



October 25, 2024

Minnesota Department of Education
Responsible Authority
mde.commissioner@state.mn.us
Compliance Official
mde.datapractices@state.mn.us

VIA EMAIL

RE: Data Practices Act Request to the Minnesota Department of Education

Dear Responsible Authority:

We represent Center of the American Experiment (CAE) related to the data requests served on the Minnesota Department of Education on October 2, 2024. A copy of the prior request is attached.

CAE made a data request to you 23 days ago requesting:

1. All materials produced in preparation for the Ethnic Studies Working Group meeting held on September 24, 2024, including but not limited to the Ethnic Studies Working Group Deliverable Draft (“ESWG Deliverable Draft” or “Deliverable Draft”), the Alignment Tool(s) document, and any other responsive documents saved in the Working Group’s Google Drive folder.
2. All materials finalized by the Ethnic Studies Working Group during the September 24, 2024 meeting, including but not limited to the Ethnic Studies Working Group Deliverable Draft (“ESWG Deliverable Draft” or “Deliverable Draft”), the Alignment Tool(s) document, and any other responsive documents saved in the Working Group’s Google Drive folder.

You have failed to even acknowledge our clients’ straightforward request, much less comply with it. Under the MGDPA, you are required to respond within a reasonable time to data requests. Prior Commissioner of Administration opinions related to more voluminous data requests demonstrate (1) that 13 working days for production of data is reasonable, and (2) failure to provide data within 5 weeks, or 35 days, even for larger requests, is unreasonable. Advisory Opinion 95-006, Feb. 2, 1995, *available at* <https://mn.gov/admin/data-practices/opinions/library/?id=36-267434> (13 working days); Advisory Opinion 97-005, Jan. 31, 1997, *available at* <https://mn.gov/admin/data-practices/opinions/library/?id=36-267434#/detail/appId/1/id/267700> (fewer than 35

days). Thus, a reasonable timeframe for production of data—related to requests far more voluminous—is between 13 working days and 35 total days.

In Advisory Opinion 95-006, the Commissioner reviewed a request for “all account ledgers and checkbook ledgers [1988-1994] along with supporting invoices and cancelled checks [and]...all Bloomington Fire Department operating procedures and other...documents used to support the maintenance of these account(s).” This involves years of data, and far more than CAE has requested. There, the Commissioner stated that “thirteen working days, in this case, is not an unreasonable time frame in which to make the data available.”

In Advisory Opinion 97-005, a law firm made a large request to Carver County, seeking the names and job titles of all persons employed by the Carver County Sheriff from 1990 through 1996, each complaint or charge of misconduct made against every employee, the nature and status of each such complaint, and the agreements resolving any disputes related to those complaints. Again, this request appears to be far more voluminous than CAE’s. The County claimed that it would take 155 hours of research and 8 working weeks to respond. The Commissioner rejected this proposed timeframe, stating that the requesters should have already received access to the data within five weeks (35 days) after the request was made.

Given the nature and scope of this request, we believe 10 working days would have been a reasonable amount of time for a response. It certainly is reasonable to have expected a response within 23 days.

Please respond to this letter with either the responsive data, or an indication that you will promptly provide the responsive data, no later than October 28, 2024. If you do not provide the responsive data or indicate that you will promptly provide it, our clients have authorized us to commence a lawsuit under the MGDPA to compel production and seek reasonable costs and attorney fees pursuant to Minn. Stat. § 13.08.

If you determine that you will redact or withhold any responsive data, please also inform me in writing of the specific statutory basis for your denial within the timeframe.

Finally, if you are willing to provide copies of the data at no charge, I will receive them electronically. If you intend to charge for copies, I will inspect the data and download all responsive data from your computers, without charge, as set forth in Minn. Stat. § 13.03, subd. 3(a) & (b) (“If a person requests access for the purpose of inspection, the responsible authority may not assess a charge or require the requesting person to pay a fee to inspect data In the case of data stored in electronic form and made available in electronic form on a remote access basis to the public by the government entity, inspection includes remote access to the data by the public and the ability to print copies of or download the data on

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the public's own computer equipment.") and *Demers v. City of Minneapolis*, 468 N.W.2d 71, 75 (Minn. 1991) ("No charge may be assessed for access to or inspection of public data or for the cost of retrieving and compiling documents for inspection."). This is necessary to ensure I can access all relevant metadata. *Webster v. Hennepin County*, Order at 11, OAH 5-0305-33135, Apr. 22, 2016, *aff'd as recognized in Webster v. Hennepin County*, 910 N.W.2d 420, 433 (Minn. 2018).

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

Thank you for your assistance.

Sincerely,



Douglas P. Seaton
President and Founder
Upper Midwest Law Center

Attachment

cc: Alexandra. K. Howell, Esq.
Client



October 2, 2024

Minnesota Department of Education
Responsible Authority
mde.commissioner@state.mn.us
Compliance Official
mde.datapractices@state.mn.us

VIA EMAIL

RE: Data Practices Act Request to the Minnesota Department of Education

Dear Responsible Authority:

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

REQUEST

For purposes of this request:

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

I seek access to the following data:

1. All materials produced in preparation for the Ethnic Studies Working Group meeting held on September 24, 2024, including but not limited to the Ethnic Studies Working Group Deliverable Draft (“ESWG Deliverable Draft” or “Deliverable

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Draft”), the Alignment Tool(s) document, and any other responsive documents saved in the Working Group’s Google Drive folder.

2. All materials finalized by the Ethnic Studies Working Group during the September 24, 2024 meeting, including but not limited to the Ethnic Studies Working Group Deliverable Draft (“ESWG Deliverable Draft” or “Deliverable Draft”), the Alignment Tool(s) document, and any other responsive documents saved in the Working Group’s Google Drive folder.

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

Pursuant to Minnesota law, the MDE is required to comply with my request within ten business days, or no later than October 17, 2024. Minn. Stat. § 13.04, subd. 3.

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

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

Thank you for your assistance.

Sincerely,



Douglas P. Seaton
President and Founder
Upper Midwest Law Center

cc: Alexandra. K. Howell, Esq.
Client