



April 20, 2023

Office of the Attorney General
Responsible Authority
datapactices@ag.state.mn.us
Compliance Official
Michael.McSherry@ag.state.mn.us

VIA EMAIL

Re: Data Practices Act Request to Office of the Attorney General

Dear Responsible Authority:

We represent Dr. Scott Jensen for this request. I am writing to you as the Responsible Authority under the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes, Chapter 13, for the Office of the Attorney General. This is a formal request for data under the MGDPA. If you believe there is another Designee or Responsible Authority to whom this letter should be directed, please let me know.

REQUEST

For purposes of this request:

- “Data” includes data points within documents or entire documents themselves, as the Minnesota Supreme Court has defined it. *KSTP-TV v. Ramsey County*, 806 N.W.2d 785, 789-90 (Minn. 2011). If you believe that “documents” include “data” that are not subject to production under Chapter 13, please redact the nonpublic data points within the document and produce the remainder without redaction.
- “Data” also means the broadest interpretation of the term under Chapter 13, and includes but is not limited to: any written, electronic, or recorded letters, emails, text messages, Microsoft Teams or other web-app-based messages, notes, reports, meeting minutes, or audio or video recordings, etc.

I seek access to the following data:

1. All documents dated from March 9, 2020 through the date of your response with the phrase “Scott Jensen.”
2. All documents dated from March 9, 2020 through the date of your response in which Scott Jensen is the subject of the data.

April 20, 2023

Page 2 of 2

Please let me know the approximate number of pages responsive to the request and the proposed cost for copies of the responsive documents. If you are willing to provide copies of the data at no charge in lieu of inspection, I will receive them electronically. Please preserve all metadata related to the produced documents.

Pursuant to Minnesota law, the OAG is required to comply with my request within ten business days, or no later than May 4, 2023. Minn. Stat. § 13.04, subd. 3.

If you determine that you will redact or withhold any otherwise responsive data, please also inform me in writing of the specific statutory basis for your denial within the timeframe, on the redacted documents themselves. *See Webster v. Hennepin Cnty.*, 910 N.W.2d 420, 425 n.2 (2018) (failure to provide specific reasons for each redaction found to violate the MGDPA); Minn. R. 1205.0800.

If you have any questions or need clarification, please contact me. I can be reached at james.dickey@umlc.org.

Very truly yours,



James V. F. Dickey
Senior Counsel

cc: Douglas P. Seaton, Esq.
Gregory J. Joseph, Esq.
Dr. Scott Jensen



The Office of
Minnesota Attorney General Keith Ellison
helping people afford their lives and live with dignity, safety, and respect • www.ag.state.mn.us

May 4, 2023

VIA EMAIL ONLY

James Dickey
Upper Midwest Law Center
james.dickey@umlc.org

Re: Request for Data, Dr. Scott Jensen

Dear Mr. Dickey:

Thank you for your email dated April 20, 2023, in which you requested that the Minnesota Attorney General's Office ("AGO") provide you copies of: (1) "All documents dated from March 9, 2020 through the date of your response with the phrase 'Scott Jensen.'"; and (2) "All documents dated from March 9, 2020 through the date of your response in which Scott Jensen is the subject of the data." As you may know, access to government data in Minnesota is regulated by the Minnesota Government Data Practices Act ("MGDPA"), Minn. Stat. §§ 13.01-.90 (2022). Data are presumptively public unless otherwise classified as not public. Minn. Stat. § 13.01, subd. 3.

Please note that various public data responsive to your request are subject to third-party copyrights (generally, news publications) and are available for inspection but not copying. *See* 17 U.S.C. § 201-205; *Nat'l Council on Tchr. Quality v. Minn. State Colls. & Univs.*, 837 N.W.2d 314 (Minn. Ct. App. 2013). Those data are accessible for inspection with view-only access via the following Box.com link, which will remain active until June 2, 2023:

Link: <https://mnago.box.com/s/tah7xwnbmluip7mxbw3cwiq2ch6tmpkb>

As you are aware, the MGDPA affords an individual the right to obtain copies of both public data and private data about the individual. *See* Minn. Stat. §§ 13.03, subd. 3; .04, subd. 3. Pursuant to Dr. Jensen's informed consent, *see* Minn. Stat. § 13.05, subd. 4(d), you are authorized to receive copies of data about Dr. Jensen classified as "private." Public data and private data about Dr. Jensen are provided via the following password-protected Box.com link, which will remain accessible until June 3, 2023. Please note that certain private data about other individuals has been redacted pursuant to Minn. Stat. § 13.65, subd. 1(c); § 13.601, subd. 2; and § 13.43, subd. 4.

Link: <https://mnago.box.com/s/65mf0rti6vbf0etq2whw468j7zjvco86>

Password: Jensen123?

Various other data are not public and are not otherwise accessible by Dr. Jensen. Pursuant to Minn. Stat. § 13.65, subd. 1(b), "communications and noninvestigative files regarding

administrative or policy matters which do not evidence final public actions” are private. Pursuant to Minn. Stat. § 13.65, subd. 1(c), “consumer complaint data, other than those data classified as confidential, including consumers’ complaints against businesses and follow-up investigative materials” are private. Pursuant to Minn. Stat. § 13.601, subd. 2, “[c]orrespondence between individuals and elected officials is private data on individuals” Pursuant to Minn. Stat. § 13.43, subd. 4, personnel data are private data on individuals unless otherwise classified as public. Pursuant to Minn. Stat. § 13.37, subd. 2(a), security information is classified as either private or nonpublic. Pursuant to Minn. Stat. § 13.356(a)(2), email addresses maintained for notification/subscription purposes are private. Data classified as either nonpublic or as private data about individuals other than Dr. Jensen, and of which Dr. Jensen is not the data subject (*e.g.*, data containing incidental mentions of “Scott Jensen”), are withheld pursuant to these sections.

Pursuant to Minn. Stat. § 13.39, subd. 2(a), “data collected by a government entity as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which are retained in anticipation of a pending civil legal action, are classified as protected nonpublic data . . . [or] confidential” Data are withheld pursuant to this section.

Further, attorney data are generally not subject to the MGDPA’s disclosure requirements pursuant to Minn. Stat. § 13.393, which provides,

Notwithstanding the provisions of [the MGDPA], 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

See also Minn. R. Prof. Conduct 1.6 (confidentiality); Minn. R. Civ. P. 26.02 (attorney work product); Minn. Stat. § 595.02, subd. 1(b) (attorney-client privilege). Various data are withheld pursuant to Minn. Stat. § 13.393. Notwithstanding, and as a courtesy to you, the AGO is providing you copies of various documents filed publicly with the judiciary.

Last, please note that the AGO is not the responsible authority or designee of any other government entity. To the extent you seek data from other government entities, you may wish to direct your request to those entities. Again, thank you for contacting the AGO.

Thank you,

Office of the Minnesota Attorney General
Data Practices Team
E: datapracitices@ag.state.mn.us
W: <https://mnago.nextrequest.com>



May 10, 2023

Office of the Attorney General
Michael McSherry, Esq.
Compliance Official
Michael.McSherry@ag.state.mn.us
Data Practices Team
datapactices@ag.state.mn.us

VIA EMAIL

Re: Your May 4, 2023 Response to the Jensen Data Practices Act Request

Dear Data Practices Team and Mr. McSherry:

As you know, we represent Dr. Scott Jensen related to his April 20, 2023 data request to the Office of the Attorney General (“OAG”), to which you responded on May 4, 2023. Thank you for your prompt initial response. I am following up on that response, however, as it appears that some data may have been withheld which should have been disclosed under the Minnesota Government Data Practices Act (“MGDPA”).

1. Certain “private data on individuals” should have been produced.

As part of your response, you stated that you withheld certain data as follows:

Various other data are not public and are not otherwise accessible by Dr. Jensen. Pursuant to Minn. Stat. § 13.65, subd. 1(b), “communications and noninvestigative files regarding administrative or policy matters which do not evidence final public actions” are private. Pursuant to Minn. Stat. § 13.65, subd. 1(c), “consumer complaint data, other than those data classified as confidential, including consumers’ complaints against businesses and follow-up investigative materials” are private. Pursuant to Minn. Stat. § 13.601, subd. 2, “[c]orrespondence between individuals and elected officials is private data on individuals” Pursuant to Minn. Stat. § 13.43, subd. 4, personnel data are private data on individuals unless otherwise classified as public. Pursuant to Minn. Stat. § 13.37, subd. 2(a), security information is classified as either private or nonpublic. Pursuant to Minn. Stat. § 13.356(a)(2), email addresses maintained for notification/subscription purposes are private. Data classified as either nonpublic or as private data about individuals other than Dr. Jensen, and of which Dr. Jensen is not the

data subject (e.g., data containing incidental mentions of “Scott Jensen”), are withheld pursuant to these sections.

In Dr. Jensen’s request, he specifically asked for data that (1) included his name, “Scott Jensen,” and (2) included him as a subject of the data. The plain language of Minn. Stat. § 13.02, subd. 5 defines “data on individuals” as all government “data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.” *Id.*; *Burks v. Metro. Council*, 884 N.W.2d 338, 342 (Minn. 2016).

This means that, for “private data on individuals,” two conditions must be met for data to be withheld because an individual is not the “subject” of the data: (1) the OAG must “clearly demonstrate[]” that the name of the individual is merely incidental to the data, and (2) “the data are not accessed by the name...of any individual.” The second requirement is fatal to the withholding of any data where the name “Scott Jensen” appears because the data were specifically accessed using that name, as your letter admits, quoted above. In addition, you have not provided any information that would “clearly demonstrate[]” that Dr. Jensen is only incidental to the data.

Having said all this, if the only data withheld pursuant to these statutes are portions of “reports” sent in email form to the OAG, which “reports” are redacted because they provide discrete “hits” for different individuals based on social media or news entries which pertain only to those individuals, such as the “Meltwater reports” contained at JENSENDPA003002-65, those “hits” for other individuals need not be provided. But for all other data withheld on the basis of Minn. Stat. § 13.65, subd. 1, and Minn. Stat. § 13.601, subd. 2, the data must be produced.

2. “Private data on individuals” which was not produced because of the existence of alleged “personnel data” should have been produced.

As quoted above, you mentioned the existence of “personnel data” pursuant to Minn. Stat. § 13.43, subd. 4 as a reason for withholding data about which Dr. Jensen was the subject or in which the name “Scott Jensen” appears. The Minnesota Supreme Court, in the companion case to *Burks*, cited above, adopted the “single-purpose reading” test regarding personnel data. *KSTP-TV v. Metro. Council*, 884 N.W.2d 342, 346-47 (Minn. 2016). There, the Court held that “personnel data” that might also qualify as “private data on individuals” may only be withheld where the data is *only* collected for *one purpose*: “solely because the subject of the data is an employee of the government entity.” *Id.* at 348.

May 10, 2023

Page 3 of 5

Again, because the data here was accessed because of the search for “Scott Jensen,” he is a data subject and is entitled to it. For any documents withheld in their entirety, nothing in your letter demonstrates that the data was collected and maintained *solely* because the subject of the data is an employee of OAG. Unless you can support that classification, any unproduced documents which contain data on Dr. Jensen as a subject must be produced.

Further, as I explained in the data request, “data” includes data points within documents or entire documents themselves, as the Minnesota Supreme Court has defined it. *KSTP-TV v. Ramsey County*, 806 N.W.2d 785, 789-90 (Minn. 2011). Thus, OAG should not withhold full documents if personnel data can be redacted.

Finally, similar to my statement at the end of section 1 above, if the only data withheld pursuant to section 13.43 is that data redacted in the production to remove things like references to pronouns (which I am not sure actually is non-public if within an email signature), that data need not be produced.

3. It is not clear what data has been withheld based on Minn. Stat. § 13.37 or 13.356.

It is unclear what “security information,” under section 13.37, might have been maintained responsive to the two categories of data requested. Please identify what data were withheld on that basis. Further, to the extent you withheld data under section 13.356 based on the existence of email subscriptions, please confirm that the only data withheld on that basis were the email addresses used to join a subscription list themselves and not any other data.

4. Active civil investigations and attorney data.

You also withheld data based on Minn. Stat. § 13.39, subd. 2(a) as investigative data from an active investigation or pending future litigation, and pursuant to Minn. Stat. § 13.393, as attorney data, whether work product or privileged.

As you can probably imagine, these classifications are somewhat alarming. I am not aware of any active investigation related to Dr. Jensen. So that I can understand your claimed exception from production, I would ask that you confirm that there is no current, active, or imminent OAG or other government agency investigation into Dr. Jensen.

I see from reviewing the data that some information was produced from public pleadings based on Dr. Jensen’s concurrent resolution to terminate Gov. Walz’ peacetime emergency, *see, e.g.*, JENSENDPA001259, his affidavit submitted in the *Alibi Drinkery* case, *see, e.g.*, JENSENDPA001333-34, his declaration submitted in the *Iron Waffle* case, *see, e.g.*,

May 10, 2023

Page 4 of 5

JENSENDPA001403-43, and his participation in *Free Minnesota Small Business Coalition*, see, e.g., JENSENDPA001532. It seems, based on your statements, that some additional data related to these lawsuits was withheld based on sections 13.39 and 13.393 due to related internal conversations at OAG among attorneys, or related privileged conversations among the OAG and its agency clients.

However, I do not want to assume that this is the sole basis for your claim of protection under sections 13.39 and 13.393. It is not clear to me whether additional documents unrelated to these lawsuits were withheld based on these statutes. Please clarify the basis for the withholding of any data *not* related to these lawsuits based on section 13.39 and 13.393 and identify what documents were not produced because of that designation. Along the same lines, if you are withholding data related to the inactive BMP (and OAG) investigations of Dr. Jensen's license, please say so.

Likewise, if you are withholding any data based on the existence of current investigations or imminent litigation, please say so. But to be clear, if any data has been withheld based on an investigation that has become *inactive*, such as the five (5) closed investigations of Dr. Jensen by BMP, those data in the OAG's possession are public and must be disclosed. Minn. Stat. § 13.39, subd. 3.

5. Some other data appear to be missing.

After review, it appears to me that OAG has not produced any document required to be submitted by the Board of Medical Practice to the OAG pursuant to Minn. Stat. § 214.10, subd. 1: “[the BMP] shall promptly forward the substance of the communication on a form prepared by the attorney general to the designee of the attorney general responsible for providing legal services to the board.” I also have not seen any document reflecting communications between the OAG and the complainant under the same section: “the designee of the attorney general may require the complaining party to state the complaint in writing on a form prepared by the attorney general.” *Id.* In addition, I have not seen any documents reflecting any non-privileged or non-work-product documents maintained by the OAG related to the inactive BMP investigations of Dr. Jensen from 2020 through this year.

I also note that documents were provided which included an email conversation between John Stiles of the OAG and Seth Kaplan of FOX9. See, e.g., JENSENDPA005142-96. These emails reference a “read-through” which was excerpted by Mr. Kaplan in response to Mr. Stiles. E.g., JENSENDPA005193. It therefore appears that there was an attachment to these emails (the “read-through”) which was not produced. Please produce the attachment.

May 10, 2023

Page 5 of 5

As one last category of documents, I only saw a few Microsoft Teams messages collected and maintained by OAG, including one dated February 2, 2023. JENSENDPA005315. Please identify the OAG's retention policy for Teams data and how far back in time you were able to retrieve Teams data.

Thank you in advance for investigating the concerns I have raised. I look forward to your response. If you have any questions or need clarification, please contact me. I can be reached at james.dickey@umlc.org or 612-428-7002.

Very truly yours,



James V. F. Dickey
Senior Counsel

cc: Douglas P. Seaton, Esq.
Gregory J. Joseph, Esq.
Dr. Scott Jensen



The Office of
Minnesota Attorney General Keith Ellison
helping people afford their lives and live with dignity, safety, and respect • www.ag.state.mn.us

May 16, 2023

VIA EMAIL ONLY

James Dickey
Upper Midwest Law Center
james.dickey@umlc.org

Re: Request for Data, Dr. Scott Jensen

Dear Mr. Dickey:

Thank you for your correspondence dated May 10, 2023, in which you: (1) asked the Minnesota Attorney General's Office ("AGO") to answer various questions regarding its response to your request for data dated April 20, 2023; and (2) demanded that the AGO supplement its response by producing additional data.

As you are aware, access to government data in Minnesota is regulated by the Minnesota Government Data Practices Act ("MGDPA"), Minn. Stat. §§ 13.01-.90 (2022). Any person may request data from a government entity. *See* Minn. Stat. §§ 13.03, subd. 3, .04, subd. 3. But not all data are accessible by a requester. When a government entity denies access to data in response to a data request, the government entity must: (1) inform the requesting person that the government entity has determined that data are classified so as to deny access; and (2) "cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based." Minn. Stat. § 13.03, subd. 3(f).

By letter dated May 4, 2023, the AGO discharged its duties by informing you that various data were not accessible by Dr. Jensen and by citing the statutory bases for withholding and/or redacting data. You then demanded that the Office: (1) produce additional data withheld pursuant to Minn. Stat. §§ 13.43, .65, and .601; (2) clarify the scope of data redacted pursuant to Minn. Stat. § 13.356; (3) explain the bases for withholding data pursuant to Minn. Stat. §§ 13.39 and .393; (4) produce data you characterize as "missing"; and (5) identify the retention period for Microsoft Teams data "and how far back in time [the AGO was] able to retrieve Teams data."

The MGDPA generally does not require the AGO to further justify its bases for withholding or to answer general questions unrelated to the meaning of the data. Notwithstanding, and as a courtesy to you, the AGO first will confirm that the only data redacted pursuant to Minn. Stat. § 13.356 are email addresses relating to email subscriptions. Second, you suggest there was a missing attachment in an exchange between John Stiles and Seth Kaplan based on the reference to a "read-through" and ask that the attachment be produced. There is no attachment in the email thread, and the "excerpt[]" you mention appears to be an excerpt of a Pioneer Press report (accessible via Yahoo Entertainment at <https://www.yahoo.com/entertainment/judge-never->

James Dickey
May 16, 2023
Page 2

[ordered-state-keep-021400870.html](#)). Third, to the extent your request to identify the Teams retention period could be considered a separate data request, Teams messages are typically retained for 30 days but may be retained for longer periods.

Separately, you requested that the AGO explain its justification for withholding security information pursuant to Minn. Stat. § 13.37. Pursuant to Minn. Stat. § 13.37, subd. 2(b), the AGO offers the following “short description explaining the necessity for the classification.” A small set of data about individually identifiable AGO employee(s) is withheld because: (1) AGO staff have received harassing and/or threatening calls following posts by Dr. Jensen on social media; and (2) the republication of certain data by Dr. Jensen on social media would likely substantially jeopardize the security of individuals and subject staff to harassment and/or threats by followers/viewers.

The AGO considers this request closed.

Thank you,

Office of the Minnesota Attorney General
Data Practices Team
E: datapracitices@ag.state.mn.us
W: <https://mnago.nextrequest.com>