STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1972

Communities United Against
Police Brutality, et al.,
Respondents,

vs.

City of Minneapolis, et al.,
Appellants,

Police Officers' Federation
of Minneapolis,
Appellant.

Filed May 25, 2010
Affirmed in part and reversed in part
Klaphake, Judge

Hennepin County District Court
File No. 27-CV-09-5022

Mark R. Anfinson, Minneapolis, Minnesota (for respondents)

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Wright, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Respondent Communities United Against Police Brutality (Communities United), a nonprofit community organization that seeks to increase oversight and accountability over police agencies with respect to police brutality claims, and its president, respondent Michelle Gross, sought a declaratory judgment to clarify the classification of information maintained by appellant City of Minneapolis (the city) and its Civilian Police Review Authority (the CRA) under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2008).

Because the existence and status of a complaint against a public employee is an exception to the statute making personnel data private, we affirm the district court's determination that referral of a complaint to the chief of police and the chief's decision not to impose discipline are public data. Because any data that reflects the nature of a complaint while disciplinary action is still pending is private, we affirm the district court's determination that the fact a complaint was sustained by the CRA is private data.

But because the fact that a request for reconsideration is pending before the CRA does not disclose the nature of the complaint but reflects the status of the complaint, we reverse the district court's determination that this is private data. And because vindication of a complainant's rights under the Minneapolis ordinance presupposes that the complainant is informed when a complaint is not sustained by the CRA, we reverse the district court's decision that this is private data.

FACTS

The city established the CRA in 1991 to investigate complaints involving Minneapolis police officers. Appellant Police Officers' Federation of Minneapolis, which intervened in the action, is the certified bargaining representative of all sworn peace officers employed by the city.[1]

In 2008, the city sought an advisory opinion from the Minnesota Commissioner of the Department of Administration pursuant to Minn. Stat. § 13.072 (permitting government entity to request advisory opinion about questions relating to public access to information governed by the MGDPA), asking which complaint information maintained by the CRA pursuant to its administrative rules is public and which is private. Based on the commissioner's opinion, the city refused to release certain information that previously had been released routinely to Communities United. Communities United sought declaratory judgment that this information is publicly accessible, as well as injunctive relief, and costs, disbursements, and attorney fees.

Formerly, the CRA administrative rules permitted disclosure of the following information, which it defined as "status information":

1. The fact that complaint has been withdrawn by the Complainant.

2. The fact that a Complaint has been dismissed.

3. The fact that a Complaint is in mediation.

4. The fact that a mediation agreement has been reached.

[1] The city and the federation filed a joint appellate brief and will hereinafter be referred to as "the city."

5. The fact that a Complaint is being investigated.

6. The fact that a Complaint has been referred to a panel of the board for hearing.

7. The fact that a Request for Reconsideration to the full board is pending.

8. The fact that a complaint was not sustained or that a complaint was sustained.

9. The fact that a Complaint has been referred to the Chief.

Minneapolis R. Civ. Police Rev. Auth. 6(B)(4).

The commissioner concluded that the first six points listed above are status information that is public data. But the commissioner further concluded that points 7-9 represent private data because they disclose more than just the existence or status of a complaint; the commissioner opined that all three of these points disclose private data by permitting the public to infer before a final disposition of a disciplinary action that a complaint was found to be justified. The commissioner further commented that "once there is no possibility that the police chief will take disciplinary action . . . it is permissible for the City to inform the public that the matter is closed and no disciplinary action was taken."

The district court granted the city's motion for summary judgment in part and denied the city's motion in part. Deferring to the commissioner's advisory opinion, the district court agreed that the following is private data: (1) the fact that a request for reconsideration is pending before the CRA; (2) prior to a final disposition of disciplinary action, the fact that a complaint was sustained by the CRA; and (3) prior to final disposition of disciplinary action, the fact that a complaint was not sustained by the CRA.

But the district court concluded that the following is public data: (1) the fact that a complaint was referred to the chief of police; (2) the chief's decision to impose discipline after all appeal rights have expired;[2] and (3) the chief's decision not to impose discipline.

In reaching this decision, the district court reviewed Minneapolis, Minn., Code of Ordinances §§ 172.10-190 (Code) (2010), the enabling authority for the CRA. The CRA has a multi-step process for investigating and reviewing complaints. The following steps have been gleaned from the ordinance (Code §§ 172.70-.150):

1. Complaint filed.

2. Preliminary review to determine next step: investigation, mediation or no further activity, resulting in dismissal.

3. Referral for investigation/mediation; (all complaints are referred to mediation with a few exceptions; if mediation fails, investigation continues or the complaint is dismissed; mediation can occur at any time during the proceeding).

4. Investigation review by review authority manager.

5. Hearing by three-member panel composed of CRA members at which complainant and officer present evidence.

6. Decision by the panel to remand for further investigation or to issue a report either sustaining or not sustaining the complaint.

7. If the complaint is wholly or partially not sustained, request for reconsideration by complainant. The CRA panel can remand for more investigation or sustain the prior decision; both complainant and officer may address the panel.

8. After conclusion of hearing and reconsideration hearing, the findings and decision of the panel are referred to the chief of police.

[2] Neither party has appealed this conclusion.

In theory, the CRA is required to forward all files to the chief of police, whether the complaint is sustained or not sustained. But in practice, the CRA has typically forwarded only those files in which complaints were sustained. The CRA itself has no authority to impose discipline, which must be undertaken by the chief of police, but it is the necessary clearing house for all complaints. The chief of police makes the decision on whether to impose discipline in the case of a sustained complaint, but the chief may not alter the findings and must accept the facts as adjudicated by the CRA. Code, § 172.130. After the chief's decision, an officer has the right to a grievance procedure by virtue of the police collective bargaining agreement. Once the grievance procedure is finished, there is a final disposition, including either imposition of discipline or refusal to impose discipline.

The city appeals that part of the district court's summary judgment making certain data public; by notice of review, respondents challenge the district court's determination that certain data is private.

D E C I S I O N

If, on a motion for judgment on the pleadings, additional matters outside the pleadings are presented to and considered by the district court, the motion is treated as if for summary judgment. Minn. R. Civ. P. 12.03. Summary judgment is appropriate when, based on the record before the district court, there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. If the district court applies a statute to undisputed facts, this court reviews the decision as a

legal conclusion subject to de novo review. *Weston v. McWilliams & Assocs.*, 716 N.W.2d 634, 638 (Minn. 2006).[3]

"All government data collected, created, received, maintained or disseminated by a government entity" is public unless otherwise classified by state or federal law. Minn. Stat. § 13.03, subd. 1 (2008). Despite this presumption, all personnel data is private and not accessible except for certain data made public by statute. Minn. Stat. § 13.43, subds. 2 (public personnel data); 4 (personnel data made private) (2008). "Personnel data" includes "all data collected because the individual is or was an employee of . . . a government entity." *Id.* at subd. 1 (2008).

Certain personnel data is made public by statute. Included among these exceptions are "the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in disciplinary action," and "the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action." Minn. Stat. § 13.43, subd. 2(a)(4), (5). The issue here revolves around the definition of "status."

The statute unfortunately does not define "status." The Minnesota Supreme Court stated, "The word 'status' means a stage of progress or development." *Navarre v. South Washington County Schs.*, 652 N.W.2d 9, 22 n. 4 (Minn. 2002). The supreme court

[3] Under Minn. Stat. § 13.072, subd. 2 (2008), we defer to opinions issued by the Commissioner of the Department of Administration regarding classification of data under the MGDPA. The commissioner issued an opinion to the city regarding the issues raised in this appeal. Op. Comm'r Admin. 08-020 (Aug. 6, 2008). While we defer to the commissioner in areas within the commissioner's expertise, interpretation of case law is a matter within the courts' expertise.

contrasted "status" with "type of complaint," which is clearly private data under the statute. *Id.* at 22. Further, "[a]ny disclosure by a government entity during the investigation that describes any quality or characteristic of the complaint, whether general or specific, goes beyond the mere existence of the complaint" and therefore violates the MGDPA. *Id.* at 23.

In *Navarre*, which dealt with a school district's violations of the MGDPA during the investigation and discipline of a teacher, the supreme court carefully analyzed the school district's various pronouncements in order to distinguish between status information and type-or-nature-of-the-complaint information. Thus, the school district could safely write in a letter to parents that "numerous" complaints were made because the statute permits the disclosure of the existence of a complaint or complaints. *Id.* at 24. But the pronouncement that the complaints were "sometimes alarming" was a violation of the MGDPA. *Id.* In the beginning of the letter, the school district referred to concern about the curriculum taught by the identified teacher. The subsequent statement that these complaints were "sometimes alarming" revealed something about the nature of the complaint. *Id.* Likewise, statements about specific facts surrounding the complaints or statements that the number of complaints was "unusual" were private because they permitted inferences about the nature of the complaints. *Id.* at 25-26. Statements made at a press release that described the severity of the complaints and the specific nature of the complainants' concerns also went beyond status information. *Id.* at 26-27. Further, statements made in a press release that "kids weren't learning" and that the principal had to start teaching the class revealed more than status information. *Id.* at 28. Finally, a

letter that referred to concerns about "classroom management and instructional methods" revealed more than status information, although the reference in the same letter to the receipt of complaints and to the fact that the complaints were being investigated was status information. *Id.* at 28-29.

Bearing this analysis in mind and turning to the issues before us, we conclude that the CRA's referral of a complaint to the chief of police is status information. The scheme under the Code contemplates that all complaint files, sustained or not, are forwarded to the chief of police. As such, this is a neutral step in the process that reveals no more information about the complaint itself than a statement that a complaint exists or that a complaint is being investigated. We acknowledge that in actual practice, the CRA is forwarding only files in which a complaint has been sustained, but we must not base our decision on the CRA's refusal to abide by the terms of its enabling authority.

Similarly, the chief's decision not to impose discipline is a neutral status step in the complaint process, particularly if all files are forwarded to the chief. We come to this conclusion under Minn. Stat. § 13.43, subd. 2(a)(4); we do not view the decision not to impose discipline as a final disposition of a disciplinary action under Minn. Stat. § 13.43, subd. 2(a)(5), based on our analysis in *State v. Renneke*, 563 N.W.2d 335, 338 (Minn. App. 1997). In *Renneke*, we stated that "[t]he mere investigation of a citizen complaint, without any attempt to impose discipline on the police officer, is not a 'disciplinary action.' Even if it were, the Act makes the data public only if there is a 'final disposition.'" *Id.* But we also held that the existence and status of a complaint is public data, even when the complaint was no longer being investigated. *Id.* The decision not to

impose discipline discloses nothing about nature of the complaint but describes a step in the process; as such, it is status information.

We note that this position is supported in advisory opinions issued by the commissioner. *See, e.g.*, Op. Comm'r Admin. 08-020 (stating "the Commissioner believes it is permissible for the City to inform the public that the matter is closed and no disciplinary action was taken"; *see also* Op. Comm'r Admin. 04-047 (July 22, 2004) (stating "[T]he 'status' of a complaint against an employee means whether the complaint has been filed, is under investigation, is closed, *no discipline is imposed*, or similar descriptions of the stages in an entity's investigatory process.") (emphasis added), *and* Op. Comm'r Admin. 03-045 (Nov. 10, 2003) (opining that "status of a specific complaint" includes fact that "no disciplinary action was taken.").

Unlike the act of referral to the chief or a statement that no discipline was imposed, the CRA's decision to sustain a complaint reveals some information about the nature of the complaint. At this stage in the process, the CRA determination is preliminary in nature and not a final disposition of a disciplinary action, and thus is not public under subsection 5; but it also is something more than a neutral statement about a stage in the complaint process. Statements about "the severity of the complaints, whether they had been substantiated, the action taken against [a person] during the investigation, and the basis for such action" are violations of the MGDPA when made before final disposition of a disciplinary action. *Navarre*, 652 N.W.2d at 27. We therefore conclude that the district court did not err by holding that the CRA's decision to sustain a complaint is private data.

The district court determined that prior to the final disposition of a disciplinary action the fact that a complaint was not sustained is private data. We acknowledge that this action at least by implication suggests that a complaint is meritless, thus disclosing something about the nature of the complaint. But we are troubled because classification of this data as private effectively prevents a complainant from exercising rights under the Code.

A complainant may request that the CRA reconsider its decision not to sustain a complaint. Code, § 172.120. In order to do so, a complainant must know that the complaint has not been sustained, yet the district court's decision that this is private data means that a complainant may not be informed that a complaint has not been sustained.

The personnel data provisions of the MGDPA are meant to protect a person from disclosure of private information solely because he or she is a public employer. But as important as this privacy right is considered to be, it is not absolute. For example, if a party seeks discovery of private government data, the court may weigh the benefit of allowing access to the party seeking the data against the confidentiality interests of the subject of the data. Minn. Stat. § 13.03, subd. 6 (2008); *see also Renneke*, 563 N.W.2d at 338-39.

The city has provided a process "for the purpose of investigating allegations of misconduct on the part of officers of the Minneapolis Police Department and making findings of fact and conclusions based upon those findings of fact." Code, § 172.10. As part of that process, the complainant is given the right to request reconsideration of a decision not sustain a complaint. Code, § 172.120. Applying the same rationale as Minn.

Stat. § 13.03, subd. 6, we consider that the right to request reconsideration that the city has extended to complainants outweighs a police officer's confidentiality interest in preventing disclosure of the fact that a meritless complaint has not been sustained. We therefore conclude that the fact that the CRA has not sustained a complaint, without disclosure of any accompanying data, should be public and we reverse this aspect of the district court's decision.

Finally, the district court determined that the fact that a request for reconsideration is pending before the CRA is private data. As stated above, the complainant's request for reconsideration is one more step in the CRA's investigative process; it presupposes that the CRA has not sustained the complaint. Although this could indirectly indicate that a complaint is meritless, it gives no information about the type of complaint. In that way, it is similar to the other status information approved by the commissioner: the complaint has been withdrawn or dismissed, the complaint is in mediation or a mediation agreement has been reached, or the complaint is being investigated or has been referred to a panel of the CRA for hearing. All of this information creates an inference about the relative strength of a complaint without disclosing the nature of the complaint. We see no difference between this approved status information and the fact that a request for reconsideration is pending before the CRA. The commissioner's opinion, which makes a conclusory statement that this is not public data, provides no basis for treating this stage of the investigatory process in a manner different from the other status information. We

therefore reverse the district court's decision that the pendency of a request for reconsideration is private data.

Affirmed in part and reversed in part.