OAH 5-0305-38230

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Alan Yelsey, Complainant, v. City of Shorewood, Respondent.	**NOTICE OF PROBABLE CAUSE DETERMINATION** **AND** **ORDER FOR PREHEARING CONFERENCE AND EVIDENTIARY HEARING**

On March 15, 2022, Alan Yelsey (Complainant) filed a data practices complaint (Complaint) with the Office of Administrative Hearings alleging the City of Shorewood (Respondent) violated the Minnesota Government Data Practices Act (MGDPA). This case has been assigned to Administrative Law Judge Jim Mortenson for a probable cause review and the City of Shorewood (Respondent) was notified of the Complaint on March 16, 2022.

Alan Yelsey represents himself, without legal counsel. Jana O'Leary Sullivan, League of Minnesota Cities, represents Respondent.

On March 21, 2022, Respondent filed a request for a short extension of the deadline to respond to the Complaint. On March 22, 2022, the Judge granted the Respondent's request for an extension to April 13, 2022. Respondent served its Response to Complainant on April 13, 2022.

Based on the Complaint, the Response, in accordance with Minn. Stat. § 13.085, subd. 3 (2020), and for the reasons explained in the memorandum below,

IT IS HEREBY ORDERED:

1. The Complaint and Response fail to establish a reasonable belief that the Respondent violated Minn. Stat. § 13.025, subd. 1 (2020). This issue is **DISMISSED**.[1]

[1] Complainant has the right to petition the Chief Administrative Law Judge for reconsideration of this dismissal. A petition for reconsideration must be filed no later than five (5) business days after receipt of this Order. If the Chief Administrative Law Judge determines that the assigned Judge made a clear material error, the Chief Administrative Law Judge will require this issue to be heard, as provided in Minn. Stat. § 13.085, subd. 4 (2020). If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this Order is the final decision on the dismissed issue under Minn. Stat. § 13.085, subd. 5(d) (2020), and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69 (2020).

2. The Complaint and Response establish a reasonable belief that the Respondent violated Minn. Stat. § 13.03, subds. 1, 2, 3 (2020).

3. Therefore, the Complaint will proceed to a hearing on whether Respondent failed to: 1) keep records containing government data in such arrangement and condition as to make them easily accessible for convenient use; 2) ensure that requests for government data are received and complied with in an appropriate and prompt manner; and 3) permit Complainant to inspect and copy public government data at reasonable times and places and without unauthorized charge, and upon request, inform Complainant of the data's meaning.

4. A telephone prehearing conference will be held on **Tuesday**, **May 10, 2022**, at **9:00 a.m.** At the appointed hour, the parties are directed to:

a. Call **1-888-742-5095** and, when prompted,

b. Enter Conference Code: **685 684 1864#**.

5. The dates and times of the evidentiary hearing will be determined at the prehearing conference.

6. **Failure to appear for the prehearing conference without the permission of the Judge will result in a default. Upon default the matter may be determined adversely to the defaulting party, pursuant to Minn. R. 1400.6000 (2021).**

Dated: May 3, 2022

JAMES R. MORTENSON
Administrative Law Judge

MEMORANDUM

A complaint alleging a violation of the MGDPA may be filed with the Office of Administrative Hearings.[2] Upon the filing of a data practices complaint, an administrative law judge must conduct a probable cause review.[3] If the judge determines that the complaint and any timely response do not present sufficient facts to believe that a violation occurred, the complaint must be dismissed. However, if the judge determines that the complaint and response present sufficient facts to believe that a violation of the MGDPA has occurred, the judge must schedule a hearing.

The purpose of a probable cause determination is to ascertain whether, given the facts submitted by the parties, it is fair and reasonable to hear the matter on the merits.[4] A judge's function in a probable cause determination is simply to determine whether the initial facts establish a reasonable belief that the governmental entity committed a data practices violation.

Complainant has been seeking data from Respondent concerning certain city land use, referred to as the Smithtown Ponds Project (Project). The Project abuts Complainant's property.[5]

Complainant has made multiple requests for data from Respondent regarding the Project since at least August 11, 2021. Complainant raises issues concerning data requests made August 11, September 16, October 13 and 22, November 4, 9, and 16, 2021, March 10, 2022, and a request for clarification made on March 9, 2022.[6]

According to Respondent, it has complied with Complainant's numerous data requests, but Complainant is often not satisfied with how Respondent provides the data. Specifically, Respondent claims Complainant is ultimately attempting to have all data regarding the Project placed on Respondent's website.[7] Respondent also argues that any charges for data were permissible, and further, that given the numerous and extensive data requests made by Complainant, the responses were reasonable in timing.[8]

The alleged facts do not demonstrate that, if proved, Respondent violated Minn. Stat. § 13.025, subd. 1. Complainant lists Minn. Stat. § 13.025, subd. 1 as a provision of law Respondent violated.[9] This subdivision concerns a responsible government authority's duty regarding the maintenance of private and confidential data in the entity's possession.[10] No facts are alleged, however, relating to private or confidential data. All of Complainant's claims concern public data about a land use

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[2] Minn. Stat. § 13.085, subd. 2 (2020).
[3] *Id*., subd. 3(a).
[4] *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).
[5] Complainant's (Comp.) Exhibit (Ex.) 3.
[6] Complaint at 5-10 (Mar. 11, 2022).
[7] Response at 6 (Apr. 13, 2022).
[8] *Id.* at 8.
[9] Complaint at 1.
[10] *See* Minn. Stat. § 13.025, subd. 1.

project. Thus, there is no probable cause to proceed to a hearing on any claim regarding Minn. Stat. § 13.025, subd. 1.

Complainant also cites Minn. Stat. § 13.03, subds. 1, 2 and 3 (2020) as provisions of law Respondent has violated.[11] Complainant sets forth numerous instances in some detail which he claims demonstrate violations of these provisions.[12] Respondent disputes that there have been any violations. The evidence each party provides to support its position is less than clear when considered as a whole. It is enough that Complainant's claims, if true, may establish one or more violations of the MGDPA. The evidence will need to be entered into the record and examined in a methodical fashion in order to determine whether the claimed violations actually occurred. Thus, the issues concerning Minn. Stat. § 13.03, subds. 1, 2, and 3 will proceed to hearing.

J. R. M.

[11] Complaint at 1.
[12] Complaint at 5-10.