

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

No. _____

_____)	
Marvin Haynes)	
)	
Plaintiff,)	COMPLAINT
)	SEEKING TO
v.)	COMPEL
)	COMPLIANCE
Casey Joe Carl, City Clerk and)	WITH MGDPA
Responsible Authority for Minneapolis;)	§§ 13.01 et seq.
Christian Rummelhoff, Assistant City Clerk)	
and Primary Designee for Minneapolis;)	
Kristi Lahti-Johnson, Responsible)	
Authority for Hennepin County; Lucie)	
Passus, Hennepin County Designee;)	
Nicholas Kimball, Hennepin County)	
Attorney’s Office Designee; Hennepin)	
County; and, City of Minneapolis.)	
)	
Defendants.)	
_____)	

GENERAL INTRODUCTION

1. This is an action to compel compliance with the Minnesota Government Data Practices Act (“MGDPA”) under Minn. Stat. §§ 13.01 et seq.
2. This action states claims against the Responsible Authorities (“RA”) for the City of Minneapolis and Hennepin County and their duly appointed designees in their official capacities.
3. This action arises from MGDPA requests that were directed to Minneapolis and Hennepin County regarding the death of Harry Sherer in 2004, the subsequent

Minneapolis Police Department (“MPD”) investigation into Mr. Sherer’s death, and the Hennepin County Attorney’s Office’s (“HCAO”) prosecution of Plaintiff Marvin Haynes for the murder of Mr. Sherer.

4. Marvin Haynes, at just seventeen years old, was convicted by a jury of the murder of Mr. Sherer and was sentenced as an adult to life in prison. Mr. Haynes is not eligible for parole until May 17, 2034.
5. Mr. Haynes has continually maintained his innocence from the time he was arrested through his trial and sentencing to the present day.
6. No physical evidence was ever discovered that linked Mr. Haynes to the death of Mr. Sherer.
7. Mr. Haynes, his family, attorneys at the Innocence Project, and reporters for the Star Tribune have all assisted in uncovering serious procedural and evidentiary deficiencies during the investigation and prosecution of Mr. Haynes which provide convincing circumstantial evidence he was wrongly convicted.
8. The MGDPA requests Mr. Haynes sent to Minneapolis and Hennepin County sought records that would assist him in conclusively demonstrating he was framed or used as a scapegoat for a crime he did not commit by certain members of the MPD and HCAO.
9. In response to Plaintiff’s MGDPA request, Minneapolis provided some responsive documents Plaintiff; Hennepin County refused to provide any documents to Plaintiff.

10. Plaintiff alleges that both Minneapolis and Hennepin County, through their RAs and designees, failed to comply with the MGDPA.

PARTIES

11. Plaintiff Marvin Haynes is a 35-year-old U.S. citizen. Mr. Haynes is currently in the custody of the Minnesota Department of Corrections (“DOC”) and is housed at MCF Stillwater, 970 Pickett St., Bayport, MN 55003.
12. Defendant City of Minneapolis is a municipal entity in Minnesota that is required to comply with the MGDPA.
13. Defendant Casey Joe Carl is the MGDPA Responsible Authority for the City of Minneapolis. Defendant Carl is sued in his official capacity only. As the City’s Responsible Authority, Defendant Carl and Minneapolis are both liable for violations of the MGDPA. As the RA for Minneapolis, Defendant Carl has the authority but is not required to appoint one or more designees to assist the RA in administering and implementing the requirements of the MGDPA.
14. Defendant Christian Rummelhoff is the primary designee for Minneapolis. Defendant Rummelhoff is sued in his official capacity only. As the City’s primary designee, Defendant Rummelhoff is responsible for assisting Defendant Carl in implementing the MGDPA and may also be directly responsible for receiving and replying to data requests received by the City.
15. Defendant Hennepin County is a municipal entity in Minnesota that is required to comply with the MGDPA. The City of Minneapolis is within the geographic limits of Hennepin County.

16. Defendant Kristi Lahti-Johnson is the MGDPA Responsible Authority for Hennepin County. Defendant Lahti-Johnson is sued in her official capacity only. As the County's Responsible Authority, Defendant Lahti-Johnson and Hennepin County are both liable for violations of the MGDPA. As the RA for Hennepin County, Defendant Lahti-Johnson has the authority but is not required to appoint one or more designees to assist the RA in administering and implementing the requirements of the MGDPA.
17. Defendant Lucie Passus is the primary designee for Hennepin County. Defendant Passus is sued in her official capacity only. As the County's primary designee, Defendant Passus is responsible for assisting Defendant Lahti-Johnson in implementing the MGDPA and may also be directly responsible for receiving and replying to data requests received by the County.
18. Defendant Nicholas Kimball is the County's designee for the Hennepin County Attorney's Office. Defendant Kimball is sued in his official capacity only. As the HCAO's designee, Defendant Kimball is responsible for assisting Defendant Lahti-Johnson in implementing the MGDPA and may also be directly responsible for receiving and replying to data requests received by the HCAO.

JURISDICTION

19. This Court has jurisdiction pursuant to MINN. STAT. § 484.01, subd. 1(1), (7) and MINN. STAT. § 13.08, subd.4 for these claims arising out of Hennepin County.

VENUE

20. Venue properly lies in the Fourth District of Hennepin County pursuant to MINN.

STAT. § 542.09 because one or more Defendants reside in or are official representatives of Hennepin County and/or Minneapolis, a municipal entity within Hennepin County.

ADMINISTRATIVE HISTORY OF THE CASE

21. On July 13, 2022, Mr. Haynes sent a data request to the Responsible Authorities and/or appropriate designees under the MGDPA for the Minneapolis Police Department and the Hennepin County Attorney's Office. Due to some technical difficulties in Minneapolis, the request to the City was not deemed submitted until September 9, 2022. These data requests and the responses made to said requests are the subject of this action.
22. Mr. Haynes included the necessary privacy releases in both requests, along with proof of his identity, to permit Defendants to release to Mr. Haynes all responsive nonpublic data and private data on individuals concerning himself.
23. The data request Mr. Haynes sent to the HCAO was properly directed to Lacey Severins, media coordinator for the HCAO, and was emailed to: hcdatarequest@hennepin.us.
24. The data request Mr. Haynes sent to the MPD was properly directed to the Responsible Authority for the MPD and was emailed to: responsibleauthority@minneapolismn.gov.
25. A copy of the data request sent to the HCAO is attached as Exhibit 1 and its contents are incorporated by reference.

26. A copy of the data request sent to the MPD is attached as Exhibit 2 and its contents are incorporated by reference.
27. To briefly summarize the data requests, Mr. Haynes described the requested records as follows:

The following public and/or private and/or nonpublic data records are requested. All records related to each inquiry should be produced without exception. None of the requested documents fall under any exemption to release. *Infra*. All requests for private and/or nonpublic request data relating to the Requesting Party (who has provided a signed release of information authorization and a signed consent form).

This request specifically seeks disclosure of all information in the Hennepin County Attorney's Office's possession directly or indirectly related to or referencing the prosecution of Mr. Haynes by the Hennepin County Attorney's Office in Minnesota Case Number: 27-CR-04-035635 (convicted on September 2, 2005).

This request specifically seeks, *inter alia*, investigative data, internal emails, memoranda, trial case records, meeting notes, field investigative notes, tapes, recordings, handwritten notes, data compiled by internal affairs, internal complaints, etc.

The requested information is not already in the public record, and counsel has been unable to find the requested information anywhere else on the internet despite a thorough search.

To the extent certain data can be reviewed for inspection but not released, we seek to inspect such data.

Exhibit 1 (alteration as original).

The following public and/or private and/or nonpublic data records are requested. All records related to each inquiry should be produced without exception. None of the requested documents fall under any exemption to release. *Infra*. All requests for private and/or nonpublic request data relating to the Requesting Party (who has provided a signed release of information authorization and a signed consent form).

This request specifically seeks disclosure of all information in the Minneapolis Police Department's possession directly or

indirectly related to or referencing the prosecution of Mr. Haynes by the Hennepin County Attorney's Office in Minnesota Case Number: 27-CR-04-035635 (convicted on September 2, 2005).

This request specifically seeks, *inter alia*, investigative data, internal emails, memoranda, trial case records, meeting notes, field investigative notes, tapes, recordings, handwritten notes, data compiled by internal affairs, internal complaints, etc.

The requested information is not already in the public record, and counsel has been unable to find the requested information anywhere else on the internet despite a thorough search.

To the extent certain data can be reviewed for inspection but not released, we seek to inspect such data.

Exhibit 2 (alteration as original).

28. Each data request sought records and information authored, reviewed, or otherwise involving (but not limited to) eight specific individuals:
- a. Plaintiff.
 - b. Amy Klobuchar, Hennepin County Attorney during Plaintiff's prosecution.
 - c. Mike Furnstahl, HCAO's prosecuting attorney at Plaintiff's trial.
 - d. Thomas A. Weist, HCAO's appellate attorney during Plaintiff's appeal.
 - e. Detective Michael Keefe, MPD officer involved in the investigation of Plaintiff and the death of Mr. Sherer.
 - f. Detective David Mattson, MPD officer involved in the investigation of Plaintiff and the death of Mr. Sherer.
 - g. Cynthia Harper, witness in criminal investigation of Plaintiff and witness at Plaintiff's trial.

- h. Isiah Harper, witness in criminal investigation of Plaintiff and witness at Plaintiff's trial.
29. Each data request limited its request to those records that are related to specific case numbers and any related files with different internal case, tracking, or identification numbers. The specific case numbers that were identified in the data requests were: (1) 27-CR-04-035635 (Sept. 2, 2005) / Hennepin County District Court File No. 04035635; and (2) Appellate Case No.: A05-2444 (Decided Jan. 4, 2007).
30. Each data request then identified specific and discrete records for disclosure, breaking the requests into 26 paragraphs and various subparagraphs. Exhibit 1 at 3-6; Exhibit 2 at 3-6.
31. The types and categories of data sought from the MPD were nearly identical to the types and categories of data sought from the HCAO.
32. The following is a representative but non-exhaustive sample of the types of records sought by Mr. Haynes' data requests:
- a. All MPD and HCAO investigative and trial case records in your office's possession from May 16, 2004 through sentencing October 28, 2005 all post-conviction and appeals records through the end of January, 2007 when the MPD and/or HCAO (presumably) closed this file. The requested Records include but are not limited to:
- i. Internal emails and/or written memoranda referencing this case (Minnesota Case Number: 27-CR-04-035635 / any internal case numbers used by the police or County Attorney's Office) where

the persons named above appear individually or collectively (in whole or in part).

- ii. All investigative reports of the MPD and the HCAO that reference this case and/or the persons named above appear individually or collectively (in whole or in part).
 - iii. All meeting notes and/or field investigative notes under the hand of any of the above-named persons (by authorship or reference) or officials acting in their stead that reference this case and any evidence and internal evidentiary dispositions thereto.
 - iv. An index of tapes and recordings (video and audio) of all persons interviewed in conjunction with this case: witnesses, experts, and anyone else (regardless of if they testified at trial or not, in whole or in part).
 - v. An index of any evidence collected but not used at trial.
- b. All records in the MPD's or HCAO's possession relating to the press conference that occurred on May 20, 2004 at the scene of the crime for which Mr. Haynes was convicted. Requested records include but are not limited to investigative data, internal/external emails, written memoranda (whether finalized or not, and whether published or not), trial case records, meeting notes, field investigative notes, tapes, recordings, handwritten notes, data compiled by internal affairs, internal complaints, emails between the persons named *supra* in Section 2 and anyone else,

mail correspondence, notes or recordings from on-the-record or off-the-record conversations with media, media advisories, press releases, correspondence between the victim in the crime for which Mr. Haynes was convicted and any employee or contractor of the MPD or HCAO, planning notes, and metadata relating to any of the foregoing categories of data.

- c. All records in the MPD's or HCAO's possession relating to whistleblowing or related allegations made by Detective Michael Keefe which touch on or relate to any criminal case initiated by the MPD or prosecuted by the HCAO between 2000 and 2010, regardless of whether such cases ended in a conviction, acquittal, dismissal, or hung jury.
- d. All emails and written correspondence sent or received by any MPD or HCAO employee to/from Amy Klobuchar between May 16, 2004 and December 31, 2008 mentioning or referencing Mr. Haynes or Minnesota Case Number: 27-CR-04-035635 (with or without dashes and/or spaces, and without regard to capitalization) and/or referencing Michael Keefe's whistleblowing allegations.
- e. All records in the MPD's or HCAO's possession relating to Mike Furnstahl's transfer or reassignment from the high-profile murder division of HCAO to the Child Protection Division of HCAO, and the reasons therefore.

- f. All records (including but not limited to transcripts, letters, audio recordings, 911 calls, etc.) relating to or stating any suspect's description given to law enforcement between May 16, 2004 and May 20, 2004 in Minnesota Case Number: 27-CR-04-035635.
- g. Any written communications by any MPD employee and/or HCAO employee which reference Mr. Hayne's hair style or length.
- h. Copies of any internal memoranda (whether published or not; finalized or not) written by Michael Keefe concerning the conduct or investigation of Mr. Haynes' criminal case on or after May 16, 2004.
- i. Copies of any statements made by or reports/emails/memoranda/written documents referencing alleged eyewitnesses in which the eyewitness(es) recant(s) their identification of Mr. Haynes or otherwise admit(ted) to misidentifying Mr. Haynes.
- j. A copy of the audio/video and transcript (if any) of the secretly recorded conversation between Sgt. Michael Keefe and Ms. Sharon Shipp (and Marvinia Marquita Haynes / Lakiesha Wright, if available) that occurred on May 19, 2004. See attached photograph of police report for reference. If the recording was destroyed, provide all records relating to when and why it was destroyed, who it was destroyed by, and all internal correspondence relating to [whether] its destruction... either predated destruction or postdated destruction. Further, provide any affidavits or

documents that were submitted to any court or prosecutor which reference the secretly recorded tape/audio/video or conversation.

33. Mr. Haynes' data requests also sought records which answer or otherwise inform various questions Mr. Haynes posed regarding various issues relating or collateral to his prosecution and conviction. For example, Mr. Haynes requested records that answered or informed the questions of: (1) whether "the victim's family [was] contacted by any County Attorney's Office official in relation to the press conference event that occurred on May 20, 2004," and, if so, "why?," and (2) "[w]as the press conference scheduled before or after Mr. Haynes was [(i)] interrogated on May 19, 2004," and (ii) "part of a police line-up on May 20, 2004?" Exhibit 1 at 3-4; Exhibit 2 and 3-4.
34. Plaintiff's data requests included a request for a fee waiver because the disclosure of the requested information is in the public interest as it will contribute significantly to the public's understanding of conviction integrity and official transparency. Though Minnesota public records laws do not require a statement of purpose, it is nevertheless worth noting that this records request is founded in the basic right to know, especially where the state has no compelling interest of non-disclosure (especially considering the crime at issue was investigated and prosecuted nearly 20 years ago). Moreover, given the recently national attention regarding the substandard conduct of Minneapolis Police Department employees, and given the U.S. Department of Justice's pattern-or-practice investigation into the Minneapolis Police Department, the requested records (which will shed light on whether and why Mr. Haynes was wrongly convicted of a crime he did not commit) are records of great public interest. *See, e.g.,* Justice for Marvin Haynes, CHANGE.ORG, <https://www.change.org/p/we-the-people-justice-for-marvin-haynes> (last visited Mar. 29, 2022) (demonstrating that 5,316 people have signed a petition demanding justice for Marvin Haynes with the belief he was wrongfully convicted, further demonstrating that a significant

segment of the public is interested in the disclosure of the requested data).[¹].

35. On August 15, 2022, the HCAO emailed Plaintiff's attorney and stated the HCAO is "denying the attached data request pursuant to Minn. Stat. § 13.393." The email was sent by Mr. Max Page, a senior assistant Hennepin County attorney working in the Child Protection Division, Media, and as a Legislative Liaison.
36. The HCAO provided Mr. Haynes with no responsive records.
- a. Mr. Page has worked in the Child Protection Division of the HCAO since October 2015.
 - b. Mr. Furnstahl worked in the Child Protection Division of the HCAO prior to October 2015 until sometime in 2020 or 2021.
 - c. Plaintiff alleges that Mr. Page worked closely with Mike Furnstahl in the Child Protection Division of the HCAO prior to denying Plaintiff's request.
 - d. Plaintiff alleges that, prior to denying Plaintiff's request, Mr. Page conferred and colluded with Mr. Furnstahl after seeing that Plaintiff's data request included requests about Mike Furnstahl.
 - e. Plaintiff alleges that part of Mr. Page's reasons for denying Plaintiff's data request stem from a desire to protect Mr. Furnstahl from public censure.

¹ As of May 19, 2023, the Change.org petition has 13,660 signatures.

37. On December 30, 2022, Minneapolis stated, “[s]ome of the data responsive to your request is available in the OpenCity Portal, including the police report, person history, officer complaint history and policy & procedure manual from 2004. Redactions were made per Minnesota Statutes, Chapter 13: Government Data Practices—Sections 13.82, 13.43 and 18 USC 2721.”
38. On February 21, 2023, Minneapolis disclosed a batch of responsive documents to Mr. Haynes. The City made redactions under Minn. Stat. §§ 13.393, 13.43, and 13.82. The City also stated “[t]here are 480 email documents left to review.”
39. On March 7, 2023, Minneapolis disclosed the final batch 31 pages of documents deemed responsive to Plaintiff’s request. Redactions were made under Minn. Stat. §§ 13.82, 260B.171.

CLAIMS FOR RELIEF

Count 1: Noncompliance with MGDPA § 13.393

(Plaintiff v. Hennepin County Defendants)

40. Plaintiff realleges and incorporates herein by reference all preceding and subsequent paragraphs of this Complaint.
41. Section 13.393 of the MGDPA provides:

Notwithstanding the provisions of this chapter and section 15.17, the use, collection, storage, and dissemination of data by an attorney acting in a professional capacity for a government entity shall be governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility; provided that this section shall not be construed to affect the applicability of any statute, other than this chapter and section 15.17, which specifically requires or prohibits disclosure of specific information by the attorney, nor shall this

section be construed to relieve any responsible authority, other than the attorney, from duties and responsibilities pursuant to this chapter and section 15.17.

42. The Hennepin County Defendants violated the MGDPA by categorically refusing to search for any documents responsive to Plaintiff's request.
43. Even if § 13.93 applies to certain parts of Plaintiff's data request, it does not apply to all parts of Plaintiff's data request.
44. Minnesota has interpreted § 13.393 of the MGDPA to apply only to documents that are privileged under the attorney-client and attorney work-product privileges.
45. Most of the documents withheld by the HCAO under § 13.393 were not records that were privileged under the attorney-client or attorney work-product privileges.
46. The Hennepin County Defendants' decision to refuse to search for and/or withhold records response to Section 4, ¶ 2 of Mr. Haynes' data request was unlawful. The HCAO attorney employees that assisted with the press conference that occurred on May 20, 2004 did not do so in their *professional capacity for a governmental entity*, but instead did so in their nonprofessional capacity as a County employee and/or in their personal capacity as individuals who wanted to be on the news. Moreover, none of the records responsive to this request are protected by attorney-client or attorney work-product privilege.
47. To the extent the HCAO employees that assisted with the press conference that occurred on May 20, 2004 were non-attorneys, Section 13.393 does not permit Hennepin County to refuse to disclose responsive documents in relation to Section 4, ¶ 2 of Plaintiff' data request.

48. The HCAO Defendants violated the MGDPA by failing to search for and disclose documents responsive to Section 4, ¶ 3.a – 3.n. Much of the data requested in this section of the request seeks information from the HCAO that has nothing to do with a government attorney’s performance of their professional duties. *See* Section 4, ¶¶ 3.a, 3.b, 3.c, 3.e, 3.f, 3.g, 3.h. Moreover, none of the records responsive to this request are protected by attorney-client or attorney work-product privilege. Additionally, some of the data requested in this section of the request constitute “official records” under Minn. Stat. § 15.17 and are thus “public” and disclosable by the Hennepin County Responsible Authority notwithstanding Minn. Stat. § 13.393 to the extent such records do not transgress the statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility (*i.e.*, attorney-client and/or attorney work-product privileges). *See* Section 4, ¶¶ 3.a, 3.b, 3.c, 3.e, 3.f, 3.g, 3.h, 3.i, 3.j, 3.k, 3.n.
49. The Hennepin County Defendants violated the MGDPA by failing to search for and disclose documents responsive to Section 4, ¶ 7 of Plaintiff’s data request. While it is likely that many of Ms. Klobuchar’s responsive emails and written correspondence may stem from her acting in her professional capacity as an attorney for a government entity, and are thus protected under Minn. Stat. § 13.393, it is also likely that many of Ms. Klobuchar’s responsive emails and written correspondence had nothing to do with Ms. Klobuchar acting in her professional capacity as an attorney for a government entity because many of the

records responsive to this request are not protected by attorney-client or attorney work-product privilege.

- a. Ms. Klobuchar was running for United States Senator as early as 2005.
- b. Mr. Haynes was arrested in May 2004 and convicted on September 2, 2005.
- c. Ms. Klobuchar officially assumed her U.S. Senator office on January 3, 2007.
- d. Section 4, ¶ 7 of the data request seeks “[a]ll emails and written correspondence sent or received by Amy Klobuchar between May 16, 2004 and December 31, 2008 mentioning or referencing Mr. Haynes or Minnesota Case Number: 27-CR-04-035635 (with or without dashes and/or spaces, and without regard to capitalization)
- e. Considering Ms. Klobuchar held the office of the County Attorney for Hennepin County from January 5, 1999 until January 3, 2007, it is safe to presume she sent and received emails from her HCAO email account up until January 3, 2007. Moreover, it is likely that her HCAO email account continued to receive emails after January 3, 2007 until the email address was officially deactivated.
- f. Between September 3, 2005 and January 3, 2007 or later, there is no reason to believe that any email Ms. Klobuchar sent or received relating to Plaintiff or Plaintiff’s case was related to her acting in a professional capacity for a government entity. Instead, those emails were likely

related to Ms. Klobuchar campaigning for federal office, communicating with her campaign managers and strategists, and potentially burying exculpatory evidence that would be personally harmful to Ms. Klobuchar if discovered. Such records are both responsive to Plaintiff's request and outside the ambit of § 13.393.

50. The Hennepin County Defendants violated the MGDPA by failing to search for and disclose documents responsive to Section 4, ¶ 8 of Plaintiff's data request. Plaintiff incorporates the arguments in the preceding paragraph by reference because they are equally applicable here. To the extent Ms. Klobuchar's emails or written correspondence during the relevant period demonstrate an intent or will to discredit Michael Keefe or to bury evidence that would support Michael Keefe's whistleblowing allegations, such records are proof that Ms. Klobuchar acted contrary to the law-and-order interests of the County and its residents for personal gain (*i.e.*, to win a federal election). Such actions are fundamentally different from "acting in a professional capacity for a government entity" and are thus unprotected. Such records are both responsive to Plaintiff's request and outside the ambit of § 13.393.
51. The Hennepin County Defendants violated the MGDPA by failing to search for and disclose documents responsive to Section 4, ¶ 10 of Plaintiff's data request. None of the records responsive to this request are protected by attorney-client or attorney work-product privilege. None of the responsive records have a material nexus to the "use, collection, storage, and dissemination of data by an attorney

acting in a professional capacity for a government agency.” To be sure, responsive records might constitute data *about* an attorney acting in a professional capacity for a government agency, but as § 13.393 makes clear, it “shall not be construed to... relieve any responsible authority, *other than the attorney*, from duties and responsibilities” under the MGDPA. (emphasis added). The records sought are responsive to Plaintiff’s request and outside the ambit of § 13.393.

52. The Hennepin County Defendants violated the MGDPA by failing to search for and disclose documents responsive to Section 4, ¶¶ 25-26 of Plaintiff’s data request. The requested records were required to be disclosed to Mr. Haynes’ defense counsel during his trial and the failure of the HCAO to do so was unlawful under Supreme Court and Minnesota precedents and statutes and thus illegal. An attorney who acts illegally to suppress evidence favorable to a criminal defendant cannot be said to be acting in a professional capacity as a matter of law. Therefore, responsive records are therefore unprotected under Minn. Stat. § 13.393. Moreover, none of the records responsive to this request are protected by attorney-client privilege and it is highly doubtful any such records would be protected by attorney work-product privilege.
53. Plaintiff acknowledges that under normal circumstances, the HCAO Defendants would have had no duty to disclose records responsive to Section 4, ¶¶ 1.a – 1.e, 3.1 – 3.n, 4, 5, 6, 9, 11-24 under Minn. Stat. § 13.393. However, Plaintiff submits Minn. Stat. § 13.393 is a non-jurisdictional claim-processing rule subject to equitable exceptions. In this case, the “unclean hands” doctrine applies because

certain employees of the HCAO and MPD combined and/or conspired to engage in inequitable behavior while prosecuting Mr. Haynes by covering up exculpatory evidence, intentionally creating misleading evidence over the objections of certain MPD officers through the use of constitutionally-deficient photo and in-person sequential line ups, withholding records essential to Mr. Haynes' defense, pressuring witnesses to testify against Mr. Haynes, pressuring witnesses not to change their story after they expressed doubts about the truth of their own statements relating to whether Mr. Haynes committed the crime in question, intentionally refusing to test Mr. Haynes' clothing for gunshot residue, and, *inter alia*, failing to disclose audio/video records that could have been used by Mr. Haynes' for exculpatory and/or impeachment purposes.

54. Because the HCAO previously failed to comply with the “statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility” during Mr. Haynes' criminal proceedings, it would be a miscarriage of justice, fundamentally unfair, and contrary to the intent of Minn. Stat. § 13.393 to permit the HCAO to avoid disclosing responsive documents that should have been previously disclosed in 2005-2007 in compliance with the “statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility.”
55. The HCAO violated the MGDPA by refusing to search for or disclose any data responsive to Plaintiff's data request without determining whether responsive

records were actually within the scope of § 13.393. Minn. Stat. § 13.393 does not protect all attorney files from disclosure under the MGDPA. Instead, the effect of § 13.393 is to make the MGDPA inapplicable to any data that are protected by the work-product doctrine or the attorney-client privilege. *See City Pages v. State*, 655 N.W.2d 839, 843 (Minn. App. 2003), *review denied* (Minn. Apr. 15, 2003).

56. The Hennepin County Defendants did not conduct any factual analysis as to whether attorney-client or attorney work-product privileges were applicable to specific documents responsive to the request because the Hennepin County Defendants presumed without verification that responsive records did not need to be disclosed.
57. The Hennepin County Defendants shielded from disclosure inter-office attorney communications that do not relate to any specific client and thus are unprivileged.
58. Thus, the HCAO has violated the MGDPA.

Count 2: Noncompliance with MGDPA § 13.393

(Plaintiff v. City of Minneapolis Defendants)

59. Plaintiff realleges and incorporates herein by reference all preceding and all subsequent paragraphs of this Complaint.
60. The City of Minneapolis Defendants are not permitted to withhold documents responsive to Plaintiff's data request because none of the documents withheld by the Minneapolis Defendants that are in the City's possession regard the "use, collection, storage, and dissemination of data by an attorney acting in a professional capacity for a government agency." Plaintiff does not seek the City

Attorney's files or the attorney files of any in-house attorneys who actually are employed by the MPD (if any). Any other responsive records, however, cannot be redacted under § 13.393 under the facts at hand.

61. Any records the Minneapolis Defendants received from the HCAO are not protected from disclosure by Minneapolis under § 13.393. Any privilege from disclosure that previously existed in the documents/records received from the HCAO was waived when those documents were provided to Minneapolis and/or the MPD.
62. Plaintiff incorporates by reference all arguments in support of Count 1.
63. Thus, to the extent the Minneapolis Defendants redacted data under § 13.393, they violated the MGDPA.

Count 3: Noncompliance with MGDPA § 13.43

(Plaintiff v. City of Minneapolis Defendants)

64. Plaintiff realleges and incorporates herein by reference all preceding and all subsequent paragraphs of this Complaint.
65. The Minneapolis Defendants redacted certain personnel data under Minn. Stat. § 13.43.
66. The Minneapolis Defendants violated the MGDPA by redacting public data relating to: (1) the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, and (2) a complaint or charge against an employee identified in Minn. Stat. § 13.43(e)(4)(i)-(iii) that fits within the ambit of Minn. Stat. § 13.43(f).

67. The Minneapolis Defendants violated the MGDPA by redacting data on pages 1574700, 1574702-08, 1574787, 1574791, 1574795, 1574814, 1574828, 1574845, 1574847, 1574869, 1574871, 1574879-80, 1574882, 1574884, 1574889, 1574891, 1574895, 1574897, 1574902, 1574914-15, 1574928-29, 1574931-32, 1574934, 1574936, 1574939, 1574943, 1574949, 1574955 (Bates Stamps) under Minn. Stat. § 13.43 (and in a few instances, without claiming a basis for the redaction). The data redacted on those pages under § 13.43 is not the sort of personnel data protected by statute. Even if such data is protected by statute, the Court should nonetheless order disclosure under Minn. Stat. § 13.43, subd.4.

- a. Notably, most of the § 13.43 redactions in these pages relate to entries made by David Mattson. Considering Mattson was the person who arranged a seriously problematic in-person lineup with different suspects (aside from Plaintiff) from the photo lineup that was shown earlier to the same witness, and considering Mattson was responsible for using an old photograph of Plaintiff that matched the description of the suspect in the photo lineup (rather than a current photo which would not have matched the description of the suspect), these redactions appear to be evidence of a cover up rather than statutorily exempt data.

68. The Minneapolis Defendants are also alleged to have violated the MGDPA by redacting data under Minn. Stat. § 13.43 on various pages without having explicitly identified the underlying reason for the redactions in specific places.

Count 4: Noncompliance with MGDPA § 13.82

(Plaintiff v. City of Minneapolis Defendants)

69. Plaintiff realleges and incorporates herein by reference all preceding and all subsequent paragraphs of this Complaint.
70. The Minneapolis Defendants unlawfully redacted certain law enforcement data under Minn. Stat. § 13.82.
71. The Minneapolis Defendants violated the MGDPA by redacting data on numerous pages between 1574699-1574962 (Bates Stamps) under Minn. Stat. § 13.82 (and in a few instances, without claiming a basis for the redaction). The data redacted on those pages under § 13.82 is not the sort of law enforcement data protected by statute. The Court should conduct an *in camera* review to ensure that each redaction is proper under the MGDPA.
- a. There are an astounding 226 redactions under § 13.82 in just 264 pages.
 - b. It appears that certain § 13.82 redactions were made pursuant to Minn. Stat. § 13.82, subd.17 to ostensibly protect the identities of certain individuals. Plaintiff submits none of these redactions were lawful because none of the narrow justifications for withholding under § 13.82, subd.17 currently apply to Plaintiff. None of the identities that were redacted have any reason to fear for their safety if identified to Plaintiff, nor do the City Defendants have any reason to argue otherwise. None of the witnesses whose names were redacted in relation to a crime and investigation that occurred nearly 20 years ago have any reason to need

protection if their names are disclosed. *See, e.g.*, 1574704, 1574706, 1574773-75, 1574783-86, 1574847, etc.

- c. All data relating to arrest data under § 13.82, subd.2 should be deemed public.
- d. All data relating to response or incident data under § 13.82 should be deemed public. No redactions under subd.17 apply.
- e. All data relating to the criminal investigation of Mr. Haynes, except that data under subds. 2, 3, and 6, constitute inactive investigative data under subd.7 and is thus public unless release of the data “would jeopardize another ongoing investigation or would reveal the identity of individuals protected under subd.17.” Here, there is no reason to believe releasing the data would jeopardize an ongoing investigation or reveal the identity of anyone protected under subd.17 (especially considering there is no reason to believe anyone needs protecting under subd.17).
- f. All images and recordings which were part of the inactive investigation file and which are “clearly offensive to common sensibilities” must be disclosed to Plaintiff as the subject of the nonpublic data, considering the investigative files were about Plaintiff.
- g. Plaintiff exhausted all rights of appeal after he was convicted on the basis of investigative data; it is therefore clear the investigation is inactive.

h. The benefit to Mr. Haynes and the public of having the data described in Minn. Stat. § 13.82, subd.7 made public far outweighs any harm to the public, agency, or any person identified in the data. Mr. Haynes was tried and sentenced for murder when he was just seventeen years old and was sentenced to spend the rest of his life in prison. Mr. Haynes has already served nearly 20 years of his sentence, and it is becoming more and more clear that major corners were cut by the MPD and HCAO. The public deserve to know that Mr. Haynes was wrongfully convicted in 2005, and Mr. Haynes deserves to get the documents that can prove as much.

72. The Minneapolis Defendants violated the MGDPA by failing to conduct an adequate search for responsive data and for refusing to turn over responsive documents that are in their inactive investigative files.

a. For example, the Minneapolis Defendants did not disclose any arrest warrant indices relating to Mr. Haynes' arrest. As Minn. Stat. § 13.82, subd.19 makes clear, such data is public because Plaintiff has been taken into custody, served with a warrant, and appeared before the Court. Assuming such an index or indices exist, it was a violation of the MGDPA for Defendants not to disclose them.

Count 5: General Noncompliance with MGDPA

(Plaintiff v. All Defendants)

73. Plaintiff realleges and incorporates herein by reference all preceding and all

subsequent paragraphs of this Complaint.

74. The Minneapolis Defendants violated the MGDPA by making numerous redactions without specifying the statutory authority for such redactions. *See, e.g.*, City Disclosures at 1574707, 1574787-95.
75. Because the Minneapolis Defendants did not identify the basis for various redactions, Plaintiff is unable to challenge those redactions on their merits and instead challenges their propriety generally.
76. The Hennepin County Defendants violated the MGDPA by refusing to search for responsive documents or otherwise follow the mandates of Minn. Stat. § 13.03, subd.3, and by refusing to make a good faith attempt to segregate data exempt under Minn. Stat. § 13.393 from other responsive data that is not exempt under Minn. Stat. § 13.393 prior to rejecting Plaintiff's data request.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Order the Hennepin County Defendants to conduct an adequate search for responsive documents and timely disclose said documents to Plaintiff;
- B. Order the Minneapolis Defendants to conduct an adequate search for responsive documents and timely disclose said documents to Plaintiff;
- C. Order the Minneapolis Defendants to disclose the original versions of documents that were improperly redacted;

- D. Enjoin the Defendants from continuing to violate Plaintiff's statutory rights under the MGDPA;
- E. Find that the Defendants are liable to Plaintiff for damages and Order Defendants to pay Plaintiff damages sustained, plus costs and reasonable attorney's fees;
- F. Find that the Hennepin County Defendants willfully violated the MGDPA and award Plaintiff exemplary damages of \$15,000 for each violation;
- G. Impose a civil penalty against each Defendant of up to \$1,000 under Minn. Stat. § 13.08, subd.4(a).
- H. Grant such other relief as may be just and reasonable.

DATED: June 9, 2023

Respectfully submitted,

/s/ Nico Ratkowski

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Attorney for Plaintiff

VERIFICATION OF COMPLAINT

Nico Ratkowski, under penalty of perjury, states the following:

1. That he is an attorney employed by Contreras & Metelska, PA, the attorneys for Plaintiff in this case.
2. That he affirms the truth of the contents thereof upon information and belief, and he believes same to be true, and he further states that the sources of this information and belief are documents provided to him by Plaintiff, Defendants, and third-parties.

DATED: June 9, 2023

Respectfully submitted,

/s/ Nico Ratkowski

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