



November 15, 2021

Melinda Hexum  
Legal Counsel  
Minnesota Department of Health  
Health.DataPracticesRequest@state.mn.us

**Re: MDH's Improper Handling of Kevin Roche's Data Requests**

Dear Ms. Hexum:

We represent Kevin Roche related to his September 16, 2021 data requests (the "Requests") to the MDH. It has now been nearly two months since Mr. Roche made the Requests, and MDH has failed to provide the requested data. MDH's delayed response violates the MGDPA's requirement of access to the requested data within a "reasonable time." Minn. Stat. § 13.03, Subd. 3; Minn. R. 1205.0300.

As you know, our client's Requests are simple. Without repeating the actual requests, they generally seek data on the following topics:

- Data related to MDH's studies of face masks for the purpose of stopping the spread of COVID-19;
- Data related to COVID-19 breakthrough infections after full vaccination;
- Data related to communications with non-school groups about school policies for COVID-19;
- Data related to COVID-19 reinfections;
- Data related to the attribution of hospitalizations and deaths to COVID-19;
- Data related to hospitalization of children for COVID-19;.

The MDH item numbers for these requests were 21-192, 21-191, 21-190, 21-189, 21-188, 21-187 and 21-186.

I recognize that you stated in your October 12 email to Mr. Roche that MDH has received a large number of requests, some with large volumes of data, before his, which was causing a delay in your response. You also stated that you would forward his inquiry to facilitate identification of documents that are readily available. But, to date, Mr. Roche has not received any follow-up response from any of these 'forwardees'—and two months is far too long a time for response.

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. MDH has failed to even provide a timeframe for inspection, much less the data requested, within nearly 60 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 Mr. Roche 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 Mr. Roche’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.

The MGDPA also *does not* contain a “burdensomeness” exception to production, and the term “reasonable” cannot be construed to allow MDH to slow-roll data requests because more people than usual are interested in data it possesses. *E.g., Webster v. Hennepin County*, 2017 WL 1316109, at \*4 (Minn. Ct. App. Apr. 10, 2017). If MDH is not efficiently responding to data requests, its own “established procedures [are] the cause of the untimely response.” *Webster v. Hennepin County*, 910 N.W.2d 420, 431 (Minn. 2018).

Given these precedents, Mr. Roche should have already been provided the data requested.

**On behalf of Mr. Roche, and consistent with precedent as to what is a reasonable timeframe for production, I demand that the MDH provide access to the requested data no later than 14 days of the date of this letter, or November 29, 2021.**

November 15, 2021

Page 3 of 3

Mr. Roche has been incredibly patient to date, but he is prepared to begin litigation to gain the MDH's compliance if the MDH does not swiftly provide access to the requested data. If Mr. Roche has to litigate this matter, he will seek and likely obtain attorney fees upon prevailing.

Please let me know as soon as possible the MDH's response and when the data will be available.

Very truly yours,



James V. F. Dickey  
Attorney for Kevin Roche

cc: Douglas P. Seaton, Esq.  
Client