemails to Human Resources who was keeping track of the derogatory voicemails. The OAG asserts withholding disclosure of this data on §§ 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) and 13.43 (Private Personal Data) grounds.

5) IC 3656. February 1, 2023, internal OAG email string regarding a voicemail referencing Scott Jensen and being quite critical of the OAG "going after" Dr. Jensen, along with a transcription of the voicemail, and any possible response from the OAG when these voicemails come into their office. The OAG asserts withholding disclosure of this data on §§ 13.393 (Attorney/Client) and 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) and 13.601 (Correspondence with Elected Officials) grounds.

6) IC 3661. February 2, 2023, internal OAG email regarding a voicemail referencing

Scott Jensen and extremely critical of the COVID vaccine, along with a transcription of the voicemail. The emailer from OAG indicates this is a "hot topic right now". The OAG asserts withholding disclosure of this data on §§ 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) and 13.601 (Correspondence with Elected Officials) grounds.

7) IC 3664. February 2, 2023, internal OAG email string regarding a voicemail referencing Scott Jensen and being extremely critical of the OAG "going after" Dr. Jensen, along with a transcription of the voicemail. The emailer from OAG indicates the OAG would not be calling people back who leave similar critical voicemails, and would only be filing the voicemails/transcription. The OAG asserts withholding disclosure of this data on §§ 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) and 13.601 (Correspondence with Elected Officials) grounds.

8) IC 5232. March 15, 2023, internal OAG Microsoft Teams post regarding Scott Jensen's social media use and new hate calls. The OAG asserts withholding disclosure of this data on §§ 13.37 (Security Information) and 13.43 (Private Personal Data) grounds.

9) IC 5360. April 27, 2023, internal OAG Microsoft Teams post regarding ID badges and Scott Jensen's specific badge, wherein Dr. Jensen wanted his 1st name and last initial only on his badge due to social media and protection issues. The OAG Microsoft Teams poster indicated that the office was cooperating with Dr. Jensen to make sure his ID badge was as requested. The OAG asserts withholding disclosure of this data on §§ 13.37 (Security Information) and 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) grounds.

10) IC 5409. March 21, 2021, internal OAG email sent from an employee to themselves regarding a Minnesota DFL flyer critical of Scott Jensen and public health misinformation. The OAG asserts withholding disclosure of this data on § 13.393 (Attorney/Client) grounds.

11) IC 5425. May 14, 2021, internal OAG email sent from an employee to themselves regarding a Scott Jensen tweet. The OAG asserts withholding disclosure of this data on § 13.393 (Attorney/Client) grounds.

The Court will briefly re-address Energy Policy Advocates, § 13.393(Attorney/Client) and § 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) because the grounds which allow for withholding the majority of the data from Plaintiff in this matter do not apply to the documents the Court is ordering be produced. Again, Attorney Data is exempt from the provisions of the MGDPA when government attorneys are acting in a professional capacity

for a government entity, and instead those government attorneys are governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility. See Minn. Stat. § 13.393 (Attorney/Client), Energy Policy Advocates v. Ellison, 980 N.W.2d 146, 151-52, 154 (Minn. 2022). Even though "attorney-client privilege may apply to protect the confidentiality of internal communications among attorneys in public law agencies" (Energy Policy Advocates, 980 N.W.2d at 150; and at 155) (emphasis added), and the common interest doctrine extends to attorney work-product [in a public law agency] (Energy Policy Advocates, 980 N.W.2d at 153), the propriety of the application of the attorney client privilege (and by definition Minn. R. Prof. Conduct 1.6 attorney-confidentiality and work-product) within internal communications of the OGA should be assessed by a "fact-intensive" inquiry (Energy Policy Advocates, 980 N.W.2d at 155-56). Simply put, not all internal communications in the OGA are protected by attorney-client, Rule 1.6 attorney-confidentiality, work product, or any other statute, rule or professional standard. And regarding § 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) collected by the OGA, that data is still accessible to the individual subject of that data. See Energy Policy Advocates, 980 N.W.2d at 158; Minn. Stat. § 13.02, Subd. 12.

IC 3019 is an internal OAG email sent from an employee to themselves regarding a bill before the Senate possibly regarding "the whole Scott Jensen stuff." The OAG asserts withholding disclosure of this data on § 13.393 (Attorney/Client) grounds alone. Nothing in this data would qualify as attorney-client, attorney-confidentiality, work product, or any other provision precluding the MGDPA from requiring access. Nothing in the email suggests the government attorney here was acting in a professional capacity for a government entity. This email is not protected and should be released. The same reasoning is true for IC 5409 and IC

5425 (both data where the OAG asserts withholding disclosure of this data on § 13.393 Attorney/Client grounds alone). Regarding all three (3) of these data sets, to the extent that there is private personal data (identifying information) in these data sets, the OAG shall redact that information before turning over to Plaintiff.

IC 3644 and IC 3645 are an internal OAG e-mail and a response to that email referencing Scott Jensen. The OAG asserts withholding disclosure of this data on §§ 13.37 (Security Information) and 13.43 (Private Personal Data) grounds for both data sets. To the extent that there is private personal data (identifying information) in these data sets, the OAG shall redact that information before turning over to Plaintiff. There is no security information contained in these data sets.

IC 3653 is an internal OAG email referencing certain voicemails about Scott Jensen and "name calling". The OAG asserts withholding disclosure of this data on §§ 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) and 13.43 (Private Personal Data) grounds. To the extent that there is private personal data (identifying information) in these data sets, the OAG shall redact that information before turning over to Plaintiff. Although this arguably contains § 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) private data, that data is accessible to the individual subject of that data (Jensen) – again see Energy Policy Advocates, 980 N.W.2d at 158; Minn. Stat. § 13.02, Subd. 12.

IC 3656 is an internal OAG email string regarding a voicemail referencing Scott Jensen, along with a transcription of the voicemail, and any possible response from the OAG. The OAG asserts withholding disclosure of this data on §§ 13.393 (Attorney/Client), 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) and 13.601 (Correspondence with Elected Officials) grounds. With regard to § 13.393 (Attorney/Client), even though this email string

purports to be between government attorneys acting in their professional capacity for a government entity, nothing in this data would qualify as attorney-client, attorney-confidentiality, work product, or any other provision precluding the MGDPA from requiring access. There is no ongoing investigation at this point, no contact with a client, no policy forming, no legal advice proffered, no work-product, no preparation for litigation, etc. Regarding § 13.65 (Administrative & Policy Data Not Evidencing Final Public Action), Scott Jensen is the subject of the data and is allowed access. Same with § 13.601 (Correspondence with Elected Officials). To the extent that there is private personal data (identifying information) in this data set, the OAG shall redact that information before turning over to Plaintiff.

IC 3661 and IC 3664 are similar to IC 3656 and are both internal OAG email strings regarding a voicemail referencing Scott Jensen, along with a transcription of the voicemail, and any possible response or lack thereof from the OAG. The OAG asserts withholding disclosure of this data on §§ 13.65 (Administrative & Policy Data Not Evidencing Final Public Action) and 13.601 (Correspondence with Elected Officials) grounds. Similar to IC 3656, Scott Jensen is the subject of the data and is allowed access. For both of these data sets, to the extent that there is private personal data (identifying information) in these data sets, the OAG shall redact that information before turning over to Plaintiff.

IC 5232 is an internal OAG Microsoft Teams post regarding Scott Jensen's social media use and new hate calls. The OAG asserts withholding disclosure of this data on §§ 13.37 and 13.43 (Private Personal Data) grounds. To the extent that there is private personal data (identifying information) in this data set, the OAG shall redact that information before turning over to Plaintiff. There is no security information contained in these data sets.

Finally, IC 5360 is an internal OAG Microsoft Teams post regarding ID badges and Scott Jensen's specific badge. The OAG asserts withholding disclosure of this data on §§ 13.37 (Security Information) and 13.65 (Administrative & Policy Data Not Evidencing Final Public Action)) grounds. Scott Jensen is the subject of the data and is allowed access. To the extent that there is private personal data (identifying information) in this data set, the OAG shall redact that information before turning over to Plaintiff. There is no security information contained in this data set.

The Court is reserving Plaintiff's claims for damages, fees, costs, disbursements, or penalties and Defendants' argument regarding their liability, if any, under Minn. Stat. § 13.08. Those arguments are premature, and the Court is in no position to assess rationale for assessing damages against the OAG. To the extent that Plaintiff asserts any intent or malice on the part of the OAG, none has been shown through the Court's *in camera* review of the data in question. This case shall proceed to trial, with mandatory ADR first being attempted.

J.B.C.