

STATE OF MINNESOTA
DISTRICT COURT

COUNTY OF CARVER
FIRST JUDICIAL DISTRICT

Dr. Scott Jensen,

Plaintiff,

v.

COMPLAINT

Keith Ellison, individually and in his official
capacity as responsible authority for the
Office of the Minnesota Attorney General;

Office of the Minnesota Attorney General,

Defendants.

Plaintiff Dr. Scott Jensen, for his Complaint against Defendants Keith Ellison, individually and in his official capacity as responsible authority for the Office of the Minnesota Attorney General, and the Office of the Minnesota Attorney General (“OAG”) (collectively, “Defendants”), states and alleges as follows:

INTRODUCTION

1. This is an action seeking the production of data, declaratory and injunctive relief, and attorney fees and costs against Defendants under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.08, subs. 1, 2, and 4, the First and Fourteenth Amendments to the United States Constitution, article I, sections 2 and 3 of the Minnesota Constitution, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

2. Since Dr. Jensen announced that he was running for Governor of Minnesota, the Defendants have been assisting the Minnesota Board of Medical Practice with politically

motivated investigations into Dr. Jensen's medical license, based almost entirely on Dr. Jensen's political speech about the government response to the COVID-19 pandemic and his reasons for opposing that response.

3. Dr. Jensen believes it is likely that the Defendants are a driving force behind the investigations, to Dr. Jensen's personal, professional, and political detriment.

4. Based on the political investigations of his medical license with which the Defendants were involved, Dr. Jensen resolved to discover what, exactly, the Office of the Attorney General maintained on Dr. Jensen and said about Dr. Jensen as the subject of that data.

5. After Dr. Jensen made a request under the MGDPA for the data held by the Office of the Attorney General related to him as the subject, the Defendants intentionally withheld certain data which should have been produced.

6. Notably, the Defendants withheld data based purely on the possibility that Dr. Jensen *might* publicly speak about the data, and some other person *might* then be upset with the Defendants for what the data show. The Defendants speculated that someone might, somehow, someday, take action against employees of the OAG, yet only cited purportedly harassing and threatening phone calls to the OAG as a basis for their speculation.

7. The Defendants' failure to substantiate any real basis for concern for any employee shows that their reasons for withholding are mere pretext for not wanting Dr. Jensen to know important information about how the OAG has viewed and treated him. In addition, despite there being no rational distinction between Dr. Jensen and a member of the news

media in terms of what he might *report* on the Defendants, the Defendants withheld information they would not, upon information and belief, withhold from the news media.

8. The Defendants' refusal to produce data on Dr. Jensen because they fear his political speech and the political repercussions of producing that data is completely contrary to the very purpose of the MGDPA: to ensure government transparency despite the political ramifications of that transparency.

9. In addition, the Defendants' intentional refusal to provide data to Dr. Jensen based on his political speech violates his First Amendment right to be treated equally with others based on viewpoint, and his Fourteenth Amendment right to be treated the same as other similarly situated people or organizations.

10. Dr. Jensen thus brings this action to force the Defendants to produce data withheld in response to the data request described in this Complaint and seeks additional damages, fees, and costs for Defendants' willful noncompliance with the MGDPA and the United States and Minnesota Constitutions.

PARTIES

11. Plaintiff Dr. Scott Jensen is a resident of Carver County, Minnesota.

12. Defendant Keith Ellison, in his official capacity, is the responsible authority for the Office of the Minnesota Attorney General, and, in his capacity as such, resides at 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101.

13. Upon information and belief, Defendant Keith Ellison, in his individual capacity, resides in the State of Minnesota. Defendant Ellison is responsible under Minnesota law for "creating, applying, or interpreting" the MGDPA policies of the Defendant Office of

the Attorney General. Minn. R. 1205.0200, subp. 13; Minn. Stat. § 13.03, subd. 2; Minn. R. 1205.1100; *see also* “Office of the Minnesota Attorney General Policy and Procedure for Data Practices Requests,” last updated Sept. 23, 2022, available at <https://www.ag.state.mn.us/Office/DataPracticesRequestPolicy.pdf> (last visited June 3, 2023). The application of those policies in this case gave rise to unconstitutional conditions vis-à-vis Dr. Jensen.

14. Defendant Office of the Minnesota Attorney General is located at 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101.

JURISDICTION AND VENUE

15. This action’s claims under the MGDPA, Minn. Stat. § 13.01, *et seq.* are within the Court’s general and specific subject matter jurisdiction over actions to compel compliance, actions for damages, and actions seeking injunctions as specified by statute. See Minn. Stat. § 13.08; Minn. Stat. § 484.01.

16. The Court has personal jurisdiction over the Defendants, who reside in Minnesota.

17. Venue is proper in this Court because Minn. Stat. § 13.08, subd. 3 provides that “[a]n action filed pursuant to this section may be commenced ... in the case of the state, any county.”

STATEMENT OF THE CLAIM

The Data Request

18. On April 20, 2023, Dr. Jensen, through his attorney, requested data from the responsible authority for the Office of the Attorney General. **Exhibit 1.**

19. The responsible authority is Keith Ellison, in his official capacity, and the OAG has

created a process for requesting data from the responsible authority.

20. Dr. Jensen followed the OAG's procedures for making a data request to the responsible authority by emailing the request to datapracitices@ag.state.mn.us, and has performed all actions necessary to receive data responsive to his request.

21. The request simply asked for the following categories of data:

All documents dated from March 9, 2020 through the date of your response with the phrase "Scott Jensen."

All documents dated from March 9, 2020 through the date of your response in which Scott Jensen is the subject of the data.

22. On April 21, 2023, the OAG responded by requesting proof of Dr. Jensen's identity and informed consent to release private data to his attorney. The same day, Dr. Jensen, through his attorney, confirmed his identity and provided his informed consent to the release of the data to his attorney.

The Defendants Responded to the Request

23. On May 4, 2023, the OAG responded to the data request by producing two categories of documents with a cover letter. **Exhibit 2.**

24. The first category included "various public data...subject to third-party copyrights."

25. The second category included "[p]ublic data and private data about Dr. Jensen."

26. The cover letter then stated that "[v]arious data are not public and not otherwise accessible by Dr. Jensen."

27. The letter listed several categories of documents withheld based on claimed statutory exceptions to Dr. Jensen's right to receive responsive government data about himself as the subject, including the following:

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.

28. To summarize, the OAG claimed to withhold data based on the following discrete exceptions to the MGDPA:

- a. Minn. Stat. § 13.65, subd. 1(b);
- b. Minn. Stat. § 13.65, subd. 1(c);
- c. Minn. Stat. § 13.601, subd. 2;
- d. Minn. Stat. § 13.43, subd. 4;
- e. Minn. Stat. § 13.37, subd. 2(a);
- f. Minn. Stat. § 13.356(a)(2);
- g. Minn. Stat. § 13.39;
- h. Minn. Stat. § 13.393.

Dr. Jensen Challenged the Withholding of Data in a Response Letter

29. Dr. Jensen, through his attorney, responded to the OAG’s May 4 letter on May 10, 2023, challenging the withholding of certain responsive data. **Exhibit 3.**

30. Dr. Jensen, through his attorney, challenged the withholding of any data classified as “private data on individuals” in which Dr. Jensen was the subject of the data or the data was “accessed by the name...of any individual.” Dr. Jensen stated, in part, as follows:

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.

31. Likewise, Dr. Jensen challenged the withholding of any personnel data under Minn. Stat. § 13.43, and stated in part as follows:

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.

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.

32. Dr. Jensen further objected to the withholding of data under 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.

33. Dr. Jensen further objected to the withholding of data classified as investigative data or attorney data, in part as follows:

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.

.....

It is not clear to me whether additional documents unrelated to [lawsuits described in the preceding paragraph] 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.

34. Finally, Dr. Jensen objected to the withholding of additional data missing from the production, including Microsoft Teams data:

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.

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.

The Defendants Partially Replied to Dr. Jensen’s Challenges but Failed to Justify Their Withholding Under Most of the Statutory Exceptions They Invoked

35. The Defendants responded to Dr. Jensen’s May 10 letter on May 16, 2023. **Exhibit 4.**

36. In the reply, Defendants claimed that they “discharged [their] 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” and that 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.”

37. The Defendants did, however, provide some additional information as to their reasons for withholding data.

38. First, the Defendants “confirm[ed] that the only data redacted pursuant to Minn.

Stat. § 13.356 are email addresses relating to email subscriptions.”

39. Second, the Defendants stated that there was no missing attachment to the email exchange between John Stiles and Seth Kaplan.

40. Third, the Defendants stated that the OAG’s retention period for Microsoft Teams data is 30 days.

41. Fourth, the Defendants provided a “short description explaining the necessity for the classification” of data as protected under Minn. Stat. § 13.37:

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.

42. The Defendants closed their letter in a manner that indicated that any further correspondence would be futile: “The AGO considers this request closed.”

43. The Defendants provided no justification in this May 16 letter for withholding data based on Minn. Stat. §§ 13.65, subd. 1(b)-(c); 13.601, subd. 2; 13.43, subd. 4; 13.39; and 13.393.

44. Upon information and belief, there is no justification for withholding any data pursuant to these sections of the MGDPA, which Defendants know, as demonstrated by their failure to justify their withholding.

45. Defendants have not “clearly demonstrated” that Dr. Jensen’s name is “merely incidental” to any data withheld, or that the data withheld was not accessed by using Dr. Jensen’s name.

46. Defendants have not identified the existence of any investigation, active or inactive, which could justify the withholding of data based on section 13.65.

47. Upon information and belief, based on Defendants' failure to identify any investigation, no such investigation exists.

48. Defendants have not provided any basis in fact or law for refusing to produce data under section 13.65 to an individual subject of the data requested.

49. Upon information and belief, based on Defendants' failure to identify any such basis, no such basis exists.

50. Defendants have not provided any basis in fact or law for refusing to produce data under section 13.601 to an individual subject of the data requested.

51. Upon information and belief, based on Defendants' failure to identify any such basis, no such basis exists.

52. Defendants have not provided any basis in fact or law for refusing to produce data under section 13.43 to an individual subject of the data requested.

53. Upon information and belief, based on Defendants' failure to identify any such basis, no such basis exists.

54. Defendants have not identified the existence of any investigation, active or inactive, which could justify the withholding of data based on section 13.39.

55. Upon information and belief, based on Defendants' failure to identify any investigation, no such investigation exists.

56. Defendants have not provided any basis in fact or law for refusing to produce data under section 13.39 to an individual subject of the data requested.

57. Upon information and belief, based on Defendants' failure to identify any such basis, no such basis exists.

58. Defendants have not provided any basis in fact or law for refusing to produce data under section 13.393 to an individual subject of the data requested.

59. Upon information and belief, based on Defendants' failure to identify any such basis, no such basis exists.

60. The Defendants' retention policy for Microsoft Teams data of 30 days leads to the destruction of government data in a manner that violates the MGDPA's requirement to maintain data pursuant to Minn. Stat. § 13.03. A 30-day retention period for such data is unreasonable.

Defendants Have Improperly Applied Minn. Stat. § 13.37 to Intentionally Deprive Dr. Jensen of His First Amendment Rights

61. In addition to failing to justify the withholding of data for the reasons given and discussed in the preceding paragraphs, the Defendants' stated reason for withholding data from Dr. Jensen under Minn. Stat. § 13.37 fails to satisfy the statute and applies the statute in a way that violates Dr. Jensen's First Amendment rights.

62. Minn. Stat. § 13.37 only allows the withholding of data as "security information" if "the disclosure of [the data] the responsible authority determines would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury."

63. The Defendants' reason for invoking section 13.37 quoted in paragraph 41 above,

on its face, does not satisfy this statutory definition.

64. As part of the production of documents, the Defendants produced a few audio recordings of individuals who called the OAG about Dr. Jensen. None of these recordings indicates any conduct which would justify withholding information based on section 13.37.

65. Upon information and belief, including the Defendants' failure to produce any evidence supporting the existence of threats or harassment, there is no evidentiary support for Defendants invoking section 13.37 to withhold data from Dr. Jensen.

66. Further, Defendants know that Dr. Jensen has no control over how third parties might react to the publication of data which demonstrates that the Defendants committed actions offensive to those third parties.

67. Upon information and belief, Defendants also know and understand that third parties become upset with the Defendants for how they carry out their constitutional duties all the time based on reports by news media.

68. Upon information and belief, Defendants have intentionally discriminated against Dr. Jensen by failing to produce information using a justification that they do not apply to the news media reporting on Defendants' actions.

69. The Defendants expressly refused to provide responsive data to Dr. Jensen because he might use his First Amendment rights to talk about the data, including via "posts by Dr. Jensen on social media."

70. The Defendants are also aware that Dr. Jensen has threatened to file a lawsuit against the Defendants based on their conduct in investigating his medical license along with the Minnesota Board of Medical Practice.

71. Upon information and belief, the Defendants intentionally refused to produce responsive data to Dr. Jensen because he could use it to exercise his First Amendment right to file a lawsuit against the Defendants based on deprivations of his First Amendment rights through illegal investigations of his medical license.

72. By refusing to produce the data based on Dr. Jensen's exercise of his First Amendment rights, or future exercise of those rights, the Defendants have committed viewpoint discrimination in violation of the First Amendment.

73. The intentional withholding of government data because of the First Amendment activities of citizens violates their First Amendment rights. *See Boardman v. Inslee*, 978 F.3d 1092, 1105-06 (9th Cir. 2020) (discussing "eight Justices in *United Reporting* joined three separate writings, all of which acknowledged the critical point that 'restrictions on the disclosure of government-held information' may, under certain circumstances, 'transgress the First Amendment.' *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 569, 131 S. Ct. 2653, 180 L. Ed. 2d 544 (2011) (citing *United Reporting*, 528 U.S. at 41-42 (Scalia, J., joined by Thomas, J., concurring); *id.* at 42-44 (Ginsburg, J., joined by O'Connor, Souter, and Breyer, JJ., concurring); *id.* at 44-48 (Stevens, J., joined by Kennedy, J., dissenting)))").

74. The Defendants' intentional withholding of data from Dr. Jensen based on section 13.37, designed to prevent his political speech and right to petition the government for redress of grievances, transgresses the First Amendment.

**The Defendants Intentionally Failed and Refused to Produce All
Data Responsive to Dr. Jensen's Request, Which Has Damaged Dr. Jensen**

75. Defendants intentionally failed and refused to produce all data responsive to Dr. Jensen's request.

76. Upon information and belief, including the Defendants' failure to provide any justification for withholding data under the subdivisions described in paragraph 43, there is no evidentiary basis or good faith legal argument for withholding any data on the basis of these subdivisions.

77. Defendants' withholding of and failure to produce data responsive to Dr. Jensen's request, to which Dr. Jensen is entitled under the MGDPA, violates the MGDPA.

78. Because Defendants have withheld data based on an improper application of exceptions to the publication requirement of the MGDPA, Defendants have failed to establish procedures to ensure appropriate and prompt compliance under Minn. Stat. § 13.03, subd. 2(a).

79. Defendants' violations of the MGDPA are willful and knowing.

80. Dr. Jensen has been damaged by the Defendants' violations of the MGDPA and First and Fourteenth Amendment, and the Minnesota Constitution, in an amount to be determined at trial.

81. The Defendants' violations of the MGDPA and First and Fourteenth Amendments, and the Minnesota Constitution, are ongoing violations of state and federal law.

82. Dr. Jensen's damages continue to accrue.

83. Because Defendants' violations of the MGDPA were and are willful, Defendants

are liable for exemplary damages of not less than \$1,000 and not more than \$15,000 for each violation, and Dr. Jensen seeks an award of the same.

84. Defendants have waived any immunity for all causes of action under the MGDPA asserted herein. Minn. Stat. § 13.08, subd. 1.

CAUSES OF ACTION

COUNT I

Minn. Stat. § 13.08; 28 U.S.C. § 2201, *et seq.*; Minn. Stat. § 555.01, *et seq.* Action for Damages, Declaratory Relief, an Injunction, and to Compel Compliance

85. Dr. Jensen realleges and incorporates by reference the allegations above.

86. The MGDPA “establishes a presumption that all government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” Minn. Stat. § 13.01, Subd. 3.

87. Under the MGDPA, “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.” Minn. Stat. § 13.03, Subd. 3.

88. Under the MGDPA, data must be retained by the government entity except as allowed by a retention schedule under Minn. Stat. § 138.17. However, a retention schedule cannot be adopted which would undermine the purpose of the MGDPA.

89. Dr. Jensen requested government data from Defendants in a manner which complied with all requirements for such a request under applicable law.

90. Defendants withheld and continue to withhold data from Dr. Jensen to which he is

entitled under the MGDPA.

91. Defendants improperly withheld data under every provision of the MGDPA asserted by Defendants as described in paragraph 28, above, except for Minn. Stat. § 13.356.

92. There is no basis in fact or any federal law, state statute, or a temporary classification of data that provides that any of the withheld data is not subject to production to Dr. Jensen based on his request, other than the data withheld under Minn. Stat. § 13.356.

93. Upon information and belief, Defendants have destroyed and not kept Microsoft Teams data shared among Defendants' employees which would be responsive to Dr. Jensen's request because of the OAG's unreasonably short 30-day Microsoft Teams data retention policy, in violation of the MGDPA.

94. Dr. Jensen has suffered at least nominal damages as a result of the Defendants' numerous violations alleged in this Complaint, each incorporated herein as individual and separate violations, in an amount to be proven at trial, and Dr. Jensen seeks an award of those damages.

95. Dr. Jensen has suffered actual damages in an amount greater than \$50,000 as a result of the Defendants' numerous violations alleged in this Complaint, each incorporated herein as individual and separate violations, in an amount to be proven at trial, and Dr. Jensen seeks an award of those damages.

96. Dr. Jensen's damages include those arising from the wrongful denial of Dr. Jensen's right to access government data, delays in the ability to speak to the public about the Defendants' actions, delays in the ability to pursue legal action against the Defendants based on their actions taken against Dr. Jensen and his medical license, time and costs in

challenging the Defendants' unlawful conduct, and more.

97. Defendants' violations of the MGDPA were willful and knowing.

98. Dr. Jensen's damages continue to accrue.

99. Because Defendants' violations of the MGDPA were willful, Defendants are liable for exemplary damages of not less than \$1,000 and not more than \$15,000 for each violation, and Dr. Jensen seeks an award of the same.

100. Dr. Jensen is also entitled to remedies including an order compelling Defendants' compliance with the MGDPA, recovery of costs, disbursements, reasonable attorney's fees (as ordered by the Court or on proper post-judgment motion for the same), and a civil penalty.

101. Dr. Jensen further asks the Court to make any order or judgment as may be necessary to enjoin Defendants from any and all practices alleged herein or embraced by this Complaint which do or propose to violate the MGDPA, and issue an injunction awarding such equitable relief.

COUNT II

First Amendment Viewpoint Discrimination

**U.S. Const. amend. I; U.S. Const. amend. XIV; Minn. Const. art. I, § 3
42 U.S.C. § 1983; 28 U.S.C. § 2201, *et seq.*; Minn. Stat. § 555.01, *et seq.***

102. Dr. Jensen realleges and incorporates by reference the allegations above.

103. The Free Speech Clause of the First Amendment to the Constitution provides, in relevant part, that "Congress shall make no law . . . abridging the freedom of speech."

104. The Free Speech Clause applies to states and their subdivisions and municipalities through the Fourteenth Amendment to the U.S. Constitution.

105. The Free Speech Clause prohibits restrictions of speech that are based on content or viewpoint.

106. Dr. Jensen's public discussions of the actions of the Defendants and investigations of his medical license are forms of expression and speech protected by the Free Speech Clause.

107. Dr. Jensen's filing of a lawsuit against the Defendants based on illegal and unconstitutional investigations of his medical license would be expression and speech protected by the Free Speech Clause.

108. The Defendants' application of Minn. Stat. § 13.37 to withhold information based on Dr. Jensen's political speech is content and viewpoint-based discrimination against Dr. Jensen.

109. The Defendants have no compelling, substantial, or legitimate interest in withholding data from Dr. Jensen based on what unknown, unidentified third parties might do with the data withheld.

110. The Defendants' withholding of data from Dr. Jensen is not narrowly tailored to achieve, nor is it rationally related to, any governmental interest Defendants purport to have.

111. As applied to Dr. Jensen, the withholding of the data under Minn. Stat. § 13.37 violates the Free Speech Clause of the First Amendment to the U.S. Constitution and article I, § 3 of the Minnesota Constitution.

112. Defendant Ellison is responsible under Minnesota law for "creating, applying, or interpreting" the MGDPA policies of the Defendant Office of the Attorney General.

Minn. R. 1205.0200, subp. 13; Minn. Stat. § 13.03, subd. 2; Minn. R. 1205.1100; see also “Office of the Minnesota Attorney General Policy and Procedure for Data Practices Requests,” last updated Sept. 23, 2022, available at <https://www.ag.state.mn.us/Office/DataPracticesRequestPolicy.pdf> (last visited June 3, 2023). The application of those policies in this case gave rise to unconstitutional conditions vis-à-vis Dr. Jensen.

113. The actions of Defendant Ellison, individually, have violated Dr. Jensen’s First Amendment rights and have caused him actual, nominal, and general damages, including damages related to his personal dignity because of the violation of his constitutional rights.

114. Should Dr. Jensen prevail in this matter, Dr. Jensen is entitled to costs and disbursements incurred in this matter.

115. Should Dr. Jensen prevail in this matter, the Court should award attorney fees to Dr. Jensen and against Defendant pursuant to an appropriate post-judgment motion for the same.

COUNT III

Class-of-One Equal Protection Violation
U.S. Const. amend. XIV; Minn. Const. art. I, § 2
42 U.S.C. § 1983; 28 U.S.C. § 2201, et seq.; Minn. Stat. § 555.01, et seq.

116. Dr. Jensen realleges and incorporates by reference the allegations above.

117. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides, in relevant part, that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

118. The Equal Protection Clause applies to states and their subdivisions and

municipalities.

119. By failing to produce data to Dr. Jensen based on an improper application of Minn. Stat. § 13.37, the Defendants intentionally treated Dr. Jensen differently than they treat others similarly situated to him.

120. As one example, Defendants treated Dr. Jensen differently than they treat the news media, who regularly report on Defendants' activities and regularly make data practices requests about controversial actions which could offend unknown third parties.

121. The conduct which the Defendants claim concerned them enough to withhold data is no different in any relevant way from the news media requesting data about and then reporting on the Defendants' actions.

122. Further, there is no rational basis for treating Dr. Jensen differently than any other citizen, including the news media, who wishes to report on the Defendants' actions.

123. In fact, the Defendants' actions violate the public policy of the State of Minnesota, as evidenced by the MGDPA's presumption of publicity of government data.

124. The Defendants' actions are irrational and arbitrary.

125. Upon information and belief, the Defendants also treat other individuals who might speak to the public about actions taken by the Defendants differently than they have treated Dr. Jensen, with no rational basis for any such distinction.

126. As applied to Dr. Jensen, the withholding of the data under Minn. Stat. § 13.37 violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and article I, § 2 of the Minnesota Constitution.

127. Defendant Ellison is responsible under Minnesota law for "creating, applying,

or interpreting” the MGDPA policies of the Defendant Office of the Attorney General. Minn. R. 1205.0200, subp. 13; Minn. Stat. § 13.03, subd. 2; Minn. R. 1205.1100; see also “Office of the Minnesota Attorney General Policy and Procedure for Data Practices Requests,” last updated Sept. 23, 2022, available at <https://www.ag.state.mn.us/Office/DataPracticesRequestPolicy.pdf> (last visited June 3, 2023). The application of those policies in this case gave rise to unconstitutional conditions vis-à-vis Dr. Jensen.

128. The actions of Defendant Ellison, individually, in violation of Dr. Jensen’s Fourteenth Amendment rights, have caused him actual, nominal, and general damages, including damages related to his personal dignity because of the violation of his constitutional rights.

129. Should Dr. Jensen prevail in this matter, Dr. Jensen is entitled to costs and disbursements incurred in this matter.

130. Should Dr. Jensen prevail in this matter, the Court should award attorney fees to Dr. Jensen and against Defendants pursuant to an appropriate post-judgment motion for the same.

PRAYER FOR RELIEF

WHEREFORE, Dr. Jensen respectfully prays that this Court:

a) Compel the Defendants’ immediate production of the requested data to Dr. Jensen, as alleged herein; and/or enjoin Defendants from continuing to withhold the requested data from Dr. Jensen.

b) Declare that the Defendants’ procedures for processing MGDPA requests and

producing data in response to them, and the Microsoft Teams data retention policy, violate Dr. Jensen's rights under the MGDPA because they are insufficient to ensure appropriate and prompt access to public data, namely because the Defendants improperly apply exceptions to the publication requirement of the MGDPA, as described herein, and the Microsoft Teams data policy causes destruction of government data in an unreasonably short period of time.

c) Declare that the Defendants' withholding of data from Dr. Jensen under Minn. Stat. § 13.37 because of Dr. Jensen's political speech violates his federal and state constitutional rights, as described herein.

d) Permanently enjoin the Defendants from using the improper procedures described herein to maintain data and respond to data requests by Dr. Jensen and others like him.

e) Order the Defendants to reform their procedures to comply with the MGDPA.

f) Award actual, nominal, and general money damages to Dr. Jensen from the responsible authority Defendants, including Keith Ellison, in his capacity as responsible authority for the OAG, and the OAG, pursuant to Minn. Stat. § 13.08, for the violations of the MGDPA alleged herein.

g) Award actual, nominal, and general money damages to Dr. Jensen from Keith Ellison, individually, pursuant to 42 U.S.C. § 1983, for the constitutional violations alleged herein.

h) Assess a civil penalty against the Defendants as authorized in Minn. Stat. § 13.08, Subd. 4;

i) Award Dr. Jensen exemplary damages for each of Defendants' willful violations of the MGDPA, in the amount of not less than \$1,000 and not more than \$15,000 for each violation.

j) Award Dr. Jensen reasonable attorney fees, as authorized in Minn. Stat. § 13.08, Subd. 4 and/or 42 U.S.C. § 1988, and taxable costs and disbursements, pursuant to proper post-judgment requests for the same; and

k) Order such additional relief as the Court may deem just and proper.

DATED: June 6, 2023

UPPER MIDWEST LAW CENTER

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ACKNOWLEDGEMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: June 6, 2023

By: /s/ James V. F. Dickey
James V. F. Dickey, #393613