

STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT
Case Type: Other Civil

James Dickey,
Plaintiff,

v.

Independent School District No. 11,
Defendant.

AMENDED COMPLAINT

Plaintiff James Dickey (“Plaintiff”), for his Amended Complaint against Defendant Independent School District No. 11 (“Defendant” or “ISD 11”), states and alleges as follows:

INTRODUCTION

1. After the ISD 11 School Board voted to require masks on ISD 11’s K-6 students on August 23, 2021, Plaintiff served a request for data (the “Request”) related to that vote under the Minnesota Government Data Practices Act (“MGDPA”) on August 24, 2021. The Request is narrowly tailored and requests simple keyword searches of communications to and from ISD 11 and its Board within limited date ranges. Plaintiff filed a Complaint in this case on October 6, 2021.

2. On October 7, 2021, Defendant briefly and vaguely responded to Plaintiff’s data request. Defendant failed to produce virtually any of the requested data and stated that data which certainly exists does not. Defendant’s actions are unreasonable.

3. Plaintiff therefore brings this action seeking the production of data, declaratory and injunctive relief, and attorney fees and costs against Defendant under Minn. Stat. § 13.08, subd. 4. In addition, Plaintiff seeks a declaration that ISD 11’s data processing practices are noncompliant

with Minn. Stat. § 13.025, subd. 2 and 13.03, subd. 1-2 and equitable relief to remedy that noncompliance.

PARTIES

4. Plaintiff James Dickey is a resident and taxpayer of Anoka County, Minnesota, within ISD 11.

5. Defendant ISD 11 is public corporation within the State of Minnesota, which sits in Anoka County, Minnesota.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to Minn. Stat. § 13.08, Subd. 4, and Minn. Stat. § 484.01.

7. Venue is proper in this Court pursuant to Minn. Stat. § 13.08, Subd. 3.

STATEMENT OF THE CLAIM

8. On August 23, 2021, ISD 11’s School Board voted to require masks on K-6 students to begin the school year.

9. Hoping to learn more about the School Board’s basis for making this decision, on August 24, 2021, Dickey served a formal data request pursuant to Minnesota Statutes, Chapter 13, on Mr. Jim Skelly, the Responsible Authority for ISD 11.

10. The request seeks to inspect the following categories of data:

- a. All drafts, prior to the final presentation, of the visual presentation that was given by the Board at the School Board Meeting related to masking of students on August 23, 2021, including all emails related to those drafts.
- b. All data which the School Board considered or relied upon in creating the presentation made to District residents at the School Board meeting on August 23, 2021.
- c. All public comments made to the School Board with the keyword “mask” or “masks” from August 10 through 23, 2021.

- d. All communications from Education Minnesota or Anoka-Hennepin Education Minnesota to the District with the keyword “mask” or “masks” from July 1 through August 23, 2021.
- e. All communications from the Minnesota School Boards Association to the District with the keyword “mask” or “masks” from July 1 through August 23, 2021.
- f. All internal communications among District staff or employees with the keyword “mask” or “masks” from July 1 through August 23, 2021.

11. Thus, three of the categories seek documents with a simple keyword related to recognizable email address suffixes (i.e., emails coming from a specific organization) from a less-than-two-month span of time. One category seeks documents with a simple keyword from a two-week span of time. One category seeks data specifically relied on for a decision made on August 23, 2021. The other category seeks drafts of a presentation given on August 23, 2021. The Request is therefore narrowly tailored to reduce the potential for extraneous results.

12. The data Plaintiff seeks are public data within the meaning of the MGDPA.

13. On August 31, 2021, having not received even an acknowledgment of his August 24th request, Plaintiff sent a second email to Mr. Skelly, stating: “Please acknowledge receipt of my 8/24 request and let me know when I can expect the documents to be available for inspection.”

14. On August 31, 2021, Mr. Skelly replied to Plaintiff’s second email, confirming that Plaintiff’s data request had been received, that “the district is working on collecting the information,” and stating that “[w]hen a schedule for providing the data has been created we will contact you.”

15. From September 1, 2021, to September 17, 2021, Plaintiff did not receive any further information from Mr. Skelly or anyone else at ISD 11.

16. On September 17, 2021, Plaintiff sent a third email to Mr. Skelly to request a timeframe for inspection:

“Mr. Skelly, please provide me a timeframe for inspection. The District is required to keep this data in a manner that allows prompt access. The IPAD/Data Practices Office opinions I am aware of do not contemplate this kind of delay for providing such the data itself on such a targeted and simple request, much less an initial estimate of the data and timeframe for inspection.”

17. On October 7, 2021, Plaintiff finally received a response, this time from Laura Becker, Administrative Assistant to ISD 11’s General Counsel. Ms. Becker provided the following responses to Plaintiff’s data request:

- a. All drafts, prior to the final presentation, of the visual presentation that was given by the Board at the School Board Meeting related to masking of students on August 23, 2021, including all emails related to those drafts. **Response:** Presentation document updated live in Google docs. See document #1 attached.
- b. All data which the School Board considered or relied upon in creating the presentation made to District residents at the School Board meeting on August 23, 2021. **Response:** All data used referenced in the attached presentation. See doc #1 attached.
- c. All public comments made to the School Board with the keyword “mask” or “masks” from August 10 through 23, 2021. **Response:** Refer to the district website taping of school board meetings. <https://www.ahschools.us/domain/82>
- d. All communications from Education Minnesota or Anoka-Hennepin Education Minnesota to the District with the keyword “mask” or “masks” from July 1 through August 23, 2021. **Response:** There is no data responsive to this category.
- e. All communications from the Minnesota School Boards Association to the District with the keyword “mask” or “masks” from July 1 through August 23, 2021. **Response:** We have 1200 pages of documents that repeat with newsletters from MNSBA. You may want to consider requesting this data directly from MSBA to avoid duplication.
- f. All internal communications among District staff or employees with the keyword “mask” or “masks” from July 1 through August 23, 2021. **Response:** The response you requested for communications with the key word "mask" or "masks" included hundreds of thousands of pages. In order to be responsive to this request, each one needs to be reviewed for non-public student and employee data so that non-public data can be redacted. We have been working on this request and will share that data as soon as possible. This will take several weeks to complete.

18. ISD 11's response to Plaintiff's formal data request is practically bereft of any requested data and specifically withholds data which does or should exist:

- a. In response to Plaintiff's request for the **drafts** of the final August 23 presentation and **emails** related to it, ISD 11 only provided Plaintiff with the final presentation. This response completely neglects the availability of metadata to complete the request and indicates a possible failure to preserve data in the form of each draft of the presentation and the identity of the users who created or worked on the presentation.
- b. In response to Plaintiff's request for "**All** public comments" made to the school Board including the keywords "mask" or "masks" within the given timeframe, ISD 11 acknowledged only those made orally at the School Board meeting on August 23, 2021, completely ignoring the timeframe Plaintiff provided and neglecting the written public comments submitted through ISD 11's website, which Plaintiff knows exist because he himself made one during the given timeframe, and Defendant (belatedly) responded to his comment.
- c. In response to Plaintiff's request for "All internal communications among District staff or employees with the keyword 'mask' or 'masks' from July 1 through August 23, 2021," ISD 11's response is wholly lacking in detail that would allow Plaintiff to narrow his request.

19. Coming 44 days after Plaintiff's formal request, ISD 11's response is both unreasonable in substance and unreasonable in delay and therefore violates Plaintiff's right of access to government data and his right to access that data within a reasonable time.

CAUSES OF ACTION

COUNT I

(Action to Compel Disclosure Pursuant to Minn. Stat. § 13.08)

20. Plaintiff realleges and incorporates by reference the allegations above.
21. 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.
22. 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.

23. In addition, the rules corresponding to the MGDPA require that “the responsible authority shall provide for a response to a request for access within a reasonable time.” Minn. R. 1205.0300.

24. ISD 11 has failed to produce the requested data within a reasonable time, in violation of the MGDPA and its implementing rules.

25. Plaintiff is entitled to immediate disclosure of the requested data pursuant to Minn. Stat. §§ 13.03, Subd. 1, and 13.08, Subd. 4.

26. Should Plaintiff prevail in this matter, Plaintiff is entitled to costs and disbursements incurred in this matter.

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

COUNT II

(Declaratory and Injunctive Relief Pursuant to Minn. Stat. §§ 13.08 and 555.01, *et seq.*)

28. Plaintiff realleges and incorporates by reference the allegations above.

29. Pursuant to Minn. Stat. § 555.01, the Court has the authority to declare the parties’ rights and other legal relations in this matter. The Court may issue an injunction to ensure compliance with its declaration. Minn. Stat. § 555.08.

30. Pursuant to Minn. Stat. § 13.08, Subd. 2, the Court may enjoin a responsible authority or government entity from violation of the MGDPA.

31. As alleged above, Defendant has violated Plaintiff’s rights under the MGDPA.

32. Based on Defendant’s unreasonable response to Plaintiff’s Request, upon

information and belief, Defendant does not have procedures in place sufficient to ensure prompt and appropriate responses to citizens' data requests under the MGDPA. Minn. Stat. §§ 13.025, subd. 2 and 13.03, subd. 2.

33. Plaintiff thus prays for a declaration that Defendant has violated the MGDPA in response to Plaintiff's request, and that Defendant's procedures for responding to data requests do violate and continue to violate the MGDPA.

34. Plaintiff also prays for an injunction against Defendant's ongoing violations of the MGDPA, and for any injunctive or equitable relief available to ensure Defendant reforms its procedures to comply with the MGDPA.

35. Should Plaintiff prevail in this matter, Plaintiff is entitled to costs and disbursements incurred in this matter.

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

COUNT III

(Declaratory and Injunctive Relief Pursuant to Minn. Stat. § 13.03)

37. Plaintiff realleges and incorporates by reference the allegations above.

38. The MGDPA provides that "[t]he responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use." Minn. Stat. § 13.03, subd. 1; *Halva v. MNSCU*, 953 N.W.2d 496, 506-07 (Minn. 2021).

39. The MGDPA defines "Government data" as "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." Minn. Stat. § 13.02, subd. 7.

40. By failing to keep the records of the drafts of the final presentation presented at the August 23, 2021, School Board Meeting, ISD 11 violated its duty under MGDPA to make those records “easily accessible for convenient use.”

41. Should Plaintiff prevail in this matter, Plaintiff is entitled to costs and disbursements incurred in this matter.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

a) Compel Defendant ISD 11’s immediate production of the requested data, as alleged herein.

b) Declare that ISD 11 has not properly kept its records for easy accessibility for convenient use, in violation of the MGDPA.

c) Declare that ISD 11 has not produced the requested data within a reasonable time, in violation of the MGDPA.

d) Declare that ISD 11’s procedures for processing data requests and producing public data in response to them violate Plaintiff’s rights under the MGDPA because they are insufficient to ensure appropriate and prompt access to public data.

e) Declare that ISD 11 has failed to maintain records which it has a duty to maintain by allowing those documents to be erased via online updates.

f) Permanently enjoin ISD 11 from using improper procedures in response to data requests by Plaintiff and others like Plaintiff’s.

g) Order ISD 11 to reform its procedures to comply with the MGDPA.

- h) Assess a civil penalty against Defendant as authorized in Minn. Stat. § 13.08, Subd. 4;
- e) Award Plaintiff reasonable attorney fees, costs, and disbursements, as authorized in Minn. Stat. § 13.08, Subd. 4 and pursuant to a proper post-judgment request for the same; and
- f) Order such additional relief as the Court may deem just and proper.

DATED: October 11, 2021

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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: October 11, 2021

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