OAH 22-0305-40533

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

C.T. Marhula,

Complainant,

vs.

ORDER DENYING PETITION FOR RECONSIDERATION

City of Bemidji,

Respondent.

On December 26, 2024, C.T. Marhula (Complainant) filed a Data Practices Complaint (Complaint) with the Office of Administrative Hearings. Complainant alleges that the City of Bemidji (Respondent) violated the Minnesota Government Data Practices Act (MGDPA or Act)[1] by not responding to Complainant's public data request within a reasonable amount of time. Respondent timely responded to the Complaint (Response).

After reviewing the Complaint, supporting materials, and Respondent's Response, Administrative Law Judge Christa L. Moseng determined that the record did not present sufficient facts to establish probable cause to believe that a violation of the MGDPA occurred. Accordingly, Judge Moseng dismissed the Complaint.

Complainant timely filed a petition for reconsideration of the Order of Dismissal (Petition) with the Chief Administrative Law Judge, pursuant to Minn. Stat. § 13.085, subd. 3(c).

Complainant appears without legal counsel. Morgan K. Azbill and Robert J. Kringler, Flaherty & Hood, P.A., appear on behalf of the Respondent City.

Based on the record herein, and for the reasons stated in the following Memorandum, the Chief Administrative Law Judge makes the following:

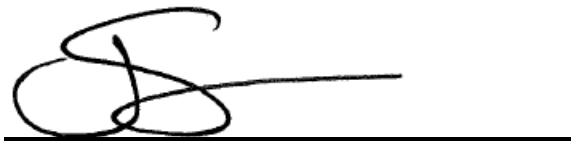
[1] Minn. Stat. §§ 13.01–.99 (2024).

ORDER

IT IS HEREBY ORDERED THAT:

Complainant's Petition for Reconsideration is **DENIED.**

Dated: February 27, 2025



JENNY STARR
Chief Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 13.085, subd. 5(d), this order is the final decision in this case. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63–.69 (2024).

MEMORANDUM

A. Procedural and Factual Background

Complainant filed a Complaint on December 26, 2024.[2] The Complaint alleged that Complainant submitted a public data request to Respondent on November 19, 2024.[3] Attachment 1A to the Complaint appears to show an email addressed to "Michelle Miller" sent on November 19 at 12:28 PM with the subject line "PD request" and the body "See attachment, thanks. CT."[4] Attachment 1B to the Complaint appears to show a completed "City of Bemidji Data Disclosure Request and Cost Calculation Form" dated November 19, 2024, requesting a "copy of report about 'city [redistricting]'".[5] The form in Attachment 1B notes that requests may be submitted via email to "cityclerk@ci.bemidji.mn.us", though Attachment 1A does not spell out the email to which the request was submitted.[6]

Complainant noted that the requested public document had previously been disclosed to another citizen and asserted that Respondent's failure to provide that already-prepared report within thirty days was unreasonable.

[2] Complaint (Dec. 26, 2024).
[3] *Id.* at 4.
[4] Complaint Ex. 1A.
[5] Complaint Ex. 1B.
[6] Complaint Exs. 1A, 1B.

Respondent argued that it did not receive the request and therefore did not fail to comply with it.[7] In support, Respondent provided an affidavit from the responsible authority, Michelle Miller, attesting that Respondent never received the email depicted in Complainant's Attachment 1A, nor any email from Respondent on November 19, 2024.[8] Respondent noted that the responsible authority did receive nine other emails from Complainant between November 20, 2024, through December 26, 2024, which it provided as Exhibit B and which included other data requests with which Respondent complied.[9] Respondent further asserted that the City completed an investigation using its information services department to assess whether Complainant's submission was ever received, and did not find evidence of that email.[10] Finally, Respondent provided the requested report as Exhibit D.[11]

Complainant submitted a Reply on January 30, 2025, indicating that consultation with Complainant's email provider and Geek Squad supported a conclusion that Complainant did send the email depicted in Attachment 1A.[12]

On February 6, 2025, Judge Moseng issued an Order finding no probable cause to believe that Respondent violated the MGDPA as alleged and dismissing the Complaint.[13] On February 12, 2025, Complainant filed a Petition for Reconsideration.[14]

B. Reconsideration Argument

In the Petition, Complainant identifies three alleged errors made in dismissing the Complaint that Complainant contends warrant granting reconsideration and a remand for hearing.[15] First, Complainant alleges that Judge Moseng erroneously declined to consider Complainant's Reply.[16] Second, Complainant alleges that Judge Moseng's decision is internally inconsistent and suggests that if the responsible authority received the nine other emails from Complainant, it defies logic that the responsible authority did not receive the email depicted in Attachment 1A.[17] Third, Complainant argues strict scrutiny should apply given the nature of the document subject to the data request.[18]

C. Analysis and Conclusion

Requests for reconsideration may only be granted if the Chief Administrative Law Judge determines that the assigned administrative law judge made a "clear material error"

[7] Response (Jan. 14, 2025).
[8] *Id.* at 1; *see* Response Ex. A.
[9] Response at 1; *see* Response Ex. B.
[10] Response at 2; *see* Response Ex. C.
[11] Response Ex. D.
[12] Reply (Jan. 30, 2025).
[13] Order of Dismissal (Feb. 6, 2025).
[14] Petition.
[15] *Id*.
[16] *Id.* at 2.
[17] *Id.* at 3.
[18] *Id.* at 4–5.

in dismissing a complaint for lack of probable cause.[19] If a reconsideration request is granted, the assigned administrative law judge must set the matter on for hearing.[20]

After reviewing the Petition and the underlying record, the Chief Administrative Law Judge finds Complainant has failed to demonstrate that Judge Moseng made a clear material error in dismissing the Complaint for lack of probable cause. Judge Moseng dismissed the Complaint because the facts presented in the Complaint and Response did not establish probable cause that Respondent violated the Act.[21]

1. The Record

Complainant argues that Judge Moseng committed clear material error in interpreting the statute defining the record for the probable cause determination.[22] The probable-cause-review subdivision defines the record for this stage as "the complaint and any timely response of the respondent agency."[23] Judge Moseng limited probable-cause review to the Complaint and the Response, relying on that statutory language.[24] Judge Moseng complied with the plain language of the statute and in so doing did not commit clear material error.[25]

2. Inconsistencies

Complainant argues that Judge Moseng's order is internally inconsistent.[26] In support of this assertion, Complainant asserts that it is inconsistent to state that the Complaint is not frivolous or harassing, but that there is also not probable cause to believe Complainant submitted the data request.[27] A complaint is not frivolous or harassing simply by virtue of lacking probable cause – an error in understanding can lead to a lack of probable cause without frivolity or harassment.[28] The conclusions that Complainant did not meet the probable cause burden, but were not frivolous are not logically inconsistent or erroneous.

Complainant asserts that if the responsible authority received Complainant's emails on other occasions, the responsible authority must have received the email in Attachment 1A as well.[29] But this claim is pure conjecture. The record does not show to what email address Attachment 1A was sent. Additionally the City produced evidence

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[19] Minn. Stat. § 13.085, subd. 3(c).
[20] *Id*.
[21] Order of Dismissal.
[22] Petition at 2.
[23] Minn. Stat. § 13.085, subds. 3(a)(1), 3(a)(2).
[24] Order of Dismissal at 1 n.3. Judge Moseng further noted that the Reply, if considered, would not change the outcome of the decision. *Id.* at 7 n.45.
[25] *See 328 Barry Ave., LLC v. Nolan Properties Grp., LLC*, 871 N.W.2d 745, 750 (Minn. 2015) ("[W]e cannot add words to an unambiguous statute under the guise of statutory interpretation."); Minn. Stat. § 645.16 (2024) (requiring plain-meaning application of a statute when its meaning is unambiguous).
[26] Petition at 2–3.
[27] *Id.* at 3.
[28] *See generally, Swanson v. Parkway Estates Townhouse Ass'n,* 567 N.W.2d 767, 769 (Minn. Ct. App. 1997) (simply because a legal argument is not "persuasive" does not mean it was "frivolous or harassing").
[29] *Id.*

that an information services investigation could not locate the email as received by the appropriate recipient.[30] In light of the probable-cause standard and the evidence in this record, Complainant has not shown clear material error in Judge Moseng's determination.[31]

3. Strict Scrutiny

Complainant argues for the first time in the Petition that access to government data in matters implicating elections or redistricting requires a heightened standard of review.[32] Minnesota law sets forth the standards under which data practices complaints must proceed. Minnesota Statute section 13.085, subdivision 3, provides for a preliminary determination of whether a complaint and any response "present sufficient facts to believe that a violation of this chapter has occurred."[33] The subdivision deems this a "probable cause review."[34] The law does not provide for a different standard or process based on the nature of the document requested. Complainant has not shown that Judge Moseng erred by applying the statute set forth in statute.

4. No Clear Material Error

Judge Moseng did not commit clear material error in dismissing the Complaint and the Petition for Reconsideration is denied.

J. S.

[30] Complaint Ex. 1A; Response Exs. A, C.
[31] Complainant also appears to argue that the Respondent's provision of the requested report in an exhibit to its Response is untimely compliance with the statute. Petition at 3. Reconsideration is bound by the allegations pleaded in the complaint and addressed by the ALJ, and this Order does not consider this new allegation of noncompliance.
[32] Petition at 4–5.
[33] Minn. Stat. § 13.085, subd. 3(a).
[34] *Id.*, subd. 3.