

**STATE OF MINNESOTA****DISTRICT COURT****COUNTY OF RAMSEY****SECOND JUDICIAL DISTRICT**AMERICAN CIVIL LIBERTIES UNION OF  
MINNESOTA; and NAACP OF  
MINNEAPOLIS,Case Type: Other Civil  
Court File No.: 62-CV-16-701  
Judge: Hon. William H. Leary, III

Plaintiffs,

v.

MINNESOTA DEPARTMENT OF PUBLIC  
SAFETY; MONA DOHMAN, in her capacity  
as Commissioner of Public Safety;  
MINNESOTA BUREAU OF CRIMINAL  
APPREHENSION, a division of the  
Minnesota Department of Public Safety; and  
DREW EVANS, in his capacity as  
Superintendent of Criminal Apprehension,**MEMORANDUM IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
JUDGMENT ON THE PLEADINGS  
OR, ALTERNATIVELY, FOR  
SUMMARY JUDGMENT**

Defendants.

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**INTRODUCTION**

More than three months ago, an unarmed African American man named Jamar Clark was shot and killed by a Minneapolis Police officer. What happened the night Clark was shot is the subject of community controversy. Video recordings were made of the incident (the "Videos"), and Governor Dayton has viewed Videos and publicly commented upon them. All other citizens of Minnesota also are entitled to view the Videos and see for themselves what happened in the last moments of Clark's life. The Minnesota Bureau of Criminal Apprehension ("BCA") has the Videos but has refused to release them to the public, claiming that it can withhold them because of an active criminal investigation. However, the BCA is wrong—it has no right to withhold the Videos—and the public entities involved have had more than ample time to conduct their investigation. Moreover, the public's right to know trumps the government's desire for secrecy,

and in any event the BCA's decision to allow the Governor to view and then publicly comment on the Videos belies its argument that the content of the Videos is confidential. Defendants violated the Minnesota Government Data Practices Act ("MGDPA") by refusing to disclose the Videos to Plaintiffs upon request. Plaintiffs are entitled to release of the Videos because they are public data that are governed by the MGDPA. Alternatively, the substantial benefit of releasing the Videos outweighs any harm to Defendants or to the public. Thus, even if the Videos are criminal investigative data under Minn. Stat. § 13.82, subd. 7, the Court may authorize their release.

Plaintiffs now bring this motion for judgment on the pleadings and are entitled to disclosure of the Videos as a matter of law.

### **BACKGROUND**

At approximately 12:45 a.m. on November 15, 2015, police responded to a disturbance call across the street from the Elks Lodge in the 1600 block of Plymouth Avenue North, Minneapolis. *What We Know About the Death of Jamar Clark*, Star Trib. (Nov. 25, 2015) [hereinafter "*What We Know*"], <http://www.startribune.com/what-we-know-about-the-death-of-jamar-clark/353199331/>. A neighbor, Nekelia Sharp, said an ambulance was called after Jamar Clark and his girlfriend got into an argument. *Id.* A statement by the Minneapolis Police Department said that Clark was confronting the paramedics and disrupting their ability to treat his girlfriend, and police officers were called to the scene. *Id.*

What happened next remains unclear. A statement from the Minneapolis NAACP said that according to "numerous witness accounts . . . [u]pon arriving at the scene, the police placed [Clark] in handcuffs and slammed him to the ground," after which a shot went off. *Id.* Although he did not view any of the Videos, the head of the Minneapolis police union stated that two officers attempted to restrain Clark, and Clark attempted to gain control of one of the officers'

firearms. *Id.* One of the officers shot Clark in the head during the ensuing struggle. *Id.* Clark died from a gunshot wound to the head. *Id.*

The BCA Superintendent stated that “[p]arts of the incident were recorded on several cameras, but no video shows the entire incident.” Sara Sidner et al., *Jamar Clark Shooting*, CNN (Nov. 22, 2015), <http://www.cnn.com/2015/11/21/us/minneapolis-jamar-clark-police-shooting/>. Similarly, Governor Dayton said that he had seen video from the ambulance camera running during Clark’s shooting, and that it did not confirm either side’s allegations of what happened. *What We Know, supra*. The BCA stated that it would not release the Videos because it could contaminate witness statements. Jon Collins, *Why Video of Jamar Clark’s Death May Not Be Released Soon*, MPR News (Nov. 19, 2015), <http://www.mprnews.org/story/2015/11/19/why-video-of-jamar-clarks-death-may-not-be-released>. Yet, it allowed Governor Dayton to publicly comment on them.

Since Clark was shot and killed on November 15, protesters have demanded release of the Videos in a series of demonstrations. On November 16, 2015, hundreds of people marched several blocks down Plymouth Avenue North from the scene of the shooting to the Minneapolis Police Department’s 4th Precinct headquarters. *Timeline*, MPR News (Nov. 30, 2015), <http://www.mprnews.org/story/2015/11/30/timeline-jamar-clark-shooting>. Protests continued at the 4th Precinct police station for several weeks, even after five protestors were shot, allegedly by individuals who have espoused white supremacist rhetoric in the past. *Id.* The demonstrators have also participated in two marches from North Minneapolis to Downtown Minneapolis, and they organized a protest that started at the Mall of America and moved to the Minneapolis-St. Paul International Airport. *Id.*; Kelly Smith et al., *Black Lives Matter Protests Spill Over to Light Rail, Airport*, Star Trib. (Dec. 24, 2015), <http://www.startribune.com/mall-of-america-prepares>

-for-black-lives-matter-protest/363386781/. On Martin Luther King, Jr. Day, protestors organized a “Tale of Two Cities” march in which activists again called for release of the Videos. Pamela Miller, *MLK Day Protesters To Congregate on Twin Cities Bridge*, Star Trib. (Jan. 18, 2016), <http://www.startribune.com/mlk-day-protesters-to-congregate-on-twin-cities-bridge/365507201/>. Activists have stated that protests will continue until the Videos are released. Peter Cox et al., *3 Arrested, 1 Released in 4th Precinct Shooting*, MPR News (Nov. 24, 2015), <http://www.mprnews.org/story/2015/11/24/fourth-precinct>.

On January 4, 2016, the ACLU sent the BCA a data request pursuant to the MGDPA. (Compl. Ex. B.) The request sought access to, or a copy of, all audio and video relating to the November 15, 2015 shooting of Jamar Clark by officers of the Minneapolis Police Department. The NAACP made a similar data request on January 15, 2016. (Compl. Ex. D.) The BCA responded to the requests on January 7 and 20, respectively. It refused to grant the data requests and denied access to or a copy of the Videos because they are “part of the BCA’s active criminal investigation.” (Compl. Exs. C, E.) The BCA did not provide any evidence to support the denial, and it did not identify any potential harm to the BCA that would allegedly result from the release of the Videos. On February 10, the BCA announced it had completed its investigation and turned its findings over to the Hennepin County Attorney’s Office. Riham Feshir & Peter Cox, *BCA: Jamar Clark Shooting Probe Done*, MPR News (Feb. 10, 2016), <http://www.mprnews.org/story/2016/02/10/jamar-clark-shooting-bca-investigation-complete>. Two weeks later, Hennepin County Attorney Mike Freeman asked the BCA to expand its investigation. Randy Furst, *Hennepin County Attorney Asks BCA To Expand Investigation of Jamar Clark Shooting*, Star Trib. (Feb. 23, 2016), <http://www.startribune.com/hennepin-county-attorney-asks-bca-to-expand-investigation-of-jamar-clark-shooting/369881941/>. Freeman stated that certain aspects of the

BCA's investigation "were not completed," but that he hoped the supplemental investigation would not delay his decision of whether to charge the officers involved with a criminal offense.

*Id.*

## DISCUSSION

### **I. STANDARD FOR JUDGMENT ON THE PLEADINGS**

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Minn. R. Civ. P. 12.03; *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). Where the pleadings create no fact issues, a motion for judgment on the pleadings should be granted. *Ryan v. Lodermeier*, 387 N.W.2d 652, 653 (Minn. Ct. App. 1986). Alternatively, the Court may convert the motion into one for summary judgment, if matters outside the pleadings are considered. Minn. R. Civ. P. 12.03; *see* Minn. R. Civ. P. 56.

This case involves no factual issues. The only matter for the Court to decide is whether the Videos are public data, which is an entirely legal question. *See Navarre v. S. Wash. Cty. Sch.*, 652 N.W.2d 9, 22 (Minn. 2002) (stating that interpretation of the MGDPA is a question of law). The only evidence is the Videos themselves, which must be examined by the Court in camera. Minn. Stat. § 13.82, subd. 7; *see* Minn. Stat. § 13.08, subd. 4. Defendants therefore cannot avoid judgment as a matter of law by claiming a need for additional fact-finding. *See* Minn. R. Civ. P. 56.06 (providing that the Court may refuse to consider a motion for summary judgment only when the nonmoving party cannot present "facts essential to justify the party's opposition"). Moreover, an action to compel compliance with the MGDPA "shall be heard as soon as possible." Minn. Stat. § 13.08, subd. 4. This case is therefore ripe for judgment on the pleadings.<sup>1</sup>

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<sup>1</sup> Plaintiffs have standing to bring their MGDPA claims because Defendants violated the MGDPA by "denying [Plaintiffs] access to data that the government is required by the Act to

## II. THE MGDPA REQUIRES THE VIDEOS TO BE RELEASED

The MGDPA's core provision states:

All government data collected, created, received, maintained or disseminated by a government entity *shall be public* unless classified by statute, or temporary classification . . . , or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential.

Minn. Stat. § 13.03, subd. 1 (emphasis added). The MGDPA establishes Minnesota's "fundamental commitment to making the operations of our public institutions open to the public." *Prairie Island Indian Cmty. v. Minn. Dept. of Pub. Safety*, 658 N.W.2d 876, 884 (Minn. Ct. App. 2003). It advances and promotes the "compelling need for public accountability, particularly with law enforcement agencies." *Demers v. City of Minneapolis*, 468 N.W.2d 71, 74 (Minn. 1991). Because the MGDPA "facilitate[s] public data accessibility," *Nat'l Council on Teacher Quality v. Minn. State Colls. & Univs.*, 837 N.W.2d 314, 319 (Minn. Ct. App. 2013), courts construe the MGDPA "in favor of public access." *Prairie Island Indian Cmty.*, 658 N.W.2d at 884. The district court may enjoin any government entity that violates the MGDPA and may make any order necessary to discontinue violative practices. Minn. Stat. § 13.08, subd. 2.

Here, the MGDPA compels disclosure of the Videos. First, the Videos are public data because they document law enforcement's efforts to "respon[d] to a request for service" and "to cite [or] arrest" an individual." *Id.* § 13.82, subd. 2, 6 (stating that such data "shall be public"). Second, the criminal investigative data exception does not apply to Arrest Data and Response or Incident Data. Moreover, the BCA's decision to allow Governor Dayton to view and then

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make available—that is, refuse[d] to grant access to data that is available as a matter of right." *Wiegel v. City of St. Paul*, 639 N.W.2d 378, 384 (Minn. 2002); *see* Minn. Stat. § 13.08, subd. 4(a).

publicly comment on the Videos belies its argument that the content of the Videos must remain confidential. Finally, even if the Videos are criminal investigative data, the Court should order Defendants to release the Videos because the benefit to the public of disclosure outweighs any harm. *See* Minn. Stat. § 13.82, subd. 7.

**A. The Videos Must Be Disclosed Because They Are Arrest Data and Response or Incident Data Under Minn. Stat. § 13.82, subd. 2 and 6**

Section 13.82, subdivision 2 and 6 of the MGDPA provides that the Videos are public data. Subdivision 2 states in relevant part:

Subd. 2. **Arrest data.** The following data created or collected by law enforcement agencies which document any actions taken by them to cite, arrest, incarcerate or otherwise substantially deprive an adult individual of liberty *shall be public at all times* in the originating agency:

- (a) time, date and place of the action;
- (b) any resistance encountered by the agency;
- (c) any pursuit engaged in by the agency;
- (d) whether any weapons were used by the agency or other individual;
- (e) the charge, arrest or search warrants, or other legal basis for the action;
- (f) the identities of the agencies, units within the agencies and individual persons taking the action . . . .

Minn. Stat. § 13.82, subd. 2 (emphasis added).<sup>2</sup>

Similarly, subdivision 6 provides:

Subd. 6. **Response or incident data.** The following data created or collected by law enforcement agencies which document the agency's response to a request for service including, but not limited to, responses to traffic accidents, or which

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<sup>2</sup> The fact that the Videos were originally collected by the Minneapolis Police Department and later provided to the BCA is irrelevant, as is the fact that the BCA has submitted its findings to the Hennepin County Attorney's Office. The MGDPA provides that the dissemination of government data from one government entity to another government entity does not affect the classification of the data. Minn. Stat. § 13.03, subd. 4(c)-(d).

describe actions taken by the agency on its own initiative *shall be public government data*:

- (a) date, time and place of the action;
- (b) agencies, units of agencies and individual agency personnel participating in the action unless the identities of agency personnel qualify for protection under subdivision 17;
- (c) any resistance encountered by the agency;
- (d) any pursuit engaged in by the agency;
- (e) whether any weapons were used by the agency or other individuals;
- (f) a brief factual reconstruction of events associated with the action;
- (g) names and addresses of witnesses to the agency action or the incident unless the identity of any witness qualifies for protection under subdivision 17 . . . .

Minn. Stat. § 13.82, subd. 6(a)-(g) (emphasis added). Both subdivisions apply to data collected by agencies that “carry on a law enforcement function, including but not limited to . . . municipal police departments . . . [and] the Bureau of Criminal Apprehension.” *Id.*, subd. 1.

First, the Videos fall under subdivisions 2 and 6 because they document actions taken by the Minneapolis Police Department to arrest Clark, deprive Clark of his liberty, respond to a request for service, and act on its own initiative. The BCA has stated that Minneapolis police officers responded to an assault incident at the request of the victim or a witness, believing that Clark was the suspect. *What We Know, supra*. The officers claim to have attempted to restrain Clark after he interfered with the victim’s medical care. *Id.* The police union has stated that Clark was shot and killed during the ensuing struggle, although witnesses assert Clark was already handcuffed and neutralized. *Id.* The Videos therefore document the officers’ response to a request for service and attempts to arrest Clark. *See* Minn. Stat. § 13.82, subd. 2. The Videos also show police actions that resulted in Clark’s death, and thus document actions to deprive Jamar

Clark of the most fundamental of liberties, his life. *See Johnson v. Zerbst*, 304 U.S. 458, 462 (1938) (describing the rights to life and liberty as “fundamental”).

Second, the Videos constitute the type of arrest data and response or incident data that is classified as public under Minn. Stat. § 13.82, subd. 2 and 6, because they are direct evidence of some or all of the following information: the time, date, and place of the action, *id.*, subd. 2(a), 6(a), any pursuit engaged in by the officers, *id.*, subd. 2(c), 6(d), and the identity of witnesses or individuals taking actions, *id.*, subd. 2(f), 6(b), (g). Further, an attorney representing one of the officers stated: “While [Clark] was being legally detained, he chose to resist, fight officers and to seize control of an officer’s firearm.” Sidner et al., *supra*. The Videos are therefore direct evidence of any resistance encountered by the officers, the weapons used, and the legal basis of the officers’ actions. Minn. Stat. § 13.82, subd. 2(b), 2(d)-(e), 6(c), 6(e).

The Videos are both Arrest Data and Response or Incident Data, and disclosure by Defendants is required by the unambiguous language of the MGDPA. At the very least, this Court should exercise its option to review the Videos in camera in order to determine whether disclosure is appropriate. See Minn. Stat. § 13.08, subd. 4(a) (“[T]he court may inspect in camera the government data in dispute . . .”).

**B. The Criminal Investigative Data Exception, Minn. Stat. § 13.82, Subd. 7, Does Not Apply**

Citing Minn. Stat. § 13.82, subd. 7, the BCA argues that it need not disclose the Videos because they fall within a narrow exception for “criminal investigative data.” (*See* Compl. Exs. C, E.) But that exception does not apply in this case. The criminal investigative data exception provides:

*Except for the data defined in subdivisions 2, 3, and 6, investigative data collected or created by a law enforcement agency in order to prepare a case against a person, whether known or unknown, for the commission of a crime or other*

offense for which the agency has primary investigative responsibility are confidential or protected nonpublic while the investigation is active.

Minn. Stat. § 13.82, subd. 7 (emphasis added).

First, the BCA's reliance on the criminal investigative data exception follows false logic. Section 13.82 must be interpreted under the presumption that the legislature "understood the effect of its words and intended the entire statute to be effective and certain." *ILHC of Eagan, LLC v. Cty. of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (citing Minn. Stat. §§ 645.08, 645.16, 645.17(2)). Even assuming that a criminal investigation is ongoing, this does not end the inquiry because, by its very language, Minn. Stat. § 13.82, subd. 7 does not prevent disclosure of all criminal investigative data. Importantly, the legislature specifically excluded data defined in subdivisions 2 (Arrest Data) and 6 (Response or Incident Data) from the criminal investigative data exception. Moreover, Subdivisions 2 and 6 state that Arrest Data and Response Data "shall be public" and are subject to no exceptions. The BCA's premise—that all investigative data are nonpublic—is therefore fundamentally flawed because the statute unambiguously excludes the Videos from the criminal investigative data exception. *See State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000) ("If the meaning of the statute is 'clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.'" (quoting Minn. Stat. § 645.16)). This interpretation is also in harmony with the general framework of the MGDPA, which provides that "[a]ll government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified . . . as nonpublic or protected nonpublic." Minn. Stat. § 13.03, subd. 1. Thus, the Videos are public data regardless of whether they are criminal investigative data.

Second, the BCA's decision to allow Governor Dayton to view and publicly comment on the Videos belies its argument that the Videos should be withheld from the public due to an

ongoing criminal investigation. Neither the Minnesota Constitution nor the Minnesota Statutes grants the Governor authority to participate in a criminal investigation. Indeed, the Governor is prohibited from “requir[ing] any person . . . to produce any records for inspection by any person.” Minn. Stat. § 12.46. Governor Dayton is not a licensed peace officer as defined by Minn. Stat. § 626.84, subd. 1(c)(1), nor is he an attorney licensed to practice law in the State of Minnesota. Because Governor Dayton plays no role in the investigation into Clark’s death, Governor Dayton’s right to view the Videos is no greater than the public’s right to view the Videos. Yet not only did Governor Dayton view at least one of the Videos, he publicly commented on what he saw, which undermines the BCA’s argument that the Videos’ content must remain confidential. The BCA’s disclosure of the Videos casts significant doubt on its assertion that *further* disclosure of the Videos will impact the integrity of its investigation and the prosecutorial review process.

**C. The Videos Should Be Disclosed Under Minn. Stat. § 13.82, Subd. 7 Because the Benefits to the Public Outweigh Any Harm to the Public or to Defendants**

Even if this Court concludes that the Videos are not Arrest Data or Response or Incident Data *and* that a criminal investigation is ongoing, the Videos should nevertheless be disclosed. The MGDPA provides:

During the time when an investigation is active, any person may bring an action in the district court located in the county where the data are being maintained to authorize disclosure of investigative data. The court may order that all or part of the data relating to a particular investigation be released to the public or to the person bringing the action. In making the determination as to whether investigative data shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the agency or to any person identified in the data. The data in dispute shall be examined by the court in camera.

Minn. Stat. § 13.82, subd. 7. Because release of the Videos would substantially benefit the public and would harm neither the public nor Defendants, this Court should authorize disclosure.

### **1. Disclosure of the Videos Will Substantially Benefit the Public**

The public has a compelling interest in learning how police wield the tremendous authority given to them to take a human life in limited circumstances. Police in the United States took the lives of over 1000 people in 2015, 26% of whom were Black. *The Counted: People Killed by Police in the US*, Guardian, <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database>. Disclosure of the Videos will provide a substantial benefit to the public because it will help inform the public regarding whether the police acted appropriately when they wielded deadly force and took the life of Jamar Clark. *See Demers*, 468 N.W.2d at 74 (noting the “compelling need for public accountability, particularly with law enforcement agencies”). If, for example, the Videos conclusively demonstrate that the officers had no other choice under the circumstances, disclosure of the Videos will increase public trust in law enforcement, which is “essential to the performance of a police officer’s duties.” *City of Minneapolis v. Moe*, 450 N.W.2d 367, 370 (Minn. Ct. App. 1990). If, on the other hand, the Videos show that officers made no attempt to first de-escalate the situation or that their use of deadly force was unjustified, releasing the Videos may lead to more immediate reforms in the Minneapolis Police Department, including additional training and changes to use-of-force policies.

Disclosure will also allow Plaintiffs and other community activists to end their campaign to get the video released. Since Clark was shot and killed on November 15, 2015, activists have staged numerous demonstrations and rallies, including an 18-day encampment outside the Minneapolis Police Department’s 4th Precinct, marches to Downtown Minneapolis, demonstrations at the Mall of America and the Minneapolis-St. Paul Airport, and a rally on the Lake Street Bridge. One of the demonstrators’ principle demands is release of the Videos, as evidenced by the countless posters and messages displayed at these rallies. (Compl. Ex. A,

Images of Demonstrators Demanding Release of the Videos.) Statements from Plaintiffs and other interested parties have made clear that the demonstrations will not end until this demand is met. Releasing the Videos will allow community activists and the public to turn their energy and resources back to the broader work of seeking justice for Jamar Clark and eliminating the persistent, widespread, and systemic racial disparities that exist in Minnesota.

Finally, disclosing the Videos will benefit the public by promoting law enforcement transparency and Minnesota's "fundamental commitment to making the operations of our public institutions open to the public." *Prairie Island Indian Cmty.*, 658 N.W.2d at 884. The public has a right "to know what the government is doing \* \* \* within a context of effective government operation." *Westrom v. Minn. Dept. of Labor & Indus.*, 667 N.W.2d 148, 150 (Minn. Ct. App. 2003) (alteration in original), *aff'd*, 686 N.W.2d 27 (Minn. 2004). The government's failure to communicate openly and transparently has caused, and will continue to cause, an erosion of public trust in government operations.

For an example, we need only look to the events that took place in Chicago over the last year and a half. In October 2014, a Chicago police officer shot and killed Laquan McDonald under circumstances similar to those described by witnesses here. *See* Annie Sweeney and Jason Meisner, *A Moment-by-Moment Account of What the Laquan McDonald Video Shows*, *Chi. Trib.* (Nov. 25, 2015), <http://www.chicagotribune.com/news/ct-chicago-cop-shooting-video-release-laquan-mcdonald-20151124-story.html> (stating that the officer alleged he "fired in fear for his life because the teen lunged at him and his partner with the knife"). Law enforcement refused to disclose videos showing the altercation for over a year until a Cook County judge ordered their release in November 2015. *See* Memorandum Opinion & Order at 1, *Smith v. Chi. Police Dep't*, No. 2015 CH 11780 (Ill. Cir. Ct. Nov. 19, 2015). The videos revealed that police had fabricated

their version of the events and had impeded justice for over a year. Wayne Drash, *The Killing of Laquan McDonald*, CNN (Dec. 19, 2015), <http://www.cnn.com/2015/12/17/us/Laquan-mcdonald-video-records-comparison/> (noting discrepancies between the released video and the officer's version of events).

The people of Minnesota expect, and deserve, better. Releasing the Videos is an essential first step to understanding what happened on November 15—when Jamar Clark lost his life—and to restore public trust in law enforcement.

## **2. The BCA Has Failed To Identify Any Harm to the Public or to Itself**

In stark contrast to the immediate and quantifiable benefits conferred through release of the Videos, the BCA has identified no harms to itself or to the public by preventing disclosure—because there are none. Indeed, in its letters to Plaintiffs denying access to the Videos, the BCA made no effort to satisfy or even address subdivision 7's balancing test. The BCA stated merely that “all audio and video are part of the . . . active criminal investigation.” (*See* Compl. Exs. C, E.) Statements to the media have been similarly nondescript and inadequate. For example, the BCA Superintendent stated that releasing the Videos “would impact the integrity of the investigation that's ongoing currently, and would impact the integrity of the eventual prosecutorial review process that will be pending at the conclusion of our investigation.” Collins, *supra*. Harm to the public or to the agency should not be presumed merely because the data may be evidence in a criminal trial; instead, the government must prove “particular harm.” *Evening Post Pub. Co. v. City of N. Charleston*, 611 S.E.2d 496, 500 (S.C. 2005); *see* Order at 14, *Smith*, No. 2015 CH 11780, (finding “conclusory and inadequate” the police department's assertion that releasing the videos could affect the recollection and testimony of witnesses). Here, the BCA identified no harm—much less particular harm—in its letters to Plaintiffs. The BCA's statement

to the media provided no evidence to support its conclusory assertions that releasing the Videos will hamper the investigation.

Moreover, it is difficult to understand why release of the Videos would result in the harms that the BCA suggests. The shooting death of Jamar Clark occurred almost four months ago. The BCA has had ample opportunity to conduct interviews and collect evidence related to the shooting, and it has not indicated that it plans to conduct further witness interviews. As stated by ACLU Legal Director Teresa Nelson, “the state’s argument to not release videos for fear of tainting witness statements could make sense, but most witness interviews should be done in the first couple days after an incident anyway.” Collins, *supra*. Accordingly, in the event this Court does not compel disclosure of the Videos as Arrest Data or Response and Incident Data, it should conclude that the benefits of disclosure outweigh the harms, and order disclosure pursuant to Minn. Stat. § 13.82, subd. 7 after its compulsory *in camera* review.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully ask the Court to grant judgment on the pleadings in favor of Plaintiffs and compel disclosure of the Videos.

Dated: March 10, 2016

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