

**STATE OF MINNESOTA****DISTRICT COURT****COUNTY OF ANOKA****TENTH JUDICIAL DISTRICT**

Case Type: Civil – Other

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**TONY WEBSTER,**

Plaintiff,

vs.

**MINNESOTA DEPARTMENT OF  
EMPLOYMENT AND ECONOMIC  
DEVELOPMENT and STEVE GROVE** in  
his official capacity as Commissioner of and  
statutory responsible authority for the  
Minnesota Department of Employment and  
Economic Development and office of the  
Commissioner of the Minnesota Department  
of Employment and Economic Development,

Defendants.

**COMPLAINT****JURY TRIAL DEMANDED**

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Plaintiff Tony Webster alleges the following against Defendants Minnesota Department of Employment and Economic Development and Steve Grove in his official capacity as Commissioner of and as statutory responsible authority for the Minnesota Department of Employment and Economic Development and the office of the Commissioner of the Minnesota Department of Employment and Economic Development:

**INTRODUCTION**

1. This is an action to compel compliance and action for damages under the Minnesota Government Data Practices Act, codified at Minnesota Statutes, Chapter 13 (the “MGDPA”), and the Minnesota Official Records Act, Minn. Stat. § 15.17 (“MORA”) which is enforceable through the MGDPA.

2. Throughout the COVID-19 pandemic, Minnesota Department of Employment and Economic Development Commissioner Steve Grove communicated essential information to Minnesotans through Twitter. Among other things, Commissioner Grove announced agency updates on unemployment, grantmaking, and hiring decisions; solicited feedback from Minnesotans which he promised to use in agency decision-making; and on behalf of the government answered questions from Minnesotans concerned about unemployment insurance payments, the condition of Minnesota's economy, and more. Commissioner Grove's tweets have been quoted and embedded in news stories and 'Retweeted' or 'Quote Tweeted' by government entities and officials to keep Minnesotans informed, including DEED itself, Governor Tim Walz, and Hennepin County. Through Twitter's 'reply,' 'Quote Tweet,' and 'Retweet' functions, Commissioner Grove's Tweets also serve as a public forum for Minnesotans to discuss state actions and state policy, expressing their approval or disapproval of government actions.

3. Plaintiff Tony Webster is a journalist and researcher. Mr. Webster observed complaints from Minnesota community members that Commissioner Grove had blocked those constituents' accounts on Twitter. In doing so, Commissioner Grove enacted technical restrictions on those constituents seeing, replying to, interacting with, quote tweeting, or retweeting his Tweets, preventing those Minnesotans from receiving Commissioner Grove's governmental updates and participating in the public forum created through the Commissioner's Tweets.

4. Intending to research, analyze, and report on this issue, Mr. Webster submitted a request under the MGDPA seeking a list of all accounts blocked by Twitter accounts operated by DEED or Commissioner Grove, along with policy and data inventory documents the MGDPA requires government entities to prepare. DEED violated the MGDPA's promptness requirements by failing to produce *any* responsive data for over six months. When DEED did finally produce

some data, they provided MGDPA policy documents which had curiously been updated after Mr. Webster's request had been submitted, along with incomplete Twitter block list data which was converted to a less usable form. Importantly, Defendants refused to produce Commissioner Grove's Twitter block list, claiming that the account the Commissioner uses to provide DEED's important updates to Minnesotans "is not a DEED Twitter account and falls outside the scope of 'government data' and therefore the Minnesota Government Data Practices Act" (citations removed). Mr. Webster then sent another request to DEED and Commissioner Grove seeking all government data within Commissioner Grove's Twitter account, but DEED and Commissioner Grove denied this request as well. In addition to Defendants' failure to produce government data upon request, they have also violated the Minnesota Official Records Act, which requires state agencies to "make and preserve all records necessary to a full and accurate knowledge of their official activities," through and including Defendants' claim that they had no access to data within Commissioner Grove's Twitter account.

5. Plaintiff seeks an order compelling Defendants' compliance, damages, an injunction, declaratory judgment, fees, costs, and a civil penalty.

### **PARTIES**

6. Plaintiff Tony Webster ("Webster") is an adult individual and Wyoming resident. Mr. Webster is an "individual" and a "person" pursuant to Minn. Stat. § 13.02, subs. 8 and 10.

7. Mr. Webster is a published journalist and researcher. He has used the MGDPA in researching, reporting on, and assisting in the public's understanding of important matters of public interest, such as law enforcement's use of cloud-based mapping technologies to find suspects near crime scenes, urban public policy issues, police use of Internet users' search history to locate suspects, privacy issues surrounding automated license plate readers, government use of facial recognition technology, and more. His work has been cited by academic journals at institutions

around the world. Mr. Webster has testified before the Minnesota Legislature on numerous records management issues, such as the MGDPA's requirements surrounding data retention, auditing, and breaches, and has litigated noncompliance with the MGDPA, including obtaining a Minnesota Supreme Court ruling affirming the importance of government entities' compliance with the law. He has spoken publicly about government accountability and freedom of information issues, such as at a University of Minnesota School of Journalism and Mass Communication roundtable, and on various radio news productions and podcasts. Reporters, researchers, the public, and the government routinely seek Mr. Webster's advice on public records issues. In 2017, Mr. Webster was awarded the Minnesota Society of Professional Journalists' Peter S. Popovich Freedom of Information Award, and in 2021 Mr. Webster received New York University's nationwide journalism award for "Best Use of Public Records." Mr. Webster is currently a student attending the University of Wyoming.

8. Defendant Minnesota Department of Employment and Economic Development ("DEED") is a state agency and "government entity" as that term is defined by the MGDPA at Minn. Stat. § 13.02, subd. 7a, subjecting it to the MGDPA's requirements, duties, and governance.

9. Defendant Steve Grove ("Grove" or "Commissioner Grove") is and at all relevant times hereto has been the Commissioner of DEED. He is sued in his official capacity as Commissioner of DEED, and as the statutory responsible authority for both DEED and his office as Commissioner under the MGDPA. Commissioner Grove and the Minnesota Department of Employment and Economic Development hereafter are referred to individually, jointly, and collectively as "Defendants."

10. The office and position of the Commissioner of DEED is a "government entity" pursuant to Minn. Stat. § 13.03, subd. 7(a).

11. Commissioner Grove is the “responsible authority” of DEED and his office as Commissioner pursuant to Minn. Stat. § 13.02, subd. 16.

### **JURISDICTION AND VENUE**

12. This action’s claims under the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, *et seq.* are within the Court’s general and subject matter jurisdiction over actions to compel compliance, actions for damages, and actions seeking injunctions as specified by statute. *See* Minn. Stat. § 13.08.

13. This action’s claims under the Minnesota Official Records Act, Minn. Stat. § 15.17, are enforceable through the civil remedies under the MGDPA, namely Minn. Stat. § 13.08. *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496 (Minn. 2021).

14. The Court has personal jurisdiction, and venue is proper, 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.”

### **FACTS**

#### **(a) DEED is a state agency led by Commissioner Steve Grove**

15. The Minnesota Department of Employment and Economic Development is Minnesota’s principal economic development agency. Among other things, DEED administers Minnesota’s Unemployment Insurance program, helps Minnesotans find employment, provides guides for starting and financing businesses in Minnesota, and performs research on Minnesota’s economy.

16. In January 2019, Minnesota Governor Tim Walz appointed Steve Grove to be the Commissioner of DEED.

17. Commissioner Grove is a member of Governor Walz’s cabinet.

18. Commissioner Grove has the authority to speak and act for DEED.

19. Commissioner Grove speaks and acts for DEED.

**(b) The Twitter accounts of DEED and Commissioner Steve Grove**

20. Twitter is a social media website which allows the posting of messages and content called “Tweets,” which may contain text, links, photos, and videos. Members of the public can follow Twitter accounts and see the followed account’s Tweets, get alerts and updates for new Tweets from the followed account, and search a Twitter account’s prior Tweets. There are many ways to interact with Tweets. Tweets can be replied to, in which case a person can add their responsive Tweets below another Tweet as a reply. Replies can be seen by the public and interacted with, creating a discussion forum. Tweets can be ‘liked,’ also known as ‘favorited,’ by clicking or tapping a heart icon underneath a Tweet, and a list of accounts who liked a Tweet and how many likes a Tweet has received can be viewed by the public. Tweets can be shared with others through the ‘Retweet’ function, which causes a Tweet to be shared to another account’s followers and seen on their own profile page. The public can see how many times a Tweet has been Retweeted and a list of accounts who Retweeted a Tweet. Tweets can also be Quote Tweeted, in which case one account can provide their own commentary or opinion with another Tweet embedded and included below it. Quote Tweets are visible to others and Tweets contain a link to view all Quote Tweets. Tweets can also be embedded on websites, for example, in news stories. Twitter accounts also have a list of accounts which that account follows or is following, which is visible to others.

21. Twitter has a ‘Block’ feature. When one account is blocked by another, the blocked account is prohibited from seeing the other account’s Twitter profile, list of followed accounts, list of following accounts, Tweets and all content within their Tweets, who has ‘liked’ or ‘Retweeted’ a Tweet, any Quote Tweets, any reply Tweets underneath their Tweets, and more. Blocked accounts are unable to interact with the blocking account’s Tweets: they are unable to like,

Retweet, Quote Tweet, or reply to the blocking account's Tweets. Additionally, they are unable to see the blocking account's Tweets when Retweeted or Quote Tweeted by others, and they are unable to use Twitter's search functionality to view the blocking account's prior Tweets. Further, the blocking account can no longer ordinarily see content from the blocked account.

22. Any Twitter user can access and download a list of accounts which they have blocked from their own account.

23. DEED maintains a Twitter account bearing the name "MN DEED" at the username "@mndeed," accessible at the URL <<https://twitter.com/mndeed>>.

24. The Twitter account @mndeed is a government Twitter account.

25. DEED maintains a Twitter account bearing the name "DEED Library" at the username "@deedlibrarian," accessible at the URL <<https://twitter.com/deedlibrarian>>.

26. The Twitter account @deedlibrarian is a government Twitter account.

27. Steve Grove maintains a Twitter account bearing the name "Steve Grove" and the username "@Grove," accessible at the URL <<https://twitter.com/grove>> (hereafter "@Grove").

28. Commissioner Grove uses the Twitter account @Grove for DEED business.

29. Commissioner Grove uses the Twitter account @Grove to post Tweets containing government data.

30. Commissioner Grove uses the Twitter account @Grove to communicate on behalf of DEED.

31. Commissioner Grove uses the Twitter account @Grove to make announcements on behalf of DEED.

32. Commissioner Grove uses the Twitter account @Grove to make announcements in his role as Commissioner of DEED.

33. Commissioner Grove uses the Twitter account @Grove to communicate with Minnesotans about the accomplishments of DEED.

34. Commissioner Grove uses the Twitter account @Grove to answer Minnesotans' questions about DEED agency functions.

35. Commissioner Grove uses the Twitter account @Grove to solicit feedback from Minnesotans relating to DEED agency functions.

36. Commissioner Grove uses the Twitter account @Grove to disseminate government data.

37. Commissioner Grove uses the Twitter account @Grove to create government data.

38. Commissioner Grove uses the Twitter account @Grove to collect government data.

39. At least some of the Tweets in or by the @Grove Twitter account are or contain government data.

40. At least some Quote Tweets or replies to the @Grove account are or contain government data.

41. Commissioner Grove has used the Twitter 'block' functionality to block members of the public through the Twitter account @Grove.

42. Commissioner Grove has used the Twitter 'block' functionality to block members of the public through the Twitter account @Grove based on or because of those persons' comments regarding DEED actions.

43. The @mndeed account occasionally Retweets @Grove tweets.

44. Persons blocked by @Grove on Twitter would not see @Grove tweets retweeted by @mndeed.



45. The profile information associated with the Twitter account @Grove is attached hereto as **EXHIBIT 1**. The @Grove account profile includes the statement: “Commissioner of @mn deed for @GovTimWalz” with a link to JoinUsMN.com.

46. JoinUsMN.com is a DEED-operated governmental website.

47. Commissioner Grove has used the Twitter account @Grove, on behalf of DEED and/or in his capacity as Commissioner of DEED, to provide governmental updates regarding unemployment insurance. A sampling of these Tweets is attached hereto as **EXHIBIT 2**.

48. Commissioner Grove has used the Twitter account @Grove, on behalf of DEED and/or in his capacity as Commissioner of DEED, to answer questions and respond to concerns regarding Minnesota’s state unemployment program. A sampling of these Tweets is attached hereto as **EXHIBIT 3**.

49. Commissioner Grove has used the Twitter account @Grove, on behalf of DEED and/or in his capacity as Commissioner of DEED, to publish DEED economic statistics. A sampling of these Tweets are attached hereto as **EXHIBIT 4**.

50. Commissioner Grove has used the Twitter account @Grove, on behalf of DEED and/or in his capacity as Commissioner of DEED, to announce DEED’s hiring or promotions of DEED employees. A sampling of these Tweets is attached hereto as **EXHIBIT 5**.

51. Commissioner Grove has used the Twitter account @Grove, on behalf of DEED and/or in his capacity as Commissioner of DEED, to interact with journalists reporting on DEED. A sampling of these Tweets is attached hereto as **EXHIBIT 6**.

52. Commissioner Grove has used the Twitter account @Grove, on behalf of DEED and/or in his capacity as Commissioner of DEED, to express DEED’s asks of the state legislature

and to provide the public with updates on the progress of bills benefiting DEED in the state legislature. A sampling of these Tweets is attached hereto as **EXHIBIT 7**.

53. Commissioner Grove has used the Twitter account @Grove, on behalf of DEED and/or in his capacity as Commissioner of DEED, to make announcements on behalf of DEED including regarding DEED accomplishments and priorities. A sampling of these Tweets is attached hereto as **EXHIBIT 8**.

54. Commissioner Grove has used the Twitter account @Grove, on behalf of DEED and/or in his capacity as Commissioner of DEED, to provide the public with updates regarding DEED's partnerships. A sampling of these Tweets is attached hereto as **EXHIBIT 9**.

55. Commissioner Grove has used the Twitter account @Grove, on behalf of DEED and/or in his capacity as Commissioner of DEED, to solicit feedback from the public. A sampling of these Tweets is attached hereto as **EXHIBIT 10**.

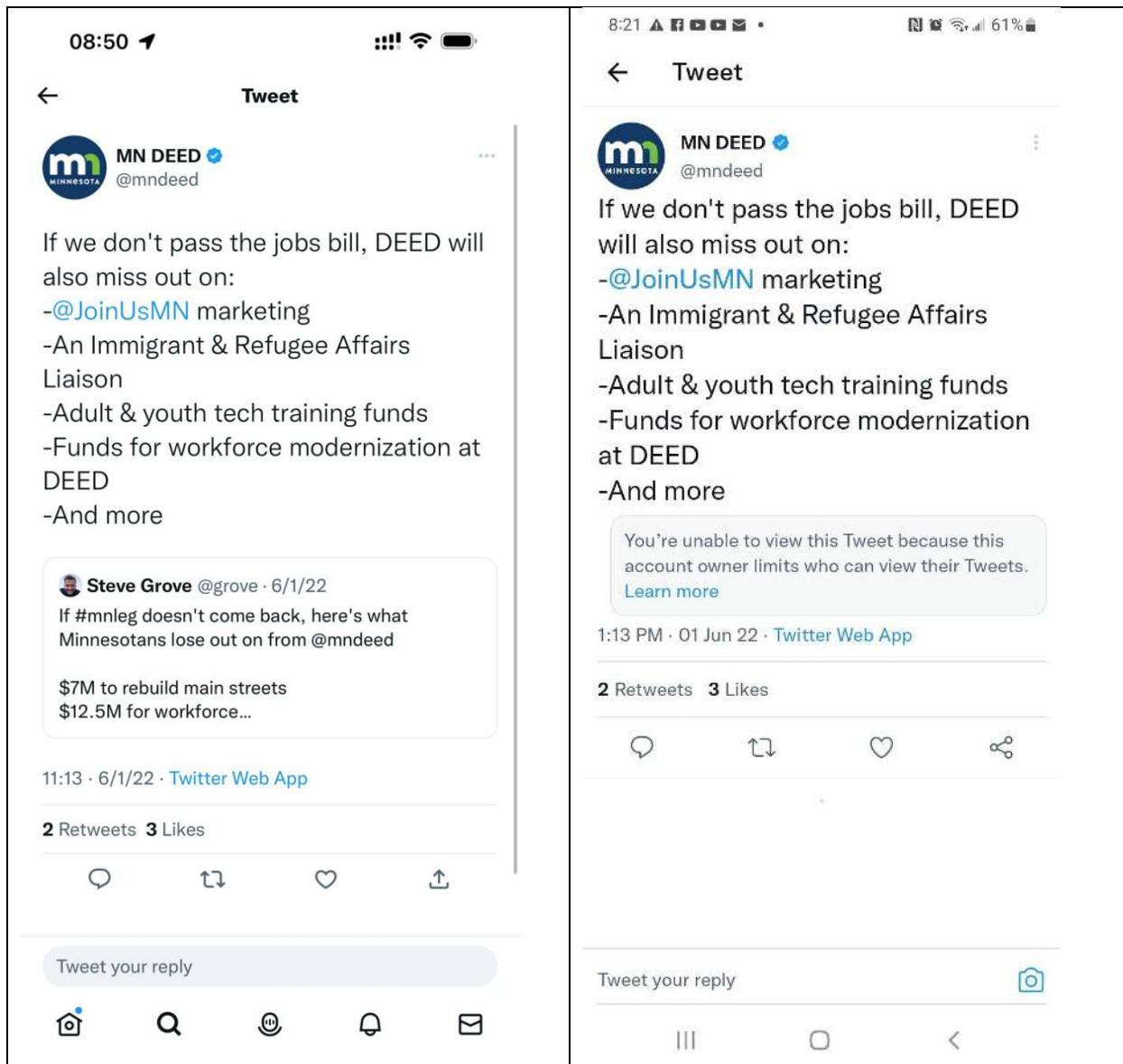
56. Government entities, public officials, news organizations, and journalists routinely share Tweets from the @Grove account as official updates or information from DEED and from the office of the Commissioner of DEED, including by retweeting and Quote Tweeting @Grove Tweets, and by quoting and embedding @Grove tweets in news stories. A sampling of these Tweets is attached hereto as **EXHIBIT 11**.

57. The Twitter account @Grove has blocked other Twitter accounts.

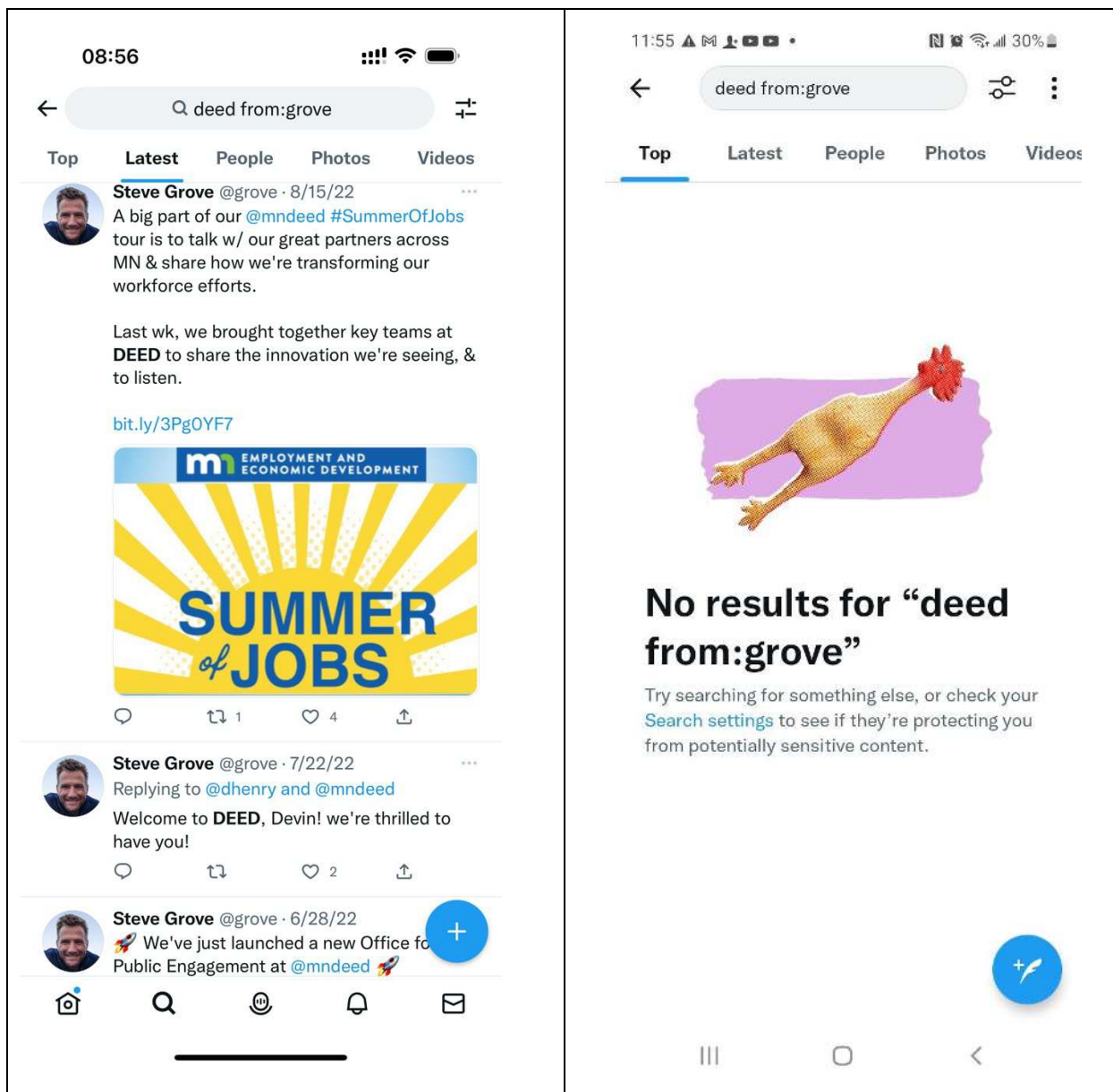
58. Commissioner Steve Grove, using the Twitter account @Grove, has blocked other persons from seeing, responding to, or interacting with @Grove Tweets.

59. When the Twitter account @Grove is blocking another account, they are unable to see the @Grove account, @Grove Tweets, @Grove Tweets shared as Retweets by other accounts, or @Grove Tweets shared as Quote Tweets and embedded within Tweets by other accounts.

60. By way of example, Commissioner Steve Grove through the @Grove Twitter account Tweeted DEED's official asks of the Minnesota State Legislature, and DEED's official Twitter account @MnDEED Quote Tweeted it, by embedding it within the @MnDEED account. A person not blocked by @Grove can see the full content, but a person blocked by @Grove cannot see the content underlying the @MnDEED Tweet. *Compare:*



61. Persons blocked by Commissioner Grove on the Twitter account @Grove are unable to search @Grove Tweets for information related to DEED. *Compare:*



(c) **Plaintiff's Data Practices Act requests**

62. On February 17, 2022, Plaintiff sent an email to Defendants, a copy of which is attached hereto as **EXHIBIT 12** (the "Request").

63. The Request was a request for copies pursuant to the MGDPA.

64. The Request was a request for access to data pursuant to Minn. Stat. § 13.03.

65. The Request requested “All data sufficient to show, list, and/or identify each and all Twitter accounts blocked by DEED or Commissioner Steve Grove, including without limitation the Twitter block lists for Twitter accounts maintained, operated, or used by DEED or Commissioner Grove,” along with DEED’s data inventory, public data access policy, and data subject rights and access policy.

66. The Request stated, among other things, “If I am denied access to any data, I respectfully request the responsible authority’s written certification along with citation to the specific statutory section upon which the denial is based.”

67. The Request was emailed to “DEED.datapractices@state.mn.us” and “s.grove@state.mn.us.”

68. “DEED.datapractices@state.mn.us” is an email address set up by DEED to receive and respond to requests under the MGDPA.

69. Commissioner Grove’s email address is “s.grove@state.mn.us”.

70. DEED received the Request on February 17, 2022.

71. Commissioner Grove received the Request on February 17, 2022.

72. DEED’s responsible authority received the Request on February 17, 2022.

73. The Request complied with all requirements under the MGDPA and DEED’s policies and procedures and was sufficient to trigger Defendants’ obligations under the MGDPA.

74. On February 17, 2022, DEED Associate General Counsel Justin R. Erickson confirmed receipt of the Request, a copy of which is attached hereto as **EXHIBIT 13**.

75. Mr. Erickson’s February 17, 2022 response was on behalf of both DEED and Commissioner Grove.

76. DEED accepted the Request on February 17, 2022.

77. Commissioner Grove accepted the Request on February 17, 2022.

78. As of March 11, 2022, neither DEED nor Commissioner Grove had further communicated with Plaintiff regarding the Request, nor had they sent any responsive data to Plaintiff.

79. On March 11, 2022, Plaintiff sent an email to Defendants, a copy of which is attached hereto as **EXHIBIT 14** stating in relevant part, “Do you have any update on this request? If all data is not available, I request you produce what is available so far. Please provide an estimate as to when (1) all data, and (2) any portion thereof, will be produced.”

80. Defendants received Plaintiff’s March 11, 2022 email.

81. DEED’s responsible authority or responsible authority designee received Plaintiff’s March 11, 2022 email.

82. Commissioner Grove, or his designee, received Plaintiff’s March 11, 2022 email.

83. Neither Defendants nor their responsible authority or designees responded to Plaintiff’s March 11, 2022 email.

84. As of August 25, 2022, Defendants had not further communicated with Plaintiff regarding the Request, nor had they provided any data responsive to the Request.

85. On August 25, 2022, Plaintiff sent an email to Defendants, a copy of which is attached hereto as **EXHIBIT 15**, stating in relevant part, “Do you have any update on this request? I have not received any responsive data. Can you tell me who the current responsible authority and data practices compliance official are?”

86. Defendants received Plaintiff’s August 25, 2022 email.

87. DEED’s responsible authority or responsible authority designee received Plaintiff’s August 25, 2022 email.

88. Commissioner Grove, or his designee, received Plaintiff's August 25, 2022 email.

89. At no time prior to August 26, 2022 had Defendants provided Plaintiff with any data responsive to the Request.

90. At no time prior to August 26, 2022 had Defendants asked any questions of Plaintiff relating to the Request.

91. At no time prior to August 26, 2022 had Defendants provided Plaintiff with any updates as to its progress in responding to Plaintiff's Request.

92. At no time prior to August 26, 2022 had Defendants provided any estimate as to when any data responsive to Plaintiff's Request would be produced.

93. At no time prior to August 26, 2022 had Defendants requested payment for producing copies of the data sought by the Request.

94. At no time prior to August 26, 2022 had Defendants informed Plaintiff that any data sought by the Request was classified so as to deny Plaintiff access, nor did Defendants prior to August 26, 2022 cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based, or certify the same.

95. On August 26, 2022, DEED Interim General Counsel Brett Terry sent an email to Plaintiff, a copy of which is attached hereto as **EXHIBIT 16**. DEED's August 26, 2022 response claimed to have fully responded to Plaintiff's request for DEED and Commissioner Grove's Twitter block list and for DEED's data inventory, and referred Plaintiff to DEED's website to view DEED's purported public data access policy and data subject rights and access policy.

96. There were several deficiencies in Defendants' August 26, 2022 response.

97. First, the Twitter block list attached to Defendants' August 26, 2022 email was only for the DEED Twitter account @mn deed and not other responsive accounts, including without limitation the accounts @Grove or @deedlibrarian.

98. Second, DEED converted the limited Twitter block list data they did provide for the @mn deed account from the standardized JSON format in which is maintained to instead a less usable and non-machine-readable PDF format.

99. Third, the links DEED sent to its MGDPA policies indicated they had been updated on or about July 28, 2022, which was after the Request had been submitted.

100. Fourth, DEED's data inventory was undated and was later revealed to have also been updated after the Request was submitted.

101. Minn. Stat. § 13.03, subd. 2(a) requires that “[t]he responsible authority in every government entity shall establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner.” A single failure to produce government data in a prompt manner constitutes a violation of the MGDPA. *Webster v. Hennepin Cnty.*, 910 N.W.2d 420, 431 (Minn. 2018).

102. Minn. Stat. § 13.03, subd. 3(c) provides that “The responsible authority or designee shall provide copies of public data upon request,” and “If the responsible authority or designee is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible.”

103. DEED's failure to produce any responsive data for a period exceeding six months was not “compli[ance] in an appropriate and prompt manner” as required by the MGDPA. Minn. Stat. § 13.03, subd. 2(a).



104. DEED's failure to produce any responsive data for a period exceeding six months constituted a violation of the MGDPA's requirement to provide copies of public data upon request and to do so at the time the request is made or as soon as reasonably possible. Minn. Stat. § 13.03, subd. 3(c).

105. DEED's conversion of the @mndeed Twitter block list data from JSON to PDF format was an impermissible alteration or substitution of the data sought by the request, in violation of the MGDPA's requirements to produce government data. Minn. Stat. § 13.03.

106. On August 26, 2022, Plaintiff responded to Defendants via email, a copy of which is attached hereto as **EXHIBIT 17**. Among other things, this correspondence asked if Defendants included the Twitter account @Grove in its search, and stated, "we are requesting the block list for the Twitter account @Grove pursuant to Minn. Stat. § 13.03," and asked clarification questions regarding the dates of the policy and inventory documents.

107. Defendants received Plaintiff's August 26, 2022 email.

108. On August 26, 2022, Mr. Terry emailed Plaintiff, a copy of which is attached hereto as **EXHIBIT 18**, stating in relevant part: "DEED considers its production to be complete. I will respond and/or provide status updates to the remaining questions no later than next Friday, September 2."

109. On September 2, 2022, Mr. Terry emailed Plaintiff, a copy of which is attached hereto as **EXHIBIT 19**, stating in relevant part: "Attached are copies of DEED's Guide for the General Public, DEED's Guide for Data Subjects, and DEED's Data Inventory that were in effect on February 17, 2022. I will respond and/or provide status updates to your remaining questions no later than next Friday, September 9." Attached to Mr. Terry's email was a webpage print-out from third-party Internet Archive's WayBack Machine showing what was purported to be an

archived version of DEED's Data Practices webpage as of November 17, 2021, and an undated data inventory purported to be the data inventory in effect at the time the Request was submitted.

110. DEED's production of a purported public data access policy and data subject rights and access policy dated after the Request was submitted violates the MGDPA's requirement to produce data responsive to the Request. Minn. Stat. § 13.03.

111. DEED's provision of a third-party's purported copy of its Data Practices webpage indicates DEED failed to preserve data responsive to Plaintiff's request, failed to produce data responsive to Plaintiff's request, and failed to "make and preserve all records necessary to a full and accurate knowledge of their official activities." Minn. Stat. § 15.17.

112. DEED's failing over a period of over six months to produce its public data access policy, data subject rights and access policy, and data inventory in effect at the time the Request was submitted violates the MGDPA's promptness requirements as specified at Minn. Stat. § 13.03, subds. 2(a) and 3(c).

113. Mr. Terry's September 2, 2022 email committed to further responding to Plaintiff "no later than next Friday, September 9."

114. On September 9, 2022, Mr. Terry further responded to Plaintiff via email, a copy of which is attached hereto as **EXHIBIT 20**, stating that he would instead respond "no later than next Friday, September 16."

115. On September 16, 2022, Mr. Terry further responded to Plaintiff via email, a copy of which is attached hereto as **EXHIBIT 21**. Among other things, Mr. Terry stated, "@Grove is not a DEED Twitter account and falls outside the scope of "government data" (Minn. Stat. § 13.02, subd. 7), and therefore the Minnesota Government Data Practices Act (Minn. Stat. § 13.01).

Furthermore, DEED does not have the responsive data you requested related to the @Grove Twitter account.”

116. Mr. Terry’s September 16, 2022 email was on behalf of DEED and Commissioner Grove.

117. On September 16, 2022, Plaintiff sent Defendants an email, a copy of which is attached hereto as **EXHIBIT 22**, asking clarification questions and requesting Defendants implement a litigation hold.

118. On September 22, 2022, Mr. Terry sent Plaintiff an email, a copy of which is attached hereto as **EXHIBIT 23**.

119. On September 22, 2022, Plaintiff sent Defendants an email, a copy of which is attached hereto as **EXHIBIT 24**.

120. On September 28, 2022, Plaintiff and DEED attorney Brett Terry spoke via telephone. After telephone call, Defendants confirmed their position had not changed in an October 3, 2022 email, a copy of which is attached hereto as **EXHIBIT 25**.

121. Defendants have refused to produce the Twitter block list associated with the account @Grove.

122. Defendants have failed to either search for or produce any Twitter block list associated with the account @deedlibrarian, or certify that the data does not exist.

123. On October 3, 2022, Plaintiff sent a subsequent MGDPA request to both DEED and Commissioner Grove, a copy of which is attached hereto as **EXHIBIT 26** (the “**Subsequent Request**,” and together with the Request, the “**Requests**”). Among other things, the Subsequent Request requested all government data in and within the Twitter account @Grove.

124. The Subsequent Request was received by DEED’s responsible authority.

125. The Subsequent Request was received by Commissioner Grove.

126. On October 4, 2022, Mr. Terry responded to the Subsequent Request, a copy of which is attached hereto as **EXHIBIT 27**. This email stated, in relevant part, “DEED’s position is that the @Grove Twitter account is not a DEED Twitter account and falls outside the scope of ‘government data’ (Minn. Stat. § 13.02, subd. 7), and therefore the Minnesota Government Data Practices Act (Minn. Stat. § 13.01).”

127. Twitter provides a Direct Message feature, in which users can send messages to another account or multiple other accounts, which are not publicly displayed on the Twitter website except to the users involved in the conversation.

128. Any Direct Messages in or within the @Grove account relating to DEED business are presumptively public, government data.

129. Defendants failed to search for, retrieve, and produce any Direct Messages in or within the Twitter account @Grove.

130. On October 5, 2022, Plaintiff asked Defendants to clarify whether they were refusing to produce any data “in” or “within” the @Grove account, among other things. A copy of this email is attached hereto as **EXHIBIT 28**.

131. On October 7, 2022, Defendants responded confirming their position that all data “in” or “within” the @Grove account is “not government data.” A copy of this email is attached hereto as **EXHIBIT 29**.

132. The Subsequent Request was denied by DEED.

133. The Subsequent Request was denied by Commissioner Grove.

134. Defendants violated the MGDPA by refusing to produce copies of government data in response to the Requests.

135. Defendants violated the MGDPA by refusing to search for and retrieve government data from the @Grove Twitter account.

136. Defendants violated the MGDPA by failing to make and preserve records, including by way of DEED's failure to retrieve records and data from the @Grove account.

137. On October 19, 2022, Defendants advised Plaintiff via email, a copy of which is attached hereto as **EXHIBIT 30**, that they had submitted a request to the Commissioner of Administration's Data Practices Office seeking an advisory opinion. This advisory opinion request did not contain a complete or accurate factual record, and the Commissioner of Administration lacks fact-finding authority.

138. Defendants' conduct has forced Plaintiff to file suit to enforce his rights under the MGDPA and to secure Defendants' compliance with the MGDPA.

139. Based on the facts alleged herein, Defendants committed numerous violations of the MGDPA, including:

|                                 |   |
|---------------------------------|---|
| Minn. Stat. § 13.03, subd. 3(c) | Failure to provide copies upon request  |
| Minn. Stat. § 13.03, subd. 3(e) | Failure to provide data maintained in a computer storage medium   |
| Minn. Stat. § 13.03, subd. 2(a) | Failure to establish procedures to insure appropriate and prompt compliance   |
| Minn. Stat. § 13.03, subd. 3(f) | Failure to certify and cite to a specific statutory section, temporary classification, or specific provision of federal law upon which a denial was based |
| Minn. Stat. § 15.17             | Failure to make and preserve records  |
| Minn. Stat. § 13.025, subd. 1   | Failure to update and ensure accuracy of data inventory   |
| Minn. Stat. § 13.025, subd. 2   | Failure to update and ensure accuracy of public data access policy  |

|                               |  |
|-------------------------------|--|
| Minn. Stat. § 13.025, subd. 3 | Failure to update and ensure accuracy of data subject rights and access policy |
|-------------------------------|--|

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

### **CLAIMS FOR RELIEF**

#### **COUNT ONE Order Compelling Compliance (Minn. Stat. § 13.08, subd. 4)**

141. Plaintiff incorporates by reference each of the above allegations as if stated fully herein.

142. Plaintiff has been aggrieved and damaged by each of the Defendants' numerous violations of the MGDPA.

143. Defendants' actions, conduct, and failures constitute numerous violations of the MGDPA as alleged in this Complaint, each incorporated herein as individual and separate violations.

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

#### **COUNT TWO Damages (Minn. Stat. § 13.08, subd. 1)**

145. Plaintiff incorporates by reference each of the above allegations as if fully stated herein.

146. Plaintiff 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 Plaintiff seeks an award of those damages.

147. Plaintiff has suffered actual and compensatory 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 Plaintiff seeks an award of those damages.

148. Plaintiff's damages include those arising from the wrongful denial of Plaintiff's right to access government data, delays in the ability to produce journalism and report matters of public concern, time and costs in challenging the Defendants' unlawful conduct, lost time and wages in challenging Defendants' unlawful conduct, and more.

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

150. Plaintiff's damages continue to accrue.

151. Defendants' violations of the MGDPA were willful. 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 Plaintiff seeks an award of the same.

**COUNT THREE**  
**Injunctive Relief**  
**(Minn. Stat. §§ 13.08, subd. 2, & 8.31 subd. 3a)**

152. Plaintiff incorporates by reference each of the above allegations as if fully stated herein.

153. Defendants have violated or propose to violate the MGDPA and may be enjoined by the Court. Minn. Stat. § 13.08, subd. 2.

154. Defendants' actions, conduct, and failures constitute numerous violations of the MGDPA as alleged in this Complaint, each incorporated herein as individual and separate violations.

155. Plaintiff 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 an injunction awarding equitable relief.

**COUNT FOUR**  
**Declaratory Judgment**  
**(Minn. Stat. Ch. 555)**

156. Plaintiff incorporates by reference each of the above allegations as if fully stated herein.

157. Plaintiff is entitled to declaratory relief pursuant to Minn. Stat. Ch. 555.

158. Plaintiff seeks declaratory judgment that Defendants have violated the MGDPA, including in all the ways alleged in this Complaint, and including without limitation an order declaring that Defendants' delays in complying with the Request and any portion thereof violated the MGDPA; that Defendants violated policy and procedure requirements of the MGDPA; and that the government data contained in or within the @Grove account and the Twitter block lists requested by the Requests are public government data.

159. Plaintiff further seeks declaratory judgment that Commissioner Grove's Tweets in his capacity as Commissioner of DEED or when speaking or acting on behalf of DEED are each, all, individually, and collectively, governmental public forums.

160. Plaintiff is entitled to injunctive relief to enforce the declaration sought herein.

**DEMAND FOR JURY TRIAL**

161. Plaintiff demands a jury trial on all issues so triable.

**DEMAND FOR RELIEF**

WHEREFORE, Plaintiff requests judgment in favor of Plaintiff, and against Defendants, as follows:

A. Declaratory and injunctive relief as described herein;



B. A finding that Defendants' actions complained of herein, and each of them, violated the MGDPA and MORA;

C. A finding that Defendants' actions complained of herein, and each of them, constitute willful violations of the MGDPA and MORA;

D. An order compelling Defendants' compliance with the MGDPA and MORA;

E. An award of nominal damages of at least \$1.00;

F. An award of actual damages in an amount to be determined at trial in excess of \$50,000;

G. An award of compensatory damages, including pre- and post-judgment interest, as described herein, in an amount to be determined at and after trial;

H. An award of exemplary damages under Minn. Stat. § 13.08, subd. 1, for each violation and violative act;

I. Assessment of a civil penalty under Minn. Stat. § 13.08, subd. 4;

J. Upon proper motion for the same after the filing of this Complaint, leave to amend the complaint to add a claim for punitive damages pursuant to Minn. Stat. § 549.191;

K. Fees, costs, disbursements, and reasonable attorney's fees, upon an order of the Court or proper post-judgment motion for the same, under Minn. Stat. § 13.08, subd. 1, and other applicable law; and

L. Such other, further, different, and additional relief as the Court may deem just and equitable.

Dated: November 10, 2022

**UPPER MIDWEST LAW CENTER**

By /s/ James V. F. Dickey  
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**ATTORNEYS FOR PLAINTIFF  
TONY WEBSTER**

**ACKNOWLEDGMENT**

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211, subd. 3.

Dated: November 10, 2022

by /s/ James V. F. Dickey  
James V. F. Dickey (#393613)