

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Marshall Helmberger,

Complainant,

v.

Johnson Controls, Incorporated

Respondent

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on November 11, 2011.

Mr. Helmberger alleged that Respondent Johnson Controls, Incorporated (Johnson Controls) violated the Minnesota Government Data Practices Act by denying him access to a copy of a certain subcontract between Johnson Controls and Architectural Resources, Incorporated (Architectural Resources or ARI).

Complainant Marshall Helmberger appeared at the evidentiary hearing on his own behalf and without counsel. David L. Lillehaug and Christopher A. Stafford, of Fredrikson & Byron P.A., appeared on behalf of Johnson Controls. Steven R. Lindemann, Leonard, Street & Deinard, P.A., appeared on behalf of Architectural Resources.

STATEMENT OF ISSUES

(1) Did Mr. Helmberger establish that as a result of the duties Johnson Controls assumed under its contract with Independent School District 2142, dated February 25, 2010, Johnson Controls was performing a “governmental function”?

(2) Did Mr. Helmberger establish that Johnson Controls violated the Minnesota Government Data Practices Act by refusing to disclose a copy of the Johnson Controls-ARI subcontract?

The Administrative Law Judge concludes that Mr. Helmberger did not establish that when it was undertaking project management, construction and architectural services relating to school buildings in New Independence Township and Field Township, Minnesota, Johnson Controls was performing a “governmental function” as

described in Minn. Stat. § 13.05, subd. 11(a). Additionally, Mr. Helmberger did not establish that either the contract between Johnson Controls and the School District, or the Data Practices Act, requires disclosure of copies of Johnson Controls' subcontracts to members of the public.

Under these circumstances, it is proper to grant Johnson Controls' motion for judgment as a matter of law.

Based upon the record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Contract Between Johnson Controls and the School District

1. By way of a set of agreements dated February 25, 2010, Independent School District 2142 (School District) contracted with Johnson Controls for project management, construction and architectural services relating to schools in New Independence Township and Field Township, Minnesota.¹

2. In the contract documents School District officials declared that it is "agreed and understood that the [District] does not represent that it is knowledgeable in architecture or other professional disciplines involving construction"²

3. In its agreement with Johnson Controls, the School District retained for itself the authority to set the budgeting and scheduling for the project and the features of the schools that were to be constructed.³

4. Under the contract, Johnson Controls is "entitled to use Subconsultants to assist JCI in performing the services. It is understood by the parties that the contracts for such services are not subject to competitive bidding."⁴

5. The contract provides that if Johnson Controls or the School District receives proprietary information from the other, the party receiving the data would hold it as confidential information. Specifically, the contract states that "the receiving party shall, subject to the Minnesota Government Data Practices Act, keep such information strictly confidential"⁵

¹ Exhibit 105.

² *Id.*, at AIA Form B102 § 1.2.

³ *Id.*, at AIA Form B102 §§ 2.1 and 2.2; AIA Form B201 §§ 2.2.3, 2.2.7, 2.3.3, 2.3.4, and 2.4.5.

⁴ *Id.*, at AIA Form B102 § 1.1.

⁵ *Compare*, Ex. 105 at AIA Form B102 § 7.8 with Minn. Stat. § 13.37 (1) (b) ("Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not

6. Marshall Helmberger, Publisher and Managing Editor of the Timberjay Newspapers, submitted a request for contract-related documents to the School District under the Minnesota Government Data Practices Act (Data Practices Act).⁶

7. The School District does not now possess, nor did it request under its prime contract with Johnson Controls, a copy of the ARI subcontract.⁷

8. On March 4, 2011, Mr. Helmberger requested that Johnson Controls produce a copy of the subcontract between Johnson Controls and ARI.⁸

9. Johnson Controls refused to make the requested disclosures, asserting that it does not have a legal duty to furnish these documents to Mr. Helmberger or other members of the public.⁹

Procedural History

10. On July 27, 2011, Mr. Helmberger filed a Complaint with the Office of Administrative Hearings. In making this filing, Mr. Helmberger appeared on his own behalf and without counsel.¹⁰

11. On August 18, 2011, Johnson Controls filed a response to the Complaint.¹¹

12. By way of a letter brief dated September 6, 2011, Mark A. Anfinson, Esq., sought leave to file a reply brief on behalf of Mr. Helmberger. Mr. Anfinson began his filing: "I represent Marshall Helmberger and Timberjay Newspapers with respect to the matter referenced above."¹²

being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use"), Minn. Stat. § 13.37 (1) (b) ("The following government data is classified as nonpublic data with regard to data not on individuals ... trade secret information ...") and Minn. Stat. § 13.599 (3) ("Responses submitted by a grantee are private or nonpublic until the responses are opened. Once the responses are opened, the name and address of the grantee and the amount requested is public. All other data in a response is private or nonpublic data until completion of the evaluation process. After a granting agency has completed the evaluation process, all remaining data in the responses is public with the exception of trade secret data as defined and classified in section 13.37").

⁶ Testimony of Marshall Helmberger.

⁷ *Id.*; see also, Ex. 105 at AIA Form B102, Articles 1 and 7.

⁸ Test. of M. Helmberger; Johnson Controls' Pre-Hearing Brief at 1.

⁹ *Id.*

¹⁰ Expedited Data Practices Complaint Form, at 1 (July 27, 2011).

¹¹ Responsive Brief of Johnson Controls (August 18, 2011).

¹² Reply Brief of Mr. Helmberger, at 1 (September 6, 2011); Minn. R. 1400.7100 (5) ("If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney").

13. On September 14, 2011, the undersigned issued an Order dismissing the Complaint on the grounds that Mr. Helmberger had not presented sufficient facts to establish probable cause that a violation of the Data Practices Act had occurred. This Order was served upon Mr. Anfinson as the attorney for Mr. Helmberger.¹³

14. On September 23, 2011, Mr. Helmberger sought reconsideration of the Order of Dismissal pursuant to Minn. Stat. § 13.085, subd. 3 (c). In the transmittal letter for his Petition for Reconsideration, Mr. Helmberger asserted:

I want you to be aware that I have yet to receive any notice of the ALJ's decision in this matter. That is despite the fact that I contacted your office shortly after my case was filed and asked to have any notices or decisions related to this case directed to me at my office in Tower. While Mr. Mark Anfinson has provided me some guidance in this matter, I explained that I am, for the most part, representing myself at this point.

....

[Y]ou will notice that I am including relevant contracts that speak to the heart of the ALJs decision and I am requesting that they be made part of the record. I had properly and appropriately assumed that the contracts would enter the record at the evidentiary stage [of the proceedings] in order to address the question of governmental function.¹⁴

15. In addition to his transmittal letter, the Petition for Reconsideration filed by Mr. Helmberger likewise prayed for an evidentiary hearing. He argued: "Obviously, the extent of [Johnson Controls'] governmental role is discernible through an examination of its contracts with the school district, which is an area of exploration appropriate to an evidentiary hearing."¹⁵

16. On the same date, Mr. Anfinson, purporting to be acting as the "Attorney for Complainant" Marshall Helmberger, drafted and filed a separate Petition for Reconsideration. In that pleading, Mr. Anfinson argued that a proper disposition of the matter required "a factual examination of the nature of the relationship between the government entity and the contractor."¹⁶

¹³ Order of Dismissal, OAH Docket No. 8-0305-22159-DP (September 14, 2011); Certificate of Service of Denise Collins (September 14, 2011); Minn. R. 1400.7100 (5) ("If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney").

¹⁴ Transmittal Letter of Mr. Helmberger, at 1-2 (September 23, 2011) (emphasis added).

¹⁵ Mr. Helmberger's Petition for Reconsideration, at 1-2 (September 23, 2011) (emphasis added).

¹⁶ Mr. Anfinson's Petition for Reconsideration on behalf of Mr. Helmberger, at 5-6 (September 23, 2011) (emphasis in original).

17. On October 4, 2011, the Chief Administrative Law Judge granted Mr. Helmberger's Petition for Reconsideration. The Chief Administrative Law Judge concluded that there were "sufficient facts to establish a reasonable belief that Johnson Controls violated the Data Practices Act by refusing to disclose to Mr. Helmberger the requested subcontract."¹⁷

18. On October 6, 2011, the Chief Administrative Law Judge issued an Order remanding the matter to the undersigned for an evidentiary hearing and setting a prehearing scheduling conference.¹⁸

19. During a Pre-Hearing Conference on October 13, 2011, counsel for Johnson Controls and Mr. Helmberger offered sharply diverging views as to the scope of the evidentiary hearing and the amount of time that should be given to the parties to present their respective cases.¹⁹

20. By way of a First Pre-Hearing Order, dated October 14, 2011, the undersigned directed counsel for Mr. Helmberger to reduce his position to writing in a Motion *In Limine*. The motion would request "an order setting a 'reasonable limit on the time allowed for testimony after considering the requests of the parties'" under Minn. R. 1400.5500 (O). Under the terms of the Order, Johnson Controls would be permitted seven days to respond to any arguments that Helmberger made in support of strict limits upon hearing time.²⁰

21. Neither Mr. Helmberger, nor his counsel, filed a motion to limit the time allowed for testimony under Minn. R. 1400.5500 (O).²¹

22. *Sua sponte*, the undersigned set a subsequent Pre-Hearing Conference for November 2, 2011.²²

23. Following a discussion with counsel at the November 2 conference, the undersigned set a schedule for further proceedings. This schedule set pre-hearing deadlines for the submission of dispositive motions, exhibits and witness lists.²³

¹⁷ Order of Granting Petition for Reconsideration, OAH Docket No. 8-0305-22159-DP (October 4, 2011).

¹⁸ Notice and Order for a Prehearing Conference and Evidentiary Hearing, OAH Docket No. 8-0305-22159-DP (October 6, 2011).

¹⁹ Digital Recording, OAH Docket No. 8-0305-22159-DP (October 13, 2011).

²⁰ See *generally*, OAH Docket No. 8-0305-22159-DP.

²¹ First Pre-Hearing Order, OAH Docket No. 8-0305-22159-DP (October 13, 2011).

²² Second Pre-Hearing Order, OAH Docket No. 8-0305-22159-DP (October 25, 2011).

²³ Third Pre-Hearing Order, OAH Docket No. 8-0305-22159-DP (November 16, 2011).

24. Neither Mr. Helmberger, nor his counsel, filed a motion for summary disposition asserting that an evidentiary hearing was not needed.²⁴

25. Neither Mr. Helmberger, nor his counsel, filed a witness list or pre-labeled exhibits in accordance with the Third Pre-Hearing Order.²⁵

26. Mr. Anfinson was not present in the courtroom at the beginning of the evidentiary hearing. Likewise, he had not advised the tribunal before the hearing that he was withdrawing from the matter or otherwise unavailable.²⁶

27. At the time scheduled for the beginning of the hearing, Mr. Helmberger announced that Mr. Anfinson “was not coming.” At the time of this announcement, Mr. Helmberger did not have with him pre-labeled copies of exhibits that he sought to introduce into the record or copies of the exhibits and witness lists that were earlier-filed by Johnson Controls or ARI.²⁷

28. After summoning Mr. Anfinson by telephone, and having an on-the-record colloquy with him, the Administrative Law Judge recessed the evidentiary hearing for a period of two hours. The recess taken was for the purpose of permitting Mr. Anfinson to confer with Mr. Helmberger and, at a minimum, provide Helmberger with copies of the exhibits and witness lists that were earlier-filed by Johnson Controls and ARI.²⁸

29. Following the two-hour recess, Mr. Anfinson proposed that he remain as counsel for Mr. Helmberger, conduct direct examination of Mr. Helmberger, but be excused from attending any later proceedings. Under Mr. Anfinson’s proposal, the tribunal would interrupt the hearing and telephone him, if and when he was needed.²⁹

30. When advised that such an unorthodox and burdensome procedure would not be permitted, Mr. Anfinson withdrew as counsel for Mr. Helmberger. Mr. Helmberger undertook the evidentiary hearing on his own and without counsel.³⁰

31. At the close of Mr. Helmberger’s case-in-chief, Johnson Controls moved for judgment as a matter of law. The Administrative Law Judge granted that motion.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

²⁴ See *generally*, OAH Docket No. 8-0305-22159-DP.

²⁵ See *generally*, OAH Docket No. 8-0305-22159-DP; Minn. R. 1400.7100 (3).

²⁶ Digital Recording, OAH Docket No. 8-0305-22159-DP (January 11, 2012).

²⁷ *Id.*; Minn. R. 1400.7100 (2).

²⁸ *Id.*

²⁹ Digital Recording, OAH Docket No. 8-0305-22159-DP (January 11, 2012).

³⁰ *Id.* See *generally*, Minn. R. 1400.5800.

CONCLUSIONS

1. The Administrative Law Judge is authorized to hear this matter pursuant to Minn. Stat. § 13.085.
2. Mr. Helmberger did not establish that architectural services are traditionally performed by school districts in Minnesota.
3. Mr. Helmberger did not establish that prior to the award of the contract to Johnson Controls on February 25, 2010 architectural services were traditionally performed by the employees of Independent School District 2142.
4. Mr. Helmberger did not establish that architectural services is a “governmental function” of the School District, as those terms are used in Minn. Stat. § 13.05, subd. 11(a).
5. Mr. Helmberger did not establish that the terms of the February 25, 2010 contract between the School District and Johnson Controls required Johnson Controls to make its subcontracts available to the public.
6. Mr. Helmberger did not establish that the services contract between the School District and Johnson Controls placed Johnson Controls on notice that any subcontracts were subject to disclosure to the public.
7. After the close of Mr. Helmberger’s case-in-chief, Johnson Controls was entitled to move for an involuntary dismissal.³¹
8. Johnson Controls demonstrated that it was entitled to dismissal of the Complaint, because upon the facts and the law, Mr. Helmberger had not shown a right to relief.
9. At many times during these proceedings, including on the day of the evidentiary hearing, it was not clear whether Mr. Anfinson was appearing as counsel for Mr. Helmberger or whether Mr. Helmberger was proceeding on his own behalf and without representation. The conflicting statements on this score, and the resulting confusion, hampered efforts to efficiently develop a record for decision-making.³²
10. Minn. Stat. § 13.085, subd. 6(c) requires that the Office of Administrative Hearings refund the filing fee of a substantially prevailing complainant in full, less \$50, and that the Office of Administrative Hearings’ costs in conducting the matter shall be

³¹ See generally, Minn. R. Civ. P. 41.02 (b); *Paradise v. City of Minneapolis*, 297 N.W.2d 152, 155 (Minn. 1980).

³² See, Minn. R. 1400.5800.

billed to the respondent, not to exceed \$1,000. Because Mr. Helmberger did not substantially prevail in this matter, he is not entitled to refund of the filing fee.

11. If the administrative law judge determines that a complaint is frivolous, or brought for purposes of harassment, the judge must order that the complainant pay the respondent's reasonable attorney fees, not to exceed \$5,000. Mr. Helmberger's complaint was not frivolous or brought for purposes of harassment.

Based upon the foregoing Conclusions, and for the reasons set out in the Memorandum that follows below, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. The Complaint is DISMISSED.
2. Because the costs of the Office of Administrative Hearings in connection with this matter exceed the amount of the filing fee, Mr. Helmberger is not entitled to a refund of the filing fee under Minn. Stat. § 13.085, subd. 6 (d).
3. Because the Complaint was not frivolous or brought for the purposes of harassment, Johnson Controls is not entitled to recover reasonable attorneys fees under Minn. Stat. § 13.085, subd. 6 (e).

Dated: January 24, 2012

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

NOTICE

A party aggrieved by a final decision on a complaint filed under in Minn. Stat. § 13.085 is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Because the data that Mr. Helmberger seeks was not created, collected or maintained by the School District, this case turns upon a key question of law – namely: When Johnson Controls entered into a contract to build facilities for the School District was it undertaking a "government function" as those terms are used in Minn. Stat. § 13.05, subdivision 11(a)?

If Johnson Controls was undertaking a "government function" when performing under the construction contract, it stands in the place of the School District for purposes of the Data Practices Act. If it was not performing a "government function" while completing this work, Johnson Controls is like any other private party, and is not required to make its records available for public inspection.

The Privatization Provisions of Minn. Stat. § 13.05

Minn. Stat. § 13.05, subdivision 11 provides:

Privatization. (a) If a government entity enters into a contract with a private person to perform any of its functions, the government entity shall include in the contract terms that make it clear that all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and that the private person must comply with those requirements as if it were a government entity. The remedies in section 13.08 apply to the private person under this subdivision.

(b) This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.

As Senator Don Betzold, chief author of the measure, explained to his Judiciary Committee colleagues, he proposed the legislation so as to maintain safeguards over private data following any transfer of sensitive information from government files to private contractors. Senator Betzold remarked:

Because if [private entities] get private data that the government has maintained ... and they were to release it, there are really no consequences against the private entities for doing so.³³

In this case, the purpose described by Senator Betzold has been fulfilled. The Johnson Controls - School District contract provides that if Johnson Controls, or its subcontractors, receive nonpublic data from the School District, the contractors shall

³³ Digital Recording, Senate Judiciary Committee Meeting (March 8, 1999).

“subject to the Minnesota Government Data Practices Act, keep such information strictly confidential”³⁴

Yet, apart from Senator Betzold’s specific policy objective, the language in Minn. Stat. § 13.05, subd. 11 covers more than the handling of data that has been transferred from government agencies to private contractors. The statute also covers “data created ... by the private person in performing [governmental] functions” Under such circumstances, the statute obliges a government contractor to comply with the requirements of the Data Practices Act “as if it were a government entity.”

Mr. Helmberger argues that the subcontract between Johnson Controls and ARI is “data created” by Johnson Controls in performing governmental functions, and therefore subject to disclosure to the public under the Data Practices Act.

The Governmental Functions of Independent School District 2142

The State courts have instructed that “a function is governmental where it involves the exercise of power conferred by statute upon local agencies in administering the affairs of the state and the promotion of the general public welfare.”³⁵ As Judge Shumaker explained in *WDSI, Inc. v. County of Steele*,

While “governmental function” is not defined in the [Data Practices Act], Minnesota courts, in the context of tort liability, have held that the test for a governmental function is “whether the act is for the common good of all without the element of special corporate benefit or pecuniary profit.” In addition, “a function is governmental where it involves the exercise of power conferred by statute upon local agencies in administering the affairs of the state and the promotion of the general public welfare.”³⁶

The School District exercises the following powers conferred by statute: It must have “general charge” of “the business of the district, the school houses, and of the

³⁴ Compare, Ex. 105 at AIA Form B102 § 7.8 with Minn. Stat. § 13.37 (1) (b) (“Trade secret information” means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use”), Minn. Stat. § 13.37 (1) (b) (“The following government data is classified as nonpublic data with regard to data not on individuals ... trade secret information”) and Minn. Stat. § 13.599 (3) (“After a granting agency has completed the evaluation process, all remaining data in the responses is public with the exception of trade secret data as defined and classified in section 13.37”).

³⁵ *Mace v. Ramsey County*, 42 N.W.2d 567, 569 (Minn. 1950).

³⁶ *WDSI, Inc. v. County of Steele*, 672 N.W.2d 617, 620-21 (Minn. App. 2003) (citing *Papenhausen v. Schoen*, 268 N.W.2d 565, 569-70 (Minn.1978), *Heitman v. Lake City*, 30 N.W.2d 18, 21 (Minn. 1947) and *Mace v. Ramsey County*, 42 N.W.2d 567, 569 (Minn. 1950)).

interests of the schools thereof....³⁷ In exercising these powers, the School District may “employ and discharge necessary employees and may contract for other services....”³⁸

Under the contracts between the School District and Johnson Controls, Johnson Controls does not exercise any powers that are conferred by statute upon the District. Johnson Controls does not assume “general charge” of “the business of the district,” “the school houses,” or “the interests of the schools.” These powers and duties remain with the School District.

Likewise significant, the Legislature has not directed School Districts to undertake the kind of architectural services that are contemplated by the Johnson Controls – ARI subcontract. Because subcontracts for architectural services do not involve the “exercise of power conferred by statute,” they are not a “governmental function” as the state courts have defined this term. They are “other services” which Minn. Stat. § 123B.02 (14) provides may be obtained by contract.

Mr. Helmberger conflates contracting that is furtherance of a “public purpose,” with the much narrower category of transfers of government duties to a non-public entity. To be sure, construction of school facilities qualifies as a public purpose and justifies the expenditure of School District funds. Yet, not every disbursement of public money includes, or implies, a transfer of powers and duties conferred by statute to a private contractor. In the view of the Administrative Law Judge, the provisions of Minn. Stat. § 13.05, subd. 11, are directed at this much smaller category of contracting.

In reaching these conclusions, the Administrative Law Judge is mindful that in Advisory Opinion 11-005, the Commissioner of Administration expressed a different view as to the reach Minn. Stat. § 13.05, subd. 11 (a). The Commissioner wrote:

Pursuant to Minnesota Statutes section 123B.02, subdivision 2:

It is the duty and function of the District to furnish school facilities to every child of school age residing in any part of the district

Numerous other statutory provisions address school districts' duties and authority regarding the construction and renovation of public schools. Accordingly, JCI is performing a governmental function for the District.³⁹

While the Data Practices Act obliges state tribunals to defer to advisory opinions rendered by the Commissioner of Administration,⁴⁰ these opinions are not binding

³⁷ Minn. Stat. § 123B.02 (1).

³⁸ Minn. Stat. § 123B.02 (14).

³⁹ Advisory Opinion 11-005 (emphasis and citations omitted).

⁴⁰ Minn. Stat. § 13.072, subd. 2.

authority nor do they form “law of the case.” Therefore, in the rare circumstance that an Administrative Law Judge differs with the Commissioner on the proper reading of a statute, the Legislature permits principled differences. This is one of those rare cases.

In the view of the Administrative Law Judge, a difference of opinion is appropriate because Advisory Opinion 11-005 does not reference legislative history that would indicate that a very broad application of Minn. Stat. § 13.05, subd. 11 was intended by the Legislature, nor does the Commissioner detail the Department of Administration's own role in the development of this statutory provision. Thus, both the Commissioner and the Administrative Law Judge have read the plain words of the statute, with an eye to the manifest purposes of the Legislature, and come to different conclusions as to what the statute requires.⁴¹

While the sought-after subcontractor data is not now held by the School District, this need not be the case. If it would be useful to have this kind of data held by the purchasing agency, or to be publicly accessible, such a result can be provided for in public contracting.⁴²

Because the requested subcontractor data is not held by the School District, and the District has not transferred government functions to Johnson Controls, Mr. Helmberger is not entitled to relief under the Data Practices Act.

Procedural Matters

Because so much time and effort in these proceedings was spent wrangling over whether there would be an evidentiary hearing, and how extensive that hearing would be, a brief discussion of this part of the record is warranted.

From the date that Mr. Helmberger's request for an evidentiary hearing was granted, he and his counsel argued that any hearing which lasted more than a few hours would be unfair and burdensome. Worse still, a hearing of more than one day would fulfill the most cynical plans of government contractors. Helmberger asserted that local contractors hope to suppress data practices requests by subjecting journalists to costly court battles.

The hearing record simply does not support these claims.

⁴¹ See generally, *Johnson v. County of Anoka*, 536 N.W.2d 336, 338 (Minn. App. 1995) (“When considering questions of law, however, reviewing courts are not bound by the decision of the agency and need not defer to agency expertise”) (citing *St. Otto's Home v. Minnesota Dep't of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989)); *Communities United Against Police Brutality, v. City of Minneapolis*, 2010 WESTLAW 2035961, at *3, n. 3 (Minn. App. 2010) (unpublished) (“While we defer to the commissioner in areas within the commissioner's expertise, interpretation of case law is a matter within the courts' expertise”); *Day v. Miner*, 1998 WESTLAW 279229, at *2 (Minn. App. 1998) (unpublished) (as to the interpretation of statutes “the district court was not compelled to follow the commissioner”).

⁴² See generally, Minn. Stat. § 16C.16; Minn. Rule 1230.1820 (Required Subcontracting for Construction of Professional or Technical Services).

If copies of the Johnson Controls - School District contracts were the only items that were needed to complete the hearing record, Mr. Helmberger had many opportunities to make this point plain: He had copies of those contracts and could have included them in his original submissions;⁴³ he could have sought limits on the hearing schedule through a Motion *In Limine*, as provided in the Second Pre-Hearing Order; or he could have made a short dispositive motion before the December 30, 2011 deadline, as provided in the Third Pre-Hearing Order. Mr. Helmberger had many opportunities to narrow the proceedings and to save costs. Yet, for reasons known only to him and his lawyer, Mr. Helmberger did not avail himself of any of these opportunities.

A better understanding of the hearing record is that Mr. Helmberger and Mr. Anfinson never really worked out the matter of paying for Anfinson's legal services. From the statements both men made in open court, the "on-again - off-again" appearances by counsel, and the series of missed deadlines, it is clear that something was wrong. It appears that Mr. Anfinson was unwilling to perform the work that would have benefitted Helmberger, at the times it would have benefitted him, without payment. If that is true, it is unfortunate; but it isn't evidence of a cabal to suppress government data or a failure by this tribunal to welcome those with proper claims.

Because Mr. Helmberger did not establish that a violation of the Data Practices Act occurred, dismissal of the Complaint is the appropriate result.

E. L. L.

⁴³ Minn. Stat. § 13.085, subd. 2 (c); Transmittal Letter of Mr. Helmberger, at 1-2 (September 23, 2011) ("I am including relevant contracts that speak to the heart of the ALJs decision and I am requesting that they be made part of the record. I had properly and appropriately assumed that the contracts would enter the record at the evidentiary stage [of the proceedings]").