



December 1, 2021

Christina Picha
Director of Human Resources and Student Affairs
Designee of Responsible Authority
515 West Bridge Street
Owatonna, MN 55060
cpicha@isd761.org

Re: United Patriots for Accountability's Curriculum Request, the District's Redaction Errors, and the District's Noncompliance with the MGDPA

Dear Ms. Picha:

As you know, we represent United Patriots for Accountability related to one of its data requests. We have become aware of problems with your method of redaction and the District's processes for dealing with data requests. In addition, after our initial data request, our clients also requested access to curricular materials. Our clients have asked us to address your recent claim to them that they will not be able to take photographs or make copies of curriculum provided in response to a data request due to copyright laws.

The District Cannot Prohibit Inspection or Copying of Curricular Materials Subject to Copyright Claims

Our clients intend to comply with the Copyright Act's Fair Use Doctrine in any reproduction of copyrighted material for non-commercial, educational or critical purposes. Further, they do not intend to reproduce large portions of any copyrighted work; any reproductions they make will be significantly limited and tailored to the non-commercial, educational, or critical purpose for which they make any reproduction.

There is no reason for ISD 761 to suspect or believe that our clients' use of the curriculum data will violate the Copyright Act, and the District must therefore allow our clients to make any copies or take any pictures they would like to. Minnesota law directly on point forbids the District from denying our clients the opportunity to inspect and take pictures of copyrighted materials given their intent to comply with the Fair Use Doctrine.

The Minnesota Court of Appeals addressed this exact issue in 2013:

Without disregarding the attorney general's opinion that data access should be withheld when providing data would constitute “an actual violation” of the copyright act, we do not read the data practices act as directing government respondents to withhold data based on a merely theoretical future violation, and again, MnSCU's brief does not explain how MnSCU could become liable for an eventual copyright violation by the NCTQ. This omission is especially significant in light of the Supreme Court's recognition that “[t]he [copyright act] does not expressly render anyone liable for infringement committed by another.”...As the district court observed, “If the MGDPA requires a Minnesota governmental entity, such as MnSCU, to release copies of public data, the person or entity receiving the data takes the information subject to the owner's FCA rights. All of the author's rights and remedies under the FCA are unimpeded.”

....

Because MnSCU has not provided any argument challenging the district court's holding that NCTQ's use will be fair use as a matter of law, and in any event it has not explained how it might become liable to the faculty-authors under the copyright act even if the NCTQ does infringe their copyrights, summary judgment enforcing the data practices act was appropriate.

Nat'l Council on Tchr. Quality v. Minnesota State Colleges & Universities, 837 N.W.2d 314, 319–20 (Minn. Ct. App. 2013)

Please confirm that the District will not prevent our clients from making any copies or taking any photographs of curriculum produced pursuant to their data request for the same.

The District’s Redaction Method and Processes Violate the MGDPA

Our clients have shown us examples of the redaction that the District has engaged in related to their initial data request. The redactions violate the MGDPA in multiple ways. In addition, the District does not appear to have processes in place to ensure that data is “in such an arrangement and condition as to make them easily accessible for convenient use.” Minn. Stat. § 13.03, Subd. 1.

First, some of the District’s redactions cover entire pages of data. As I wrote in our initial data request, “data” and “documents” are not the same thing, and while some “data” may be redacted pursuant to various exemptions from the MGDPA’s presumption of publicity, the District has an obligation to parse out those data within the documents. *KSTP-TV v. Ramsey County*, 806 N.W.2d 785, 789-90 (Minn. 2011). Complete redactions of any document are highly likely to be improper under the MGDPA.

Compounding this error is the District's failure to identify the specific statutory reason for each redaction it makes. In my initial letter to the District, I wrote: "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." The MGDPA's implementing rules are clear on this requirement:

1205.0800 CLASSIFICATION OF DATA.

In order to comply with the provisions of Minnesota Statutes, sections 13.02, 13.04, and 13.05, the responsible authority shall:

....

identify either a state statute or provisions of federal law supporting any determination that certain data is either private or confidential.

Instead of identifying the state statute or federal law provision relevant to each of the District's substantial over-redactions, the District provided our clients with a one-paragraph summary simply listing various reasons that data might be redacted, without any explanation of how each reason applies to each redaction. This is inappropriate and violates the MGDPA. *See Webster v. Hennepin Cty.*, 910 N.W.2d 420, 425 n.2 (2018) (failure to provide specific reasons for redaction with the redacted documents found to violate MGDPA).

It is also apparent, upon reviewing some examples of redaction, that the District is redacting data that could not possibly be protected from access as public data under the MGDPA. For example, one document produced in response to our clients' November 11 request is an email between an unidentified District employee and Emily Kahnke of the Owatonna People's Press. In that document, you entirely redact the name of the *public employee* sender from within the District, and what appears to be a picture that was sent to another member of the public—a reporter. There is absolutely no justification for withholding data like this. I can only imagine that this error is repeated again and again throughout the redactions that the District has made. Unfortunately, it appears that the District is spending time providing information about our clients' legitimate requests to reporters instead of properly processing these documents, which would be produced in a more prompt and reasonable manner if the District were limiting its redactions properly.

Finally, the manner in which the District has conducted itself since our initial letter in *August*, combined with its admissions to the Owatonna People's Press, indicates that the District's process for dealing with public data requests does not comply with the MGDPA. According to the recent People's Press article, the District is apparently assigning just one person to review the data responsive to public data requests in whatever spare time she has, and does not expect to finish the entire process until possibly the *end of the school year*. This slow, cumbersome, backwards process violates the MGDPA's requirement that a responsible authority "keep records containing government data in such an arrangement

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and condition as to make them easily accessible for convenient use” and respond in an “appropriate and prompt manner.” Minn. Stat. § 13.03, Subds. 1 & 2. If the statements to the Owatonna People’s Press are untrue, and there are more people available for processing our clients’ requests, please correct me, but I take the District at its word.

If the District does not correct its errors, we will have to file a lawsuit seeking its compliance. If you have any additional questions or need further clarification, please write, email, or call me.

Very truly yours,



James V. F. Dickey
Attorney for United Patriots for Accountability

cc: Douglas P. Seaton, Esq.
Clients