

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Communities United Against Police Brutality
Plaintiff,

vs.

City of Minneapolis
Defendant.

Case File No. 27-CV-19-20757

Case Type: Civil Other/Misc.

Judge: Bridget Sullivan

**ORDER ON MOTION FOR SUMMARY
JUDGMENT**

THIS MATTER came before the undersigned district court judge for a hearing on November 24, 2020, on Defendant's motion for summary judgment.

Appearances:

Paul J. Bosman, Esq., for Plaintiff, Community United Against Policy Brutality

Sarah C.S. McClaren, Esq., for Defendant, City of Minneapolis

SUMMARY OF THE CASE

On December 15, 2019, at 3:00 a.m., a man was shot and killed by Minneapolis police who were responding to a domestic incident that police had been told involved weapons. That man's name was Chaisher Fong Vue. The loss of his life is important and tragic. But it is not a fact that is related to this dispute. This dispute is about the names of the police officers who shot Chaisher Fong Vue.

The City of Minneapolis argues that the legal issue before the court is whether it complied with the Minnesota Government Data Practices Act ("the Act") by providing public information about the shooting within a reasonable time. The Community United Against Police Brutality argue that the legal issue is whether the City of Minneapolis kept such data

public at all times and unreasonably delayed in providing this information when it was requested. The facts are undisputed, what is in play is the interpretation of two sections of the Act.

THE UNDISPUTED MATERIAL FACTS

On Sunday, December 15, 2019, shortly after 3:00 a.m., unnamed Minneapolis police officers were involved in a critical incident resulting in the shooting death of Chaisher Fong Vue. At some unknown time after that critical incident, the City of Minneapolis made a request to the Bureau of Criminal Apprehension (“BCA”) to investigate the incident. On Monday, December 16, 2019, at approximately 7:40 am, David Bicking, on behalf of Community United Against Police Brutality (“CUAPB”) submitted a request for data related to this critical incident under Minnesota Statutes section 13.82, subdivision 2. *See* Exh. A to the Complaint. Bicking asked for all the data elements listed in Minnesota Statutes section 13.82, subdivision 2 and submitted his request through the Minneapolis Police Department Data Practices Request online portal.¹ Bicking also sent the request by email to Casey Carl, Minneapolis Data Practices Responsible Authority.

On December 17, 2019, at approximately 11:48 a.m., Katherine Knudsen of the Minneapolis Police Department Records Information Unit sent a response email. *See* Exh. B to the Complaint, “Knudsen Email.” The Knudsen Email read: “All data regarding case 19-367701 will be posted on the website....data will be posted as it becomes available.” At the time of this initial response, the City of Minneapolis did not publish the names of the police officers involved in the shooting. Then, sometime on December 18, 2019, the City posted information it received from the BCA about the incident on its public website. This second response also omitted the

¹ This portal can be found at <http://www.ci.minneapolis.mn.us/police/records/WCMS1P-148183>.

officers' names because, according to the City, "the BCA, the investigating agency, had not yet released these names." See Exh. C to Krystosek Declaration at pg. 1. This second response also omitted several requested data elements referenced in subdivision 2 (b), (d)-(f), (j), and (l) of the statute. See Exh. C to the Complaint, "General Offense Public Information Report."

After receiving this second response, the CUAPB, filed its Complaint later that same day as well as a motion for a temporary injunction seeking release of the names of the officers involved.² Then, later in the day on December 18, 2019, the City of Minneapolis published the names of the officers because, according to the City, "the BCA identified the officers involved in this incident." See Defendant's Memorandum in Support of Motion for Summary Judgment, dated October 27, 2020, at 3.

ANALYSIS

Summary judgment is appropriate when there exist no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. The burden of proof is on the moving party, and the evidence must be viewed in the light most favorable to the nonmoving party. *Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981).

The two sections of the Government Data Practices Act relevant here provide:

13.03 ACCESS TO GOVERNMENT DATA.

Subdivision 1. Public data.

All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential. The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use....

Subdivision 3. Request for access to data.

² The Plaintiff CUAPB then withdrew its request for injunctive relief.

(a) Upon request to a responsible authority or designee, **a person shall be permitted to inspect and copy public government data at reasonable times and places**, and, upon request, shall be informed of the data's meaning. If a person requests access for the purpose of inspection, the responsible authority may not assess a charge or require the requesting person to pay a fee to inspect data.

Minn. Stat. §13.03 (emphasis added)

13.82 COMPREHENSIVE LAW ENFORCEMENT DATA.

Subdivision 1. Application.

This section shall apply to agencies which carry on a law enforcement function, including but not limited to municipal police departments....

Subd. 2. Arrest data.

The following data created or collected by law enforcement agencies which document any actions taken by them to cite, arrest, incarcerate or otherwise substantially deprive an adult individual of liberty **shall be public at all times in the originating agency:**

- (a) time, date and place of the action;
- (b) any resistance encountered by the agency;
- (c) any pursuit engaged in by the agency;
- (d) whether any weapons were used by the agency or other individual;
- (e) the charge, arrest or search warrants, or other legal basis for the action;
- (f) the identities of the agencies, units within the agencies and individual persons taking the action;
- (g) whether and where the individual is being held in custody or is being incarcerated by the agency;
- (h) the date, time and legal basis for any transfer of custody and the identity of the agency or person who received custody;
- (i) the date, time and legal basis for any release from custody or incarceration;
- (j) the name, age, sex and last known address of an adult person or the age and sex of any juvenile person cited, arrested, incarcerated or otherwise substantially deprived of liberty;

(k) whether the agency employed a portable recording system, automated license plate reader, wiretaps or other eavesdropping techniques, unless the release of this specific data would jeopardize an ongoing investigation;

(l) the manner in which the agencies received the information that led to the arrest and the names of individuals who supplied the information unless the identities of those individuals qualify for protection under subdivision 17; and

(m) response or incident report number.

Minn. Stat. §13.82 (emphasis added).

In its case for summary judgment, the City focuses solely on its obligation to provide the data at a “reasonable time and place,” the phrase used in Section 13.03, subdivision 3:

Minnesota law sets “reasonableness” as the standard cities must meet when responding to this type of data practices request. The law requires that public data be made available for inspection at a reasonable time and place. Minn. Stat. § 13.03, subd. 3(a)...Minn. Stat. § 13.03 sets forth a data request as “the triggering event that obligates a governmental unit to disclose requested public data: ‘Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places.’ ” *Scheffler v. City of Anoka*, 890 N.W.2d 437, 444 (Minn. App. 2017) (quoting Minn. Stat. § 13.03, subd. 3(a)). If the City is not able to provide copies at the time a request is made, copies shall be supplied “as soon as reasonably possible.” Minn. Stat. § 13.03, subd. 3(c)....

See Defendant’s October 27, 2020 Memorandum at pgs. 7-8.

Curiously, the City implicitly admits that it waited to release the data: “the requested data was provided three days after the date of the incident, *as soon as* the investigating agency, the BCA, disclosed the remaining data...” *Id.* at 8 (emphasis added). While the factual record may show that very little time that elapsed between the BCA’s disclosure of the data and the City’s disclosure of the data to the public, there are no facts to determine how much time elapsed between the time the City possessed this public data and when it disclosed it to the CUAPB. It is this time

period that the CUAPB's case is about. Because there is no factual record regarding this, the City's motion for summary judgment fails.

Regarding the question of whether the CUAPB can prevail given that the City produced the requested data within three days, the Court turns to Section 13.82 of the Act. In its discussion of Section 13.82, the City insists that Section 13.82 does not have anything to say about the timeliness of its actions: “[Section 13.82] “does not dictate when a government entity must respond to a request for public data.” In the City's interpretation, this section merely *clarifies* what data is considered “public” to distinguish what is public data from data that the statute refers to as nonpublic; it does this by indicating that some data is *public* “at all times.” *Id.* at pg. 2. The City cites an opinion of the Commissioner of Administration opinion which holds that Section 13.82 data that “are presumptively public,” can be classified as confidential (when there is an ongoing investigation per subdivision 7 of Section 13.82) to support its argument that “public at all times” means “always public” to distinguish it from data that is not always public. Defendant's Reply Memorandum dated November 17, 2020, at pg. 4 (citing Op. Minn. Dept. Admin. No. 120013 (Sept. 6, 2013)).

This City also points out that the Minnesota State Legislature knew how to set specific time requirements for producing data as it did in Section 13.04, subdivision 3.³ Thus if the legislature intended the phrase “at all times” in Section 13.82 to be interpreted to mean some data must be produced “immediately,” as the City contends CUAPB is asserting, it would have stated so in the text of the Act. Because the Legislature did not include such language, the only conclusion

³ In that section of the statute, it requires the City to produce the data within 10 days when the person requesting the data is the subject of the data.

(according to the City), is that the Legislature did not intend “at all times,” to operate act as a time requirement for data requests. Memorandum at pg. 7.

But the CUAPB is not arguing that the City should produce the public the instant it receives the data. The CUAPB does not dispute the City’s position that a government agency must have a “workable period of time” to provide the requested public data. Rather, it argues that the City must comply with both Section 13.82 and Section 13.03, and disputes that its interpretation of these two sections leads to an absurd result. The CUAPB’s position is that if the City complied with Section 13.82, it must disclose the data it to be public “at all times,” it cannot withhold such data while waiting for the BCA to do something or for any other event to occur. Interestingly, the City never argues that it could not produce the names earlier than it did or that it was unreasonable to require it to produce the data sooner than it did. The City never argues or attempts to demonstrate that it keeps this data public “at all times” or what its understanding of what keeping this data public “at all times” actually means. It admits that it did not provide the names of the officers involved until the names were released by the BCA. It does not argue that it withheld the names of the officers involved because of an ongoing investigation. And it never claims that it did not know the names of the officers involved in the shooting until the BCA released the names.

Most importantly, the City does not argue that it was not the “originating agency.” The Act requires “the originating agency” to keep Section 13.82, subdivision 2 data public “at all times.” The City cites the BCA’s timing of its “release” of the names of the police involved as the reason for the City’s own timing of publication of the data. In fact Section 13.82 specifically removes subdivision 2 data—the data the CUAPB requested—from the subdivision that allows investigatory data to be classified as nonpublic during an investigation. *See* Minn. Stat. §13.82,

subd. 7. The City gives no reason why it kept public data from the public until the BCA released the preliminary results of its investigation to it. Thus the Court cannot conclude that the City complied with Section 13.03 or Section 13.82 because the City has not established that there is no issue of undisputed material fact that it provided the data requested by the CUAPB in a reasonable time.

The Court notes for the record that in these cases—officer involved shootings—the reasons for the public to have immediate access to specific information such as the names of the officers involved—are compelling. Our common humanity tells us we owe at least this much to the surviving family members. In addition, in her affidavit, Michelle Gross, the president of CUAPB explains that one media strategy often used by law enforcement agencies in the immediate aftermath of officer-involved killings is to vilify the victim. *See* Exhibit B to the Affidavit of Paul Bosman dated November 9, 2020. She explains that to be on a level-playing field with such agencies, the families of those killed and the public must have immediate access to critical information about the shooting. The Court agrees. The Court is persuaded that the families of the dead and maimed are entitled to immediately know the names of those responsible.

As regards injunctive relief and the CUAPB's request for its attorney fees and costs, those issues will be decided after trial in this matter as additional facts are required from both parties before the Court can decide these issues. Specifically, the Court requires facts related to the City's continued noncompliance or compliance with the Data Practices Act and facts related to how CUAPB was damaged or is damaged by the City's violations of the Data Practices Act. The same is true for the request for exemplary damages.

CONCLUSION

Based upon the foregoing, the Court will deny the Defendant City of Minneapolis' motion for summary judgment.

ORDER

IT IS HEREBY ORDERED that:

1. The Defendant City of Minneapolis' motion for summary judgment is **DENIED** in its entirety.
2. A trial in this matter will be scheduled by separate Order of the Court.

Dated: 2/5/2021

BY THE COURT:



Bridget A. Sullivan
Judge of District Court