

STATE OF MINNESOTA
COUNTY OF KANDIYOHI

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT
Case Type: Criminal

STATE OF MINNESOTA,
Plaintiff,

vs.

NICHOLAS ROBERT REKIETA,
Defendant.

**NOTICE OF MOTION AND MOTION
TO INTERVENE FOR THE PURPOSE
OF ASSERTING RIGHT OF ACCESS
TO EVIDENCE**

Case No. 34-CR-24-341

**TO: Hon. Stephen B. Wentzell, Judge of District Court; the above-named
Plaintiff and Defendant; and Plaintiff's and Defendant's attorneys:**

NOTICE OF MOTION

PLEASE BE ADVISED that interested party Matthew D. Hardin brings the following motion:

MOTION

[¶1] COMES NOW Matthew D. Hardin, an interested party possessing rights under the U.S. Constitution and the Minnesota Constitution, by and through his undersigned counsel of record and requests leave to intervene in this case for the purpose of asserting rights under the Common Law Right of Access to judicial documents and evidence, including but not limited to rights under the U.S. Constitution and the Minnesota Constitution.

I. Introduction

[¶2] The Defendant in this case entered a guilty plea in the above case and was sentenced on April 18, 2025. Prior to pleading guilty, the Defendant filed briefing

and cited to exhibits to argue that the State violated his Constitutional rights.¹ The Defendant himself submitted body camera footage from two Kandiyohi County Sheriff's deputies in support of that argument.

[¶3] On April 22, 2025, Mr. Hardin (acting as attorney for Joshua Moon) requested that this Court provide him access to evidence described as follows:

Evidence submitted through MNDES by Defendant Nicholas Rekieta, including but not limited to a file entitled "RobbieBranness_202405230911_BWC2120177- 0.mp4" and a file entitled "QuinPomplun_202405230914_BWC2120153- 0.mp4."

[¶4] Mr. Hardin's request was properly docketed into the Court's Administrative file, 34-CV-AD-25-3. It was eventually granted in part on May 1, 2025. Although the Court did not provide Mr. Hardin copies of the records he requested, the Court informed Mr. Hardin that he could view the records in person at the Kandiyohi County Courthouse. Additionally, the Court held that the records Mr. Hardin requested were also available from the Kandiyohi County Sheriff, the original custodian, as "public data on individuals."

[¶5] But the Kandiyohi County Sheriff has resisted at every turn Mr. Hardin's Government Data Practices Act request for these documents. This despite the fact that the Minnesota Commissioner of Administration has provided the Sheriff with informal "guidance" to comply with Mr. Hardin's request.² Now, having received a formal demand from Mr. Hardin's counsel that the Sheriff provide the requested data by June 1, 2025 or face a suit under the Government Data Practices Act, the

¹ Index # 38 at 15 (citing repeatedly to body camera footage of Robbie Branness) and 16 (citing to footage of Quin Pomplun).

² Exhibit A. Further informal guidance was apparently offered on May 22, 2025. Exhibit B.

County has suddenly decided—in apparent collusion with the defense—that it will seek an order from this Court to the effect that the documents the Defendant himself submitted to the Court and referred to repeatedly in his briefing were never court documents or evidence at all.³

[¶6] The Court improperly granted, in the early morning hours of May 30 and without the benefit of adversarial briefing, the motion filed by the County Attorney on May 29 in which the County Attorney confessed that his entire purpose for seeking to amend this Court’s records was to frustrate Mr. Hardin’s rights under the Government Data Practices Act. Specifically, as the County admitted in its May 29 motion, whether the evidence Mr. Rekieta submitted is available under the Government Data Practices Act depends in large part on whether the footage is “any investigative data that is presented as evidence in court.”

[¶7] Mr. Hardin seeks leave to intervene in this case to present adversarial briefing on whether the two body camera videos submitted by the Defendant to this Court are public data. Mr. Hardin’s perspective is vital, because the parties have apparently colluded to bring a motion without notifying him of that motion, despite that the motion directly impacts his substantial rights.

II. Standard of Review

[¶8] As the Minnesota Court of Appeals has explained in *Bonzel v. Pfizer, Inc.*, C4-02-298, 2002 Minn. App. LEXIS 977, at *8-9 (Ct. App. Aug. 20, 2002):

“The Minnesota Rules of Civil Procedure set forth that intervention *shall be permitted* when an applicant for intervention meets four criteria: (1) timely application, (2) “an interest relating to the property

³ Index # 70.

or transaction which is the subject of the action," (3) the disposition of the action "may as a practical matter impair or impede the applicant's ability to protect that interest," and (4) the existing parties to the action do not adequately represent the applicant's interest."

Id. (internal citations omitted).

[¶9] American courts “recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978) (footnote omitted); *see also* *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006) (“The common law right of public access to judicial documents is firmly rooted in our nation's history.”); *Brown v. Advantage Eng'g, Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992) (“Once a matter is brought before a court for resolution, it is no longer solely the parties' case, but is also the public's case.”). As the Eighth Circuit has held:

There is a common-law right of access to judicial records... This right of access bolsters public confidence in the judicial system by allowing citizens to evaluate the reasonableness and fairness of judicial proceedings, and “to keep a watchful eye on the workings of public agencies.” It also provides a measure of accountability to the public at large, which pays for the courts.

IDT Corp. v. eBay, 709 F.3d 1220, 1222 (8th Cir. 2013) (citations omitted).

III. Argument

[¶10] In this case, the prosecution and the defense—after a guilty plea was tendered and even after imposition of sentence—have decided that they are aligned in the belief that this Court’s records were incorrect. They have done so expressly because the County Attorney wishes to frustrate a Government Data Practices Act

request that Mr. Hardin filed with the Kandiyohi County Sheriff. Remarkably, these ostensibly adverse parties came to this Court with a “consent” request on May 29, 2025 after the County Attorney received a civil demand letter on May 23, 2025 warning the County it would face a civil suit from Mr. Hardin on June 1 if it continued to refuse to release the records Mr. Hardin requested. As a result the parties obtained an order, purportedly based on “consent” or “clarification,” on May 30, 2025, less than one business day after their request was filed. This action was undertaken with no notice to Mr. Hardin, despite the fact that it was expressly and admittedly intended to impact his substantial rights. Therefore, this Court should allow Mr. Hardin to intervene for purposes of seeking to vacate an order that was erroneously entered on May 30, 2025.

1. Mr. Hardin should be granted intervention as of right.

[¶11] Mr. Hardin should be permitted to intervene in this matter as of right under Minn. R. Civ. P. 24.01:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

Id. The Minnesota Court of Appeals has expressly approved intervention for the purposes of seeking access to Court records. In *Bonzel v. Pfizer, Inc.*, C4-02-298, 2002 Minn. App. LEXIS 977, at *12 (Ct. App. Aug. 20, 2002), the Court of Appeals held that an “intervention motion must be granted” when an applicant seeks to intervene to seek a court document which is not publicly accessible.

[¶12] This case is even more clear-cut than *Bonzel*. Here, the prosecution admits that it made a motion on May 29, 2025 expressly because it sought to “correct” court records in a way that would deny Mr. Hardin access to those records under the Government Data Practices Act. But the County Attorney, in apparent collusion with the criminal Defendant, sought to “correct” this Court’s records in a way that would deprive Mr. Hardin of his substantial rights without notifying Mr. Hardin of that motion. Mr. Hardin therefore was not permitted to assert his rights to access the judicial records that the Court has now reclassified, in the absence of any adversarial briefing, as “not received.”

[¶13] Mr. Hardin should be permitted to intervene to file a brief in opposition to the County’s May 29, 2025 motion, which was obtained on “consent” and in the absence of any adversarial presentation of evidence, despite that it directly impacted his substantial rights under the Common Law Right of Access and the federal and state constitutions.

2. Mr. Hardin should be granted permissive intervention.

[¶14] Even if Mr. Hardin were not permitted to intervene as of right, he would be permitted to intervene on a permissive basis. Minn. R. Civ. P. 24.02 provides that “[u]pon timely application anyone may be permitted to intervene in an action... In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.*

[¶15] Here, there is no danger that allowing Mr. Hardin to intervene will delay this case or prejudice any party. The criminal case has already proceeded to a

sentencing. There can therefore be no possible delay or prejudice to the parties if Mr. Hardin is allowed to intervene to assert his substantial rights to access judicial records. Moreover, there can be no prejudice merely from allowing Mr. Hardin to oppose a collusive motion agreed to by the prosecution and the defense, which apparently was entered into for the express purpose of hiding key evidence which the Defendant himself cited repeatedly in his briefing and which the prosecution generated. The Court may ultimately grant or deny Mr. Hardin request for substantive relief in the form of renewed access to the body camera footage which the State has for now successively hidden from public view. But Mr. Hardin is at least entitled to make an argument, and the mere fact of his intervention for that purpose will not delay this case or cause harm to anyone.

3. This Court should permit Mr. Hardin to file a brief in opposition to the “consent” Motion dated May 29, 2025, which was clearly intended to impact his substantial rights and which was filed without notice to him.

[¶16] The parties colluded in this case to present this Court with only one side of an argument. On May 29, the prosecution presented a motion by “consent.” Less than one business day later, the Court entered an order granting that motion. Neither the prosecution nor the defense disclosed to Mr. Hardin that the motion was being made, despite Mr. Hardin’s clear interest in the records at issue and the County Attorney’s receipt of a letter indicating that the records would become the subject of litigation if they were not processed by June 1.

[¶17] Under the circumstances, Mr. Hardin requests that this Court vacate its order entered May 30, 2025 without the benefit of adversarial briefing. He requests

that this Court set a schedule for him to brief his entitlement to view the records which the Court has “corrected,” and set a hearing at which he can present evidence and argument regarding his rights to access the records.

IV. Conclusion

[¶18] The Court should grant Mr. Hardin standing as an intervenor in this case to assert his common law right of access to judicial records and related rights under the Constitution of Minnesota and the Constitution of the United States. It should set an appropriate schedule for briefing related to the “consent” motion filed by the County Attorney on May 29, 2025, and should set a hearing at which his counsel and the parties to this case may be heard.

Respectfully submitted this 30th day of May 2025.

/s/ Oliver W. Bromke

Oliver W. Bromke

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Attorney for Matthew D. Hardin

CERTIFICATE OF SERVICE

I certify that I e-served this document and the exhibits filed herewith on all counsel of record via Odyssey on May 30, 2025.

/s/ Oliver W. Bromke

Oliver W. Bromke

May 21, 2025

Via email

Matthew Hardin

HardinLawPLLC@icloud.com

Re: Your Commissioner of Administration Advisory Opinion Request

Dear Matthew Hardin,

On May 14, 2025, the Data Practices Office received your data practices advisory opinion request regarding the Kandiyohi County Sheriff's Office. The Commissioner reviewed the information provided and will not be moving forward with your opinion request.

The Commissioner's authority to issue advisory opinions under Minn. Stat. section 13.072 is permissive; she "may give a written opinion." The Commissioner's decision balances several considerations including whether the issues raised fall under her authority based on the language of section 13.072, the benefits to be gained from an opinion, forums available to requesters, and the resources of a small office.

The Commissioner has addressed very similar issues to the ones you've raised in a previous advisory opinion. Specifically, the Commissioner opined in Advisory Opinion 22-003 that body camera data maintained by a law enforcement agency and presented as evidence in court are classified as public data, and she determined that the law enforcement agency did not respond appropriately when it failed to provide access to those data upon request. A copy of Advisory Opinion 22-003 is enclosed.

Individuals who are "similarly situated" may rely on the guidance provided in any opinion unless the Commissioner states otherwise. (See Minn. Stat., section 13.072, subd. 2). The Commissioner did not indicate that the guidance provided in AO 22-003 was limited to that situation alone. Therefore, you may rely on the analysis and conclusions in the opinion if you were to seek the remedies available under section 13.08 or section 13.085.

As a courtesy, the Data Practices Office has reached out to the Kandiyohi Sheriff's Office to schedule a phone call to offer guidance about the Data Practices Act's requirements and to see whether our office could informally resolve your concerns. Our office has not yet received any response from the Sheriff's Office, and we will plan to follow up with that office before the end of this week. DPO will provide you with an update sometime early next week on the status of our efforts to discuss your concerns with the Sheriff's Office.

If you have questions, please contact Casey Carmody by email at casey.carmody@state.mn.us or by phone at 651-201-2505.

Sincerely,

Taya Moxley-Goldsmith

TAYA MOXLEY-GOLDSMITH
DIRECTOR, DATA PRACTICES OFFICE
DEPARTMENT OF ADMINISTRATION

By: Casey Carmody
Assistant Director, Data Practices Office

Enclosure

Advisory Opinion 22-003

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2021). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

Joe Augustine, on behalf of KSTP-TV, asked for an advisory opinion regarding his right to obtain copies of data from the City of Minneapolis (“the City”) under Minnesota Statutes, Chapter 13 (Data Practices Act). The City submitted comments in response to Augustine’s request.

A summary of the facts is as follows:

Augustine submitted a data request to the City for a copy of body camera data that was submitted as evidence in court. As part of his advisory opinion request, Augustine provided a copy of the “Court’s Order, which documents that the body camera data was submitted, accepted, and relied on by the Court as evidence in the [criminal] proceeding.”

The City’s response to Augustine’s data request stated:

This request is denied under MN statute [*sic*] 13.825. The BWC recording is classified as private data associated with the subject(s) seen and heard in the video. The data subject(s) of the video requested have not provided authorization for us to release the video to you, as is required by law and our own City policy. You may be requesting the video because you believe it was used in an exhibit in court, which is considered public data under statute 13.82. However, Minneapolis was not the prosecuting agency in this case and did not enter the video as an exhibit in court. The prosecuting agency is responsible for submitting court exhibits, and you must contact that agency to receive an exact copy of the exhibits.

Issue:

Based on the opinion request, the Commissioner agreed to address the following issue:

Did the City of Minneapolis properly respond to a request for body camera data that was presented as evidence in court?

Discussion:

The Data Practices Act classifies all government data as public, unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.)

Minnesota Statutes, section 13.825 classifies “portable recording system data” – audio or video data collected by a portable recording system worn by a peace officer (commonly referred to as body camera data) – as private or nonpublic, with exceptions. Minnesota Statutes, section

13.825, subdivision 2(a)(3) states, “portable recording system data that are active criminal investigative data are governed by section 13.82, subdivision 7.”

Minnesota Statutes, section 13.82, subdivision 7, classifies active criminal investigative data collected or created to prepare a case against a person for a crime or offense, “for which the agency has primary investigative responsibility,” as confidential or protected nonpublic. Section 13.82, subd. 7 also states, “[a]ny investigative data presented as evidence in court shall be public.”

In its comments, the City provided several arguments to support its decision to deny access to the requested body camera data. The City stated, it “is not required to meet with the County Attorney to create new data. ‘Government data’ means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use. The data submitted into evidence by the prosecuting county attorney does not constitute ‘government data’ of the City.” The Commissioner disagrees.

Section 13.82 applies to law enforcement agencies. In Advisory Opinion 01-079, the Commissioner interpreted the definition of a “law enforcement agency” to include county attorneys for purposes of section 13.82. However, the Minnesota Attorney General’s Office disagreed with the Commissioner’s interpretation in a February 12, 2002, letter, noting that the language and legislative history of section 13.82 made clear that prosecuting authorities were not included as law enforcement agencies for the purposes of this section. As a result, law enforcement agencies, rather than prosecuting authorities, are obligated to respond and provide access to data classified by section 13.82.

The City also noted that it “has no knowledge of whether or how any data was redacted, enhanced, stabilized, or otherwise prepared for use as evidence in trial.” The City must have procedures to insure prompt and appropriate access to data (see Minnesota Statutes, section 13.03, subdivision 3). Thus, it is incumbent on the City to determine which data are responsive to a data request. One way the City can accomplish this is to consult with the County Attorney to determine which part of the City’s investigative record the County Attorney’s Office has submitted as evidence in court.

The City also argued that section 13.82, subdivision 7 is applicable to active investigative data, and as the criminal matter in which the body camera data at issue was presented as evidence in court has now been dismissed, the investigation is now inactive and the public body camera data are classified as private pursuant to section 13.825. The Commissioner disagrees.

Section 13.825, subd. 2(a)(3) indicates that body camera data are “governed by section 13.82, subdivision 7” while the data are part of an active criminal investigation. Additionally, section 13.82, subd. 7 contains a trigger establishing that “[a]ny investigative data presented in court shall be public.”

Here, the City was maintaining the body camera data at issue as active criminal investigative data. While the criminal investigation was still active, and governed by section 13.82, subd. 7, prosecutors presented portions of the body camera data as evidence in court as part of a criminal

prosecution. As a result, the portions of the body camera data presented as evidence in court became and remain public data. Any remaining body camera data that were not presented as evidence would revert to the applicable classifications governed under section 13.825 when the criminal investigation became inactive.

This analysis is also supported by the language in Minnesota Statutes, section 13.03, subdivision 4(e):

To the extent that judicial branch data are disseminated to government entities by the judicial branch, the data disseminated shall have the same level of accessibility at the government entity receiving them as they had at the judicial branch entity providing them. If the data have a specific classification in state statute or federal law, the government entity must maintain the data according to the specific classification.

Additionally, section 13.03, subdivision 12 provides, “[p]leadings, as defined by court rule, served by or on a government entity, are public data to the same extent that the data would be public if filed with the court.”

Both of these provisions, along with the public trigger for active criminal investigative data presented as evidence in court pursuant to section 13.82, subd. 7, reflect the Legislature’s intent for judicial branch data, or data presented in court, to have the same level of accessibility at government entities as the data would possess at the judicial branch.

The Commissioner notes that the Legislature enacted section 13.825 in 2016 and has not substantially changed its provisions since that time. The Commissioner is aware that in the intervening years, both members of the public and law enforcement agencies have identified several areas where the requirements could be clarified. This opinion highlights one such area. The Commissioner encourages the Legislature to review the provisions of section 13.825 and in particular its interaction with other provisions governing law enforcement data, to determine whether it best reflects the Legislature’s intent with regard to the protection of and access to this type of data.

Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issue is as follows:


The City of Minneapolis did not properly respond to a request for body camera data that was presented as evidence in court.



Alice Roberts-Davis
Commissioner

June 17, 2022



From: Carmody, Casey (ADM) Casey.Carmody@state.mn.us 
Subject: Kandiyohi County Sheriff's Office follow-up
Date: May 23, 2025 at 1:55 PM
To: HardinLawPLLC@icloud.com hardinlawpllc@icloud.com

Hi Matthew,

I'm writing to follow-up on the letter that the Data Practices Office sent you regarding your advisory opinion request.

I was able to speak with Kandiyohi County Sheriff Eric Tollefson yesterday regarding the concerns you raised in the advisory opinion request you submitted to the Commissioner of Administration.

During the conversation, I offered the guidance that body camera data that are presented as evidence in court are classified as public data under section 13.82, subd. 7. I added that the information you had provided to my office suggested that at least some of the body camera data that you requested had been presented as evidence in court, which meant those data should be available upon request. I also pointed him toward Advisory Opinion 22-003 as additional guidance about the requirements of the Data Practices Act on this front.

Sheriff Tollefson said he generally agreed with the guidance and clarification that I was offering about the requirements of the Data Practices Act. We also discussed the fact that only the portions of the body camera video that were presented as evidence would be public data, and any remaining portions that were not included as evidence would continue to be classified as not public data. Sheriff Tollefson explained that he would be contacting the prosecutor's office to learn what portions of videos were presented as evidence, and then his office would provide you with access to the applicable data.

So, I expect that the Kandiyohi Sheriff's Office will be following up with you soon regarding your data request, if it has not done so already.

Please feel free to let me know if you have additional questions. I'm happy to offer any additional guidance I can.

Thanks,
Casey



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<https://mn.gov/admin/data-practices/>