STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
Case Type: Other Civil

MINNESOTA COALITION ON GOVERNMENT INFORMATION,

Plaintiff,

v.

CITY OF MINNEAPOLIS; CASEY J. CARL, in his official capacity as Clerk for the City of Minneapolis; NIKKI ODOM, in her official capacity as Chief Officer for the Human Resources Department for the City of Minneapolis; MINNEAPOLIS POLICE DEPARTMENT; and BRIAN O'HARA, in his official capacity as Chief of Police for the Minneapolis Police Department,

Defendants.

Court File No. 27-CV-21-7237
Judge: The Honorable Karen A. Janisch

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

BALLARD SPAHR LLP

Leita Walker (No. 0387095)
Isabella Salomão Nascimento (No. 0401408)
J. Matt Thornton (No. 0402271)
80 South Eighth Street
2000 IDS Center
Minneapolis, MN 55402-2119
Tel: (612) 371-3211
walkerl@ballardspahr.com
salomaonascimentoi@ballardspahr.com
thorntonj@ballardspahr.com

Emily Parsons (admitted *pro hac vice*)
1909 K Street NW, 12th Floor
Washington, D.C. 20006
Tel: (202) 661-7603
parsonse@ballardspahr.com

AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA

Teresa Nelson (No. 0387095)
Dan Shulman (No. 0100651)
P.O. Box 14720
Minneapolis, MN 55414
Tel: (651) 645-4097
tnelson@aclu-mn.org
dshulman@aclu-mn.org

Attorneys for Plaintiff Minnesota Coalition on Government Information

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Following a rule where you require, on the face of the document, for it to say "this is discipline; you have been disciplined," the responsible authority knows whether this is disciplinary action. . . . Everybody knows it's disciplinary action, because it says it."

—Counsel for Defendants, to this Court
November 7, 2022

INTRODUCTION

It has been four years, almost to the day, since then-Minneapolis police officer Derek Chauvin murdered George Floyd. Chauvin's crime turned an international spotlight on the Minneapolis Police Department ("MPD"), and raised serious concerns about the steps MPD takes to ensure its officers uphold their oath to serve and protect the citizens of Minneapolis.

It was not long until the press and public zeroed in on MPD's use of "coaching" to address officer misconduct and MPD's refusal to disclose coaching data under the Minnesota Government Data Practices Act ("MGDPA"). In response to this scrutiny, public officials repeatedly claimed that coaching is not "disciplinary action" and therefore not public under the MGDPA. They insisted MPD used coaching only as a performance management tool and reserved it for "only the most low level violations" of policy, similar to how many other private and public workplaces use the tool. Data uncovered by watchdog groups, however, suggested that, behind closed doors, MPD was using a materially different form of so-called coaching to address more serious policy violations—including for misconduct that, under MPD's policies, required disciplinary action, such as constitutional violations and mishandling department-issued firearms.

Discovery in this case has shown exactly that. Specifically, indisputable evidence shows that, unlike the relatively quick and informal "A-level coaching" for minor policy violations, MPD has also long used a more regimented form of coaching—referred to by shorthand herein

as "B-level coaching."[1] This B-level coaching is invariably "complaint-based" and imposed only after MPD completes a full administrative investigation, including by providing the accused officer *all* of the same procedural protections it is obligated to provide before imposing recognized forms of discipline. If the investigation substantiates the complaint, then the Chief of Police himself issues the B-level coaching decision in a determination letter *intentionally* designed to mirror letters used to memorialize discipline. Indeed, in some instances, those letters stated unequivocally: "***As discipline for this incident you will receive coaching***."

This case is about *that* kind of coaching and the data MPD generated to document its occurrences. This case is *not* about everyday efforts to teach, mentor, or gently correct officers—efforts that often are not even documented and thus not subject to disclosure under the MGDPA. Rather, Plaintiff sued because, when Defendants give an officer all the bells and whistles of due process before sustaining a complaint of serious misconduct, and the Chief then issues a formal letter imposing a consequence indistinguishable from recognized forms of discipline, which letter is kept to be used against the officer in the event of a future infraction, *it does not matter how Defendants choose to unilaterally label that consequence*. Defendants can call it "coaching" or they can call it an "elephant." Regardless, because the consequence looks and feels like disciplinary action—indeed, here Defendants even call it that—the law of this State says this data is public and must be provided upon request.

Plaintiff is the Minnesota Coalition on Government Information ("MNCOGI" or "Plaintiff"), an all-volunteer organization that seeks to promote government transparency. On February 20, 2021, Plaintiff submitted a four-part request ("Request") to the City of Minneapolis

[1] Throughout this Memorandum, and unless context dictates otherwise, Plaintiff uses "B-level coaching" to refer to coaching of any misconduct that exceeds the A level—*i.e.*, B-, C-, D-, and E-level misconduct.

(the "City") under the MGDPA, seeking all public data related to (1) the coaching of Chauvin; (2) coaching imposed on officers as a consequence of improperly using a neck restraint in a specific set of cases; (3) coaching imposed on officers as the sole consequence for a policy violation at the B level or above; and (4) in which coaching is described as a form of discipline or acknowledged by a supervisor or the Chief of Police to constitute a form of discipline.

On March 26, City employee Katherine Knudsen summarily denied Plaintiff's Request in full, stating, "Coaching is not discipline and has never been discipline. The data you are requesting is private under MN statute 13.43; MPD has no responsive data. Your request is now closed." This lawsuit followed.

After three long years of litigation, during which not only Plaintiff but also other advocacy groups, the press, and the general public were wrongfully denied presumptively public information, Plaintiff now seeks an order from this Court granting it partial summary judgment on its claim against Defendants. Plaintiff's motion is based on undisputed material facts establishing that, contrary to what the City represented in its response to Plaintiff's Request, Defendants did have responsive, public data and failed to produce it. Among that data: dozens of public documents created by the City that characterize coaching as discipline, as well as determination letters telling officers they were being coached as discipline and grievances in which the Police Officers' Federation of Minneapolis (the "Federation") complained about B-level coaching as discipline. Defendants did not bother to locate these documents, much less disclose them in response to Plaintiff's Request because, evidence shows, Knudsen spent ***less than three minutes*** considering the Request before summarily denying it, and no one at the City ***took any steps*** to identify, collect, or review the documents before doing so. Make no mistake, this alone is a violation of the MGDPA.

While there may come a time when MNCOGI asks the Court for a more general finding that *all* coaching of misconduct at the B-level or above is disciplinary action, that issue is reserved for another day.[2] Today, Plaintiff's motion for partial summary judgment asks only for relief on Defendants' most clear-cut and egregious violations—withholding public data facially responsive to Plaintiff's Request, even though no statutory exemption applies. Defendants were obligated as a matter of law to provide access to these records, all of which explicitly state that coaching is discipline or discuss coaching as a final disposition of disciplinary action. By failing to do so, Defendants violated the MGDPA. Accordingly, the Court should grant Plaintiff's motion for partial summary and enter an order, among other things, compelling Defendants to promptly release unredacted copies of the data to which Plaintiff was always entitled.

STATEMENT OF THE LEGAL ISSUES PRESENTED

Pursuant to Minn. Gen. R. Prac. 115.03(d)(1), the following issues are presented to the Court for summary disposition in Plaintiff's favor:

> Did Defendants violate the MGDPA by failing to disclose documents facially responsive to Plaintiff's Request?
>
> To what declaratory and injunctive relief is Plaintiff entitled for Defendants' violations of the MGDPA?

STATEMENT OF THE RECORD

Pursuant to Minn. Gen. R. Prac. 115.03(d)(2), this summary judgment motion is based on all the pleadings, hearings, orders, and documents of record in this matter, including, but not limited to the following:

[2] Also reserved for trial are questions related to the appropriate amount of compensatory and exemplary damages Plaintiff should be awarded, the imposition of a civil penalty against Defendants, and whether Defendants' violation of the MGDPA was willful. After trial, Plaintiff expects to seek prospective, injunctive relief and attorneys' fees.

- The Declaration of Leita Walker, dated May 23, 2024 ("Walker Decl."), with accompanying Exhibits A-K (transcripts of the depositions taken and hearings in this case);

- The Declaration of Isabella Salomão Nascimento, dated May 29, 2024 ("Nascimento Decl."), with accompanying numerical exhibits of documents produced in discovery in this matter and other publicly available records; and

- The Declaration of Matthew W. Ehling, dated May 28, 2024 ("MNCOGI Decl.").

STATEMENT OF THE UNDISPUTED MATERIAL FACTS[3]

I. In the aftermath of George Floyd's murder, "coaching" within MPD came under fire as a threat to transparency and accountability.

1. On May 25, 2020, then-MPD officer Derek Chauvin murdered George Floyd. *State v. Chauvin*, 989 N.W.2d 1, 13-15 (Minn. Ct. App. 2023).

2. Within days, the media reported that Chauvin, who had been on the force for nearly two decades, had more than 15 complaints against him, only one of which had ever resulted in the imposition of what MPD and the City acknowledge as discipline. *See* Derek Hawkins, *Officer charged in George Floyd's death used fatal force before and had history of complaints*, WASH. POST (May 29, 2020), https://www.washingtonpost.com/nation/2020/05/29/officer-charged-george-floyds-death-used-fatal-force-before-had-history-complaints/.

3. Additional reporting revealed that MPD disciplined its officers for misconduct in only about three percent of cases, raising alarms for watchdog groups, including the City's own Police Conduct Oversight Commission ("PCOC"). *See* Nascimento Decl. Ex. 57 at 1-2.[4]

4. Meanwhile, the City was diverting an increasing number of cases to a process referred to by MPD as "coaching." *Id*. at 2.

5. In response to growing concerns about MPD's use of coaching and how coaching could be used to avoid public scrutiny of police misconduct, City officials repeatedly assured the

[3] Pursuant to Minn. Gen. R. Prac. 115.03(d)(4) and 115.05, this 46-page statement of undisputed material facts is excluded from the 35-page limitation applicable to Plaintiff's memorandum in support of its motion for summary judgment.

[4] Exhibits A through K in this Memorandum are attached to the Walker Declaration. All numerical exhibits are attached to the Nascimento Declaration. All references to exhibits are to those attached to the Walker and Nascimento Declarations. Additionally, exhibits previously marked during discovery in this case retain the exhibit number used at or for the deposition. Exhibits not previously marked are numbered 300 and above.

public that coaching was used only to address the lowest category of infractions (what are known as "A-level violations")—infractions such as "errors in report writing" or "seatbelt violations." *See id*. at 1-2; Ex. 35 at 21:16-24; *see also* Andy Mannix, *Proposal to unseal hundreds of misconduct allegations against Minneapolis police officers moves forward*, STAR TRIBUNE (Aug. 25, 2020), https://www.startribune.com/proposal-to-unseal-hundreds-of-misconduct-allegations-against-minneapolis-police-officers-moves-forw/572217352/.

6. Summary data the City was providing to the PCOC, however, suggested otherwise, *see generally* Compl. Ex. 11, and the PCOC subsequently sought clarification from the City on the ability "to make past coaching enterprise-wide public data." Ex. 59 at 1.

7. In response, then-Assistant City Attorney Trina Chernos issued a legal opinion on behalf of the City. *Id*.

8. In that letter, she stated that "[c]oaching is not discipline"—and thus not subject to public disclosure—pointing the PCOC to MPD's Policy and Procedure Manual, Discipline Manual, and Discipline Matrix. *Id*. at CITY.001528-31.

9. Chernos's September 2020 letter did not resolve the PCOC's questions, and, in March 2021, it directed the City Clerk to notify City department leaders of its request for clarification about the "definition, application, and data classification implications of 'coaching'" and "to request those City leaders to appear" at an upcoming meeting "to provide responsive information and to respond to questions." Ex. 186.

10. That meeting, which was transcribed, occurred in May 2021. Ex. 35.

11. Chernos, then-MPD Deputy Chief Amelia Huffman, and then-Chief Human Resources Officer Patience Ferguson presented at the meeting at length. *Id.* Then-Chief Medaria

Arradondo and then-City Attorney Jim Rowader also appeared and spoke briefly. *Id.* City Clerk Casey Carl, who organized the meeting, attended, but did not speak. Ex. G (Carl Tr.) at 85:1-8.

12. On behalf of the City, Huffman stated that "only the most low level violations" of MPD policy—*i.e.*, A-level violations— "are eligible for coaching." Ex. 35 at 21:16-17, 25.

13. She continued,

> So while [A] violations are not considered disciplinary, repeated policy violations at the A level are eligible for enhancement. And so two [A-level violations] within a one-year reckoning period that are the same or similar violations, or three violations in any period of a year then become ***a B-level violation, which is disciplinary***.

Id. at 22:21-23:3 (emphasis added).

14. Huffman also told the PCOC that coaching can be and is resolved "within a 30-day timeframe," due largely to the fact that those cases require less investigation, do not involve taking formal statements from officers, and do not go "down that very adversarial pathway that we do when we have a disciplinary case." *Id*. at 35:12-21, 36:10-14; *see also id*. at 38:11-14 (Chernos claiming "there is no right to a union representative present during" coaching).

15. To the question whether "excessive force would *not* be eligible for coaching," Huffman responded unequivocally, "Yes, that's correct." *Id.* at 43:21-44:1 (emphasis added).

16. Chernos, who Rowader introduced to the PCOC as "the closest thing we have to an expert on this [coaching] issue" at the City Attorney's Office, also fielded questions. She began by stating that the City "ha[s] a practice of trying to always make sure that an employee leaves a conversation understanding whether discipline has occurred or not." *Id*. at 33:9-12.

17. It does so, Chernos said, through "either the Chief's discipline memo for MPD or what's called a determination letter in the City," the "subject line of" which "indicates, or elsewhere in the body of that letter will indicate that it is a disciplinary measure." *Id*. at 34:9-16.

18. She stressed that the "***key part***" of such documents—which she said was "very different than the coaching document in MPD"—"is that it will state at the bottom that further misconduct will result in discipline up to and including termination." *Id*. at 34:16-23 (emphasis added).

19. Consistent with coaching being an oral process, Chernos highlighted that "there is no obligation to document coaching." *Id*. at 33:14-15.

20. Finally, in response to a straightforward question—"What is discipline?"—Chernos directed the PCOC to Rule 11.04 of the Civil Service Commission Rules ("CSCRs"), while acknowledging that the collective bargaining agreement ("CBA") between the City and the Federation actually "does not lay out what is discipline," but instead only what "would be subject to the grievance procedure." *Id*. at 30:10-31:8; *see* Ex. B (Huffman Tr.)[5] at 124:8-13* (same); *see also* Ex. 48 § 12.02.

21. As for Ferguson, she told the PCOC that "coaching" in the City is a process to "provide just-in-time," "immediate feedback and direction." Ex. 35 at 15:4-11.

II. Plaintiff submitted a request to Defendants under the MGDPA for a range of coaching-related data, including nonpersonnel data.

22. Plaintiff is an all-volunteer, non-profit organization. MNCOGI Decl. ¶ 2.

23. On February 20, 2021, around the same time the PCOC issued its directive to City leaders, Plaintiff submitted to the City a request under the MGDPA ("Request") seeking data related to MPD's use of coaching. *See* Ex. 2.

24. Plaintiff's Request had four parts. *Id.* Parts 1 through 3 sought "personnel data," which is governed by Minn. Stat. § 13.43.

[5] Defendants designated portions of Huffman's testimony as their own. Ex. 334. Where Plaintiff cites to one of these portions, in whole or in part, it is noted with an asterisk ("*").

25. Specifically, and in an effort to determine whether MPD was using at least some coaching as a form of disciplinary action, MNCOGI Decl. ¶ 8, Plaintiff sought (1) "[a]ll data . . . related to coaching of Derek Chauvin;" (2) "[a]ll data . . . related to coaching of any officer as a result of his/her involvement" in a discrete set of incidents involving officers' use of neck restraints; and (3) "[a]ll data . . . related to coaching of any officer resulting from a sustained complaint where the original complaint alleged a B-, C-, or D-Level Violation where coaching was the only corrective action taken." Ex. 2.[6]

26. Notably, and with the exception of data related to Chauvin, Plaintiff did not seek personnel data related to "A-level" or "low-level" coaching. *See id*.

27. Part 4 of Plaintiff's Request was intentionally much broader in what it sought, as Defendants concede. *Id*.; MNCOGI Decl. ¶¶ 9-11; *see also* Ex. E (Zenzen Tr.) at 37:24-38:1, 66:12-19, 68:7:12 (admitting on behalf of Defendants that fourth request "is not necessarily for personnel data"); Ex. A (Knudsen Tr.) at 61:8-14 (admitting that fourth part of request is for more than "coaching forms").

28. Part 4 of Plaintiff's Request had two distinct clauses. Ex. 2; *see also* Ex. G (Carl Tr.) at 30:22-32:7 (admitting the fourth request can be read as two standalone requests); MNCOGI Decl. ¶¶ 9-11.

29. Plaintiff sought "[a]ll data, dating from January 1, 2011, to present, in which coaching is described as a form of discipline[.]" Ex. 2.

[6] At the time, misconduct was only classified through the D level. There is now a category for E-level misconduct, as well. *See, e.g.*, Ex. B (Huffman Tr.) at 85:7-12.*

30. In addition, Plaintiff sought "[a]ll data, dating from January 1, 2011, to present, in which coaching is . . . acknowledged by a supervisor or the Chief of Police to constitute a form of discipline." *Id.*

III. Defendants' standard practice is to construe MGDPA requests broadly, ask for clarification if the request is confusing, and disclose data responsive on its face.

31. Named Defendant Casey Carl is the City's Responsible Authority, which means he is responsible for the City's, including MPD's, compliance with the MGDPA. Ex. G (Carl Tr.) at 16:3-18:1.

32. According to Carl, every MGDPA request submitted to the City "goes through four stages": intake, collection, review, and production. *See id.* at 26:22-27:6; Ex. 329 at DPA_008552.

33. In the intake phase, the City receives the request and clarifies what the request is seeking, if clarification is needed. Ex. G (Carl. Tr.) at 27:8-18 (testifying that is the process "for every data request").

34. The City then "locate[s] and gather[s] the requested data" (collection), "remove[s] data not available to the public by law" (review), and "format[s] and deliver[s] the requested data" (production). Ex. 329 at DPA_008552.

35. At a hearing in this matter, counsel for Defendants explained how the City approaches MGDPA requests for disciplinary data in particular, stating that the Responsible Authority can only be expected to look at the face of the document:

> The structure of the act is that there's a responsible authority with each entity. And a request comes in, the responsible authority has to gather the data . . . and provide a response. If every time we have to look at—that responsible authority has to analyze or start interviewing people to find out did you intend to punish, there's nothing workable about that. Following a rule where you require, on the face of the document, for it to say, "this is discipline; you have been disciplined," the responsible authority knows whether this is disciplinary action. They have to find out

if it's final disposition, but they know it's disciplinary action. Everybody knows it's disciplinary action, because it says it.

Ex. I (Nov. 7, 2022 Hr'g Tr.) at 56:20-25.

36. Likewise, Mary Zenzen, the City's corporate designee, testified as follows:

Q. It's not very typical for the City to try to interpret and read the mind of what someone meant when responding to data practices requests, is it?

A. Correct.

Q. Can you think of any instance … where in responding to a data practices request, the City ignored the plain language on the face of a document and justified withholding it based on its unilateral interpretation of what the author meant?

…

A. No. I don't recall a specific instance.

Ex. E. (Zenzen Tr.) at 71:16-75:12; *see also id.* at 65:18-66:7

37. Zenzen also acknowledged on behalf of Defendants that the City avoids narrowly construing MGDPA requests and instead strives to take the broadest interpretation possible. *Id*. at 46:12-47:9, 52:3-6; Ex. G (Carl Tr.) at 28:8-10 (Responsible Authority testifying City does not have policy that data requests should be interpreted as narrowly as possible).

38. If an MGDPA request is confusing or ambiguous, the City's policy is to reach out to the requester for clarification. Ex. E (Zenzen Tr.) at 47:10-14; *see also id.* at 47:15-49:25, 50:12-24, 55:24-57:6; *see, e.g.*, Ex. 80 at FED001658 (example of City Clerk employee Kyle McDonald seeking clarification from data requestor on scope of request).

39. Finally, according to Carl, the City has neither a policy nor a practice that "a data request can be summarily closed without conducting any sort of collection or review of responsive records." Ex. G (Carl Tr.) at 29:1-19.

IV. Defendants summarily closed Plaintiff's MGDPA Request within minutes and without making any effort to identify, collect, or review responsive data.

40. On March 26, 2021, Defendants denied Plaintiff's MGDPA Request. Ex. 3.

41. Specifically, City employee Katherine Knudsen responded as follows: "Coaching is not discipline and has never been discipline. The data you are requesting is private under MN statute 13.43; MPD has no responsive data. Your request is now closed." *Id.*

42. Knudsen's response did not cite any basis for withholding nonpersonnel data responsive to Part 4 of Plaintiff's Request, or indicate whether any City department *other than* MPD had data responsive to Plaintiff's Request. *Id.*; *see also* Ex. G (Carl Tr.) at 51:20-52:1 (admitting nothing in Plaintiff's Request indicated that it only sought MPD data).

43. Neither Knudsen nor anyone else in the City asked Plaintiff to clarify the scope of its Request or what it sought before Defendants summarily denied and closed it. Ex. E (Zenzen Tr.) at 49:15-20; *id*. at 57:17-58:4; MNCOGI Decl. ¶ 10.

44. Discovery since revealed that the City had in its possession *dozens* of personnel records in which MPD officers were told that, as discipline, they were being coached, or in which grievances described coaching as discipline. *See infra* ¶¶ 83, 86-107, 109.

45. It also had in its possession numerous nonpersonnel records where coaching was described as, or acknowledged to be, a form of discipline. *See infra* ¶ 78.

46. These data were in the possession of various City departments beyond MPD including the City Attorney's Office and the Human Resources, and Civil Rights departments. *See infra* ¶¶ 78, 83, 86-107, 109.

47. Discovery also revealed that Defendants took *zero* steps to identify, collect, or review any of these data. Specifically, an email exchange produced by Defendants during

discovery shows that, on March 26, 2021, Knudsen sent the following messages to her supervisor Zenzen:

> Knudsen (16:54:52): Hi Mary, This one is similar to the Cerra one we just closed, 17317, what was the final language for the denial of that request? I can use the same language to close this one I think.
>
> Knudsen (16:57:44): Never mind, I just denied it under 13.43 and said coaching has never been discipline.

Compare Ex. 326, *with* Ex. 327.

48. As evidenced by the time stamps on those emails, Knudsen summarily closed Plaintiff's Request within approximately ***three minutes***. *Id.*

49. Meanwhile, Knudsen *admitted* that she did not look for coaching forms responsive to Parts 1 through 3 of Plaintiff's Request, Ex. A (Knudsen Dep.) at 124:21-125:1, and she conceded she "made *zero effort*" to look for any responsive documents at all, *id.* at 62:25-63:16 (emphasis added); *see also, e.g., id.* at 38:4-8, 43:9-44:4, 45:3-20, 61:18-62:3, 62:22-24, 63:12-16, 64:8-65:10, 99:12-14.

50. Zenzen, as the City's corporate designee, likewise admitted that, as far as the City knew, "no search for documents was done" and Plaintiff's Request was "summarily closed" for the simple reason that the "four points" in the Request "all relate to . . . coaching." Ex. E (Zenzen Tr.) at 17:13-18:8; *see also id.* at 22:14-28:4 (admitting no effort was made to identify who might have responsive documents and collect those documents), 34:19-23 (same), 50:1-4 (admitting Defendants summarily closed Plaintiff's Request because they "saw a reference to 'coaching'"), 52:13-22 (same), 53:13-55:23 (same), 57:22-58:4 (admitting Defendants have no evidence that anyone "parsed the pieces" of Part 4 of Plaintiff's Request before it was summarily closed), 68:18-69:3 (admitting no due diligence occurred), 76:3-77:20 (same), 93:21-23 (same).

51. Defendants also admitted that they would handle the Request differently today, rather than summarily closing it. *Id.* at 102:17-106:5.

52. The City's Responsible Authority went further, testifying that summarily closing an MGDPA request without seeking clarification on its scope or identifying, collecting, or reviewing any potentially responsive data does not comply with the MGDPA. Ex. G (Carl Tr.) at 54:11-55:8.

V. Plaintiff sued Defendants and, prior to discovery, Defendants made several noteworthy representations—and misrepresentations—to this Court.

53. In June 2021, Plaintiff filed this case against the City and various City officials for violating its right under the MGDPA to access the public data it had requested. *See generally* Compl.

54. Defendants answered in July, *see* July 13, 2021 Defs.' Joint Ans., and, in August, the Federation successfully moved to intervene, *see* Dec. 1, 2021 Order Granting Intervention.

55. In December, Defendants moved unsuccessfully for judgment on the pleadings. Apr. 15, 2022 Order Denying Judg. on the Pleadings at 16.

56. Then, before discovery began, the Court directed the parties to file cross-motions for partial summary judgment on the narrow issue of how the statutory term "disciplinary action" should be defined. July 11, 2022 Order for Further Proceedings at 3-4.

57. In February 2023, the Court decided that issue, defining the phrase as "an action imposed through the decision of a government entity to punish or penalize an individual within the scope of § 13.43, subd. 1 consistent with the rights and obligations between the government entity and the individual data subject as established by law and/or collective bargaining." Feb. 6, 2023 Orders on Mots. For Partial Summ. Judg. ("Summary Judgment Order"), at 2 ¶ 1(b).

A. Defendants' notable representations to the Court during pre-discovery proceedings

58. It was at the hearing on these cross motions where counsel for Defendants told the Court that the only "workable" way for the Responsible Authority to respond to MGDPA requests is to look at potentially responsive data and rely on its plain language. *See supra* ¶ 35.

59. In addition, counsel explained how City employees know whether they have been disciplined:

- "[t]he way you know if you've been disciplined is the rules of your workplace tell you this is discipline ***and you get a letter that says, 'Here's the discipline'***," Ex. I (Nov. 7, 2022 Hr'g Tr.) at 45:18-21 (emphasis added); and
- a letter that looks like disciplinary action is, in fact, disciplinary action "***when it says, 'You are being disciplined,***'" *id*. at 50:17-21 (emphasis added).

B. Defendants' notable misrepresentations to the Court during pre-discovery proceedings

60. Prior to briefing on the meaning of "disciplinary action," in their memorandum in support of their motion for judgment on the pleadings, Defendants listed various procedural steps occurring before the imposition of discipline and claimed that these "procedural hallmarks of discipline are absent with coaching." Nov. 19, 2021 Mem. in Supp. of Mot. for J. on the Pleadings at 15.

61. Likewise, in their reply brief on that motion, they told this Court that "officers who receive coaching are not afforded" their "statutorily and collectively-bargained-for rights." Dec. 10, 2021 Mot. for J. on the Pleadings Reply Mem. at 4.

62. ***However***, given the evidence uncovered in discovery, Defendants have since stipulated and will not dispute that, in at least 25 cases, MPD officers who were coached "were provided sufficient process such that, under the Labor Agreement and/or law, . . . the Chief of

Police could instead have imposed" a form of corrective action Defendants recognize as discipline. *See* Ex. 214 ¶ 4.

63. Defendants also represented to this Court that "[t]he coaching documentation form lacks any indication that the Chief is involved in a decision to coaching." *See* Nov. 19, 2021 Mot. for Judg. on the Pleadings at 10.

64. Likewise, they told the Court that "MPD's template Discipline Memorandum includes fields to select which of these enumerated disciplinary actions the chief is imposing. The form does not include an option for the chief to select 'coaching.'" *Id*. at 11 n.8 (cleaned up)).

65. And they told the Court that coaching is not imposed by the Chief. Ex. J (Jan. 18, 2022 Hr'g Tr.) at 17:6-12.

66. ***However***, discovery revealed that the Chief is the very individual who imposes B-level coaching. *See infra, e.g.*, ¶¶ 86, 96.

67. Finally, at the hearing on the parties' cross-motions for partial summary judgment, the Court asked whether there is a distinction between "coaching imposed by the Chief" and "coaching imposed by persons other than the Chief." In response, counsel for Defendants stated it was "theoretically possible, but it is not how anything operates" in practice. Ex. J (Jan. 18, 2022 Hr'g Tr.) at 17:6-12.

68. ***However***, at her deposition in this case, Huffman testified that there is, indeed, a distinction between the process for most A-level coaching, which goes through a relatively informal "joint supervisor referral process," and the process for any B-level coaching, which is imposed by the Chief after a very "adversarial" process identical to that required for other

disciplinary actions. *See* Ex. B (Huffman Tr.) at 67:13-68:4,* 70:5-23, 77:2-3; *see also infra* ¶¶ 183-186.

69. Notably, back in 2021, City officials conveyed to the PCOC and the public the same, incomplete information they gave this Court: that coaching happens quickly and informally, avoiding the "adversarial" administrative investigation, and without the Chief's involvement. Ex. 35 at 35:5-36:15.

70. Huffman subsequently explained at her deposition that her remarks at the May 2021 PCOC meeting were only about A-level coaching, and that she had no idea the PCOC was interested in B-level coaching. Ex. B (Huffman Tr.) at 69:9-71:20.*

71. Neither Ferguson, Huffman's co-presenter, nor Carl, who handled the PCOC's directive to convene the meeting, understood either Huffman's comments or the PCOC's interest in coaching to be so limited. *See* Ex. C (Ferguson Tr.) at 82:13-25; Ex. G (Carl Tr.) at 88:19-23, 86:11-23.

72. During her deposition, Ferguson similarly testified that none of her remarks before the PCOC had been about how coaching is used within MPD because, in fact, she testified that she "didn't know how MPD was using coaching" and still does not. *See* Ex. C (Ferguson Tr.) at 87:15-23, 100:1-2 ("I didn't have any knowledge how coaching was done in MPD"); *see also* Ex. F (Schoenberger Tr.) at 150:19-151:6 (distinguishing, as the City's corporate designee in this matter, between how the City's human resources department describes coaching and MPD's "complaint-based coaching," which he said is a "separate process").

73. As for Chernos, she later admitted in her deposition for this case that she conducted no investigation before providing the PCOC with her September 2020 legal opinion, and could not recall what, if anything, she did to prepare the comments she gave at the PCOC's

May 2021 meeting. *See* Ex. H (Chernos Tr.) at 107:17-108:8, 109:16-17, 110:1-2, 111:25-112:5, 116:5-8.

VI. Discovery revealed that Defendants possess many documents that describe coaching as discipline.

74. According to the City's Responsible Authority, if Defendants have data responsive to an MGDPA request, it must be transparent about that fact, even if it is going to withhold the data under some provision of the MGDPA. *See* Ex. G (Carl Tr.) at 42:6-17.

75. Here, however, Defendants summarily denied and closed Plaintiff's Request, stating, "MPD has no responsive data." Ex. 3. Discovery revealed that the City possesses at least four categories of public documents that describe coaching as discipline.

A. Public, nonpersonnel data that explicitly characterize coaching as discipline

76. Plaintiff requested all data describing coaching "as a form of discipline" or in which coaching is "acknowledged by a supervisor or the Chief of Police to constitute a form of discipline." Ex. 2.

77. Defendants did not disclose a single document in response to this Request. Ex. 3.

78. Yet during discovery, Defendants and the Federation produced—or in some cases, Plaintiff obtained through other means—the following documents, from many City departments:

- A quarterly report of the OPCR, a division of the Civil Rights Department, that lists coaching as a "Discipline Type[] Issued by Chief," Ex. 5 at WEBSTER_0000895;
- A Memorandum of Agreement ("MOA") that lists coaching and oral reprimands among "disciplinary options" at MPD, Ex. 7 at CITY.001189;

- An MPD Body Worn Camera Policy from the Mayor's Office that lists coaching as one of the "[d]isciplinary consequences for violating" the policy, Ex. 9 at CITY.001733;[7]

- An annual report of the OPCR, which lists coaching as one of the types of discipline issued by MPD, Ex. 10 at CITY.001874;

- Another OPCR document—a bar graph—that lists coaching among the "Discipline Types Issued by the Chief," Ex. 11;

- A document drafted by then-Director for OPCR, Imani Jaafar, providing "current discipline numbers from" OPCR cases, 172 of which were "coachings," Ex. 306;

- An analysis by former PCOC member Abigail Cerra describing coaching as discipline, Ex. 308, which she sent to City Councilmember Schroeder in 2020, Ex. 307;

- A summary prepared by the City of document requests by the Minnesota Department of Human Rights, one of which sought "records of discipline issued to sworn personnel" at MPD "including coaching," Ex. 156;

- A post-arbitration brief by the Federation in which, while arguing against the termination of an officer for an excessive use of force, the Federation noted that in other similar cases, "discipline ranged from coaching, to a letter of reprimand, to a short suspension," Ex. 133;

- A presentation by the Minneapolis City Attorney's Office describing A level violations, "usually coaching," as "discipline," Ex. 167 at FED002712;

- A 2013 memorandum from (now Judge) Michael Browne, then-Director of OPCR, and Medaria Arradondo, then Commander of Internal Affairs ("IAU"), wherein Ryan Patrick, "legal analyst for the OPCR," noted that "several supervisors" of MPD "have expressed concern that under an OPCR Coaching process the measures and steps described herein is often viewed by the involved employee as being . . . discipline," Ex. 209; and

- A 2013 email from then-Commander of Internal Affairs Medaria Arradondo noting that "OPCR Coaching can result in . . . discipline," Ex. 213.

[7] This document was publicly released as part of a 2016 open letter from then-Mayor Betsy Hodges "[t]o the residents and communities of Minneapolis." Ex. 8.

79. These nonpersonnel data and potentially others[8] were not marked "Confidential" when produced in discovery, and Defendants' corporate designee testified that she could think of no MGPDA exemption that would permit their withholding. Ex. E (Zenzen Tr.) at 77:21-78:2.

80. Numerous witnesses for Defendants—including the City's Responsible Authority and a former Assistant City Attorney—have admitted they are responsive to Part 4 of Plaintiff's MGDPA Request. Carl, for example, described OPCR's bar graph as responsive "[o]n the face of it." Ex. G (Carl Tr.) at 55:19-56:5; *see also id.* at 54:19-56:5 ("On the face of [Exhibit 5,] it would seem to be responsive to the request."), 46:24-48:2 (similar for Exhibit 7), 56:7-57:35 (similar for Exhibits 10-11), 73:5-74-12 (similar for Exhibit 12); Ex. A (Knudsen Tr.) at 86:11-132:1 (admitting that Exhibits 7, 9-14, 18-26 "could be" or are "possib[ly]" responsive to Plaintiff's Request).

81. Or as put by Chernos, who advised the City on responding to MGDPA requests:

> Q. [D]id you ever see a document where coaching was described as discipline?
>
> A. You placed documents in front of me today that do.

Ex. H (Chernos Tr.) at 46:15-19.

B. Settlement agreements Defendants admit are public or in which the Chief explicitly imposed coaching as "final discipline"

82. According to the City Attorney's Office, "settlement agreements are public, even if they result in coaching[.]" *See* Ex. 80 (copying Zenzen and several other employees from the

[8] To this day, Defendants refer to coaching as a "disciplinary action taken by Chief," even on public documents posted to the City's website. *See, e.g.*, https://www2.minneapolismn.gov/media/content-assets/www2-documents/departments/OPCR-21-53.pdf ("[§] 7b) Disciplinary action taken by Chief – Coaching from supervising officer.").

City Clerk's Office); Ex. E (Zenzen Tr.) at 59:2-14 (City's corporate designee admitting that settlement agreements are public).

83. Discovery revealed the City has repeatedly settled grievances by imposing coaching. Examples include:

- A 2021 settlement reducing a sustained C-level violation with a letter of reprimand to a B-level violation with coaching, Ex. 18;
- A 2021 settlement "agree[ing] to resolve [a] grievance" over three sustained B violations with 60 hours suspension by imposing "the ***final discipline*** as amended": one A and one B violation with a 20-hour suspension and coaching, Ex. 77 (emphasis added); and
- A 2021 settlement "agree[ing] to resolve [a] grievance" over a sustained B level violation with a 10-hour suspension by imposing "the ***final discipline*** as amended": one A violation with coaching, Ex. 79 (emphasis added).

84. Defendants marked Exhibits 77 and 79 "Confidential" when they produced them in discovery, and designated deposition testimony about all three documents "Confidential."[9]

C. Determination letters in which the Chief explicitly told officers that "as discipline" for misconduct they would receive coaching or that further misconduct would result in discipline "more severe" than coaching

85. The City represented to the PCOC that coaching is not documented on what the City calls "determination letter[s]." *See* Ex. 35 at 34:9-11, 16-17. Evidence obtained during discovery shows otherwise.

1. B-level coaching is documented on determination letters.

86. B-level coaching involves a formal and adversarial process, *see* Ex. B (Huffman Tr.) at 70:16-71:1,* and at the end of that process, MPD gives notice of such coaching on determination letters issued by the Chief. *See, e.g.*, Exs. 12, 13, 15, 17.

[9] These three settlement agreements post-date Plaintiff's Request. Two, however, were created before Defendants denied Plaintiff's Request. *See* Exs. 77, 79.

87. These determination letters often require counter-signature by the recipient officer, and are often copied to personnel or human resources, IAU, and/or OPCR for placement in officer personnel files. *See, e.g.*, *id*.; *see also, e.g.*, Ex. 34 (then-Federation President Bob Kroll tells officers to annually check their personnel file because "[m]any times old coaching documents . . . are in the file beyond the date they should be removed"), 85 ("he was given 2 B Level Violations listed as Coaching ***put in his discipline file***" (emphasis added)).

88. Under the CBA "[i]nvestigations into an employee's conduct which ***do not*** result in the imposition of discipline" are not permitted to "entered into the employee's official personnel file." Ex. 48 § 12.01 (emphasis added); *see, e.g.*, Ex. 87 (Federation requesting "[n]o entry" of discipline outcome "into [the officer's] personnel file").

89. Several of these letters state explicitly that "***[a]s discipline for this incident you will receive coaching***." *See, e.g.*, Exs. 12, 13, 14 (emphasis added).

90. Alternatively, the letters sometimes inform officers that "any additional violations of Department Rule and Regulations may result in ***more severe disciplinary action*** up to and including discharge from employment." Exs. 15, 17, 20, 23, 88, 92 (emphasis added).

91. Some other determination letters for B-level coaching do not contain such explicit language. *See, e.g.*, Exs. 21, 22.

92. This is also the case for many determination letters imposing recognized discipline. *See, e.g.*, Ex. 311.

93. But, with very few exceptions, *all* of the coaching determination letters that Defendants produced in discovery contain the "key" language that the City uses to inform its employees that they have been disciplined. *See* Ex. 35 at 34:16-23 (Chernos tells PCOC that "key part" of how the City indicates to its employees that they are being disciplined is through

determination letters that "will state at the bottom that further misconduct will result in discipline up to and including termination," and claiming "that's not what coaching documents under either MPD system or other labor agreements within the city system would show").

94. For example, several officers received coaching for sustained B-level violations for mishandling their firearms, Exs. 21, 22—*i.e.*, accidental discharges of their department-issued weapons, Exs. 317, 122.

95. The letters issued to these officers contain the same cautionary language at the bottom that Chernos described to the PCOC: "Be advised that any additional violations of Department Rules and Regulations may result in disciplinary action up to and including discharge." Exs. 21, 22.

2. Coaching determination letters were designed to look like discipline letters.

96. Determination letters imposing coaching are virtually indistinguishable from those issued when officers receive a letter of reprimand, a recognized form of discipline:

Minneapolis
City of Lakes

Police Department – Medaria Arradondo, Chief of Police
350 S. Fifth St. - Room 130
Minneapolis, MN 55415
TEL 612.673.3000
www.minneapolismn.gov

NOTICE OF COACHING

February 14, 2020

Officer [redacted]
Minneapolis Police Department

RE: OPCR Case [redacted]
Notice of Coaching

Officer [redacted]

The finding for OPCR Case [redacted] is as follows:

Policy Number	Sub-Section	Policy Description	Category	Disposition
7-403		Vehicles – Emergency Response	B	Sustained

As discipline for this incident you will receive coaching from your supervisor as 7-403 Vehicles – Emergency Response was sustained at a "B" level with Coaching.

This case will remain in OPCR files per the record retention guidelines mandated by State Law.

Be advised that any additional violations of Department Rules and Regulations may result in disciplinary action up to and including discharge.

Sincerely,

Medaria Arradondo
Chief of Police

By: Michael Kjos, Assistant Chief of Police
Henry Halvorson, Deputy Chief, Professional Standards Bureau

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Pl.'s Ex. 13

CONFIDENTIAL CITY002979

Minneapolis
City of Lakes

Police Department
Janee L. Harteau, Chief of Police
350 S. Fifth St., Room 130
Minneapolis, MN 55415
TEL 612.673.3000
www.minneapolismn.gov

October 24, 2016

Officer Andrew Reed
First Precinct
Minneapolis Police Department

Officer Reed,

RE: OPCR Case Number #16-09388
LETTER OF REPRIMAND

The finding for OPCR Case #16-09388 is as follows:

MPD P/P 5-401 Handling of Firearms.....SUSTAINED (Category B)

You will receive this Letter of Reprimand. This case will remain in the OPCR files per the record retention guidelines mandated by State Law.

Be advised that any additional violations of Department Rules and Regulations may result in disciplinary action up to and including discharge.

Sincerely,

Janee Harteau
Chief of Police

BY:

Assistant Chief
Kristine Arneson

Pl.'s Ex. 332

CITY002810

Nonpublic Notice of Coaching *Public Letter of Reprimand*

See, e.g., Exs. 13, 332.

97. Each of these documents contains the following elements:

- the sustained finding of misconduct (policy and violation level),
- a sentence informing the officer that the case will be retained for the reckoning period, and
- the "key" language, that further misconduct will result in discipline up to and including termination.

Id.

98. These similarities are by design. In 2015, two weeks after the City and Federation discussed the "first known case of a violation higher than A being listed as Coaching," *see* Ex. 85, then-Commander Christopher Granger issued a memorandum to MPD, *see* Ex. 33.

99. In the section of the memorandum titled "New—Coaching as Part of an Administrative Outcome," Granger directed that "[t]he [coaching] notification letter will be

drafted like a discipline letter outcome requiring signatures and date." *Id.*; *see also* Ex. F (Schoenberger Tr.) at 112:10-113:19.

100. Asked why MPD would want a coaching letter to look like a discipline letter, Defendants' corporate designee said "[s]o that it has a consistent look and feel to the other documents that are coming out of internal affairs." *Id.* at 114:3-7.

101. His testimony continued:

> Q. Why is it important that it has the same look and feel?
>
> A. For consistency.
>
> Q. Why is consistency important?
>
> A. I think it helps those receiving the letters and processing the letters to know what it is that they're getting.

Id. at 114:11-116:12.

102. Whatever the reason for making coaching letters look like discipline letters, Defendants' one-time Chief Human Resources Officer agreed that, when it comes to giving employees notice that they are being disciplined, the best practice is to do it in writing. Ex. C (Ferguson Tr.) at 106:24-107:12 (testifying that employees should leave a conversation knowing whether they've been disciplined and the conversation should be "combined with some sort of documentation"); *see also supra* ¶¶ 16-18, 35, 58-59.

103. Defendants did not disclose any coaching determination letters in response to Plaintiff's MGDPA Request, Ex. 3, and designated all of them "Confidential" during discovery.

D. Letters in which an officer received a recognized form of discipline plus coaching

104. Defendants also possess numerous determination letters in which officers received a Letter of Reprimand, or some other recognized form of discipline, *plus* coaching. For example, in one case, the Chief sustained a C-level violation of the Code of Conduct, writing in

the Notice of Discipline, "As discipline for this incident, you will be suspended for 20 hours without pay, receive a letter of reprimand and be referred for supervisory coaching." Ex. 75; *see also, e.g.*, Exs. 16, 72, 73, 312, 313, 314, 323, 324, 325.[10]

105. According to Defendants' corporate designee, when coaching or training is imposed as part of "a written reprimand with education-based discipline," then "the education is part of the disciplinary outcome." *See* Ex. F (Schoenberger Tr.) at 120:1-121:17.

106. Defendants, however, did not disclose any of these letters in response to Plaintiff's Request, Ex. 3, and designated all of them "Confidential" during discovery.[11]

107. Yet the City itself has several times publicly disclosed data on police misconduct cases without redacting references to such "education-based discipline." *See, e.g.*, Exs. 305 at 4 (the officer "was referred to MPD Training Division and has completed refresher training in De-escalation [redacted] and Report Writing"),[12] 328 ("Additionally, you are to complete training[.]"), 301 at 3-4, 302 at 3,[13] 303 at 3,[14] 304 at 4.

[10] In addition, and in the same vein, several other notices of discipline required officers to attend training on the policies they were found to have violated. *See, e.g.*, Exs. 45, 46, 310, 311, 315, 316.

[11] At Defendants' request, Plaintiff has redacted references in these documents to coaching and training before filing them publicly. Plaintiff mentions the redacted content here consistent with the Amended Protective Order dated May 9, 2024 at 2, ¶ 11.

[12] Defendants produced the corresponding Notice of Discipline for this officer, but designated it "Confidential" and required redaction before public filing. *See* Ex. 74.

[13] Defendants also produced the corresponding Notice of Discipline for this officer, but designated it "Confidential" and required redaction before public filing. *See* Ex. 315.

[14] Once again, Defendants produced the corresponding Notice of Discipline for this officer, but designated it "Confidential" and required redaction before public filing. *See* Ex. 316.

E. Grievances in which the Federation described coaching as discipline

108. In its intervention papers and at the hearing on that motion, the Federation told the Court it was unable to grieve coaching decisions. *See* Sept. 22, 2021 Intervention Mot. at 2 ("[T]he Federation was prohibited from filing a grievance challenging the implementation of coaching memorandum."); Ex. K (Oct. 14, 2021 Hr'g Tr.) at 9:13-14 (The Federation "has not had a right to file a grievance" over the imposition of coaching), 10:19-21 ("[T]he Federation has been prevented from being able to file any grievances to challenge those coaching memoranda.").

109. In fact, the Federation has consistently submitted grievances over the imposition of B-level coaching on officers, and those grievances are data in Defendants' possession. They include but are not limited to:

- Grievance of a B-level violation with coaching, in which the Federation stated that the basis for the grievance was that there was "[n]o just cause for [the] ***discipline***" imposed, Ex. 76 (emphasis added);[15]
- Grievance of a sustained Code of Conduct violation where the supervisor who conducted the coaching "informed [the officer] that this concluded ***discipline*** in this case," but "that this ***discipline*** would not be put into his personnel file as the incident date was in excess of ONE YEAR from the date of this ***discipline*** meeting." The officer was later "summoned to another ***discipline*** meeting in this matter," where the misconduct findings were revised to sustain a Use of Force violation and the officer was suspended. Several lieutenants later told the officer "that appropriate ***discipline*** in this case" was "coaching," Ex. 87 (emphasis added);
- Grievance of two sustained B-level violations with coaching, where the Federation characterizes the notification letter as a "Final ***Discipline*** Letter, Coaching" and complains that "Steps 3, 4, and 5 of the complaint

[15] In the case of this grievance, the Federation attempted to take the dispute all the way to arbitration. *See* Ex. 192.

manual process for the issuance of 'B' level ***discipline*** [here] was skipped," Ex. 86 (emphasis added);[16]

- Correspondence from counsel for the Federation to counsel for the City, Chernos, on the above grievance, threatening to elevate the grievance to arbitration because, "[w]hile I understand the City has taken the position that [coaching] is not discipline and therefore not grievable[,] the Federation ***contends that it is, in fact discipline*** subject to the grievance process," Ex. 215 (emphasis added); and

- Grievance of a sustained B-level violation with coaching, with the following statement by the Federation:

  The Federation does not concur with the ***discipline*** of B level coaching. Based upon the discipline matrix, B level ***discipline*** is not coaching and has a reckoning period of 3 years. Coaching is at an A level and remains with the ***disciplined party*** for a period of 1 year. This form of ***discipline*** is holding it against the grievant for an extended period of time, and can be used against him in ***enhanced discipline***.

  Ex. 140 (emphasis added).

110. Defendants did not disclose any of these grievances in response to Plaintiff's Request, Ex. 3, and all were designated "Confidential" during discovery.

VII. Defendants' *post hac* rationale for failing to disclose data facially responsive to Plaintiff's MGDPA Request ignores logic and evidence.

A. Failure to disclose nonpersonnel data responsive to Plaintiff's Request

111. With regard to the first category of documents listed above—nonpersonnel records that characterize coaching as discipline or in which the Chief or a supervisor acknowledged coaching to be discipline: Knudsen did not cite in her response to Plaintiff's Request any exemption within the MGDPA that would justify withholding of this category of data. *See* Ex. 3.

[16] In reference to the same case, the Federation expressed concern that this "Coaching [was] put in [the officer's] ***discipline file***." Ex. 85 at FED003228 (emphasis added).

112. Indeed, Defendants admit no such exemption exists. *See* Ex. E (Zenzen Tr.) at 77:21-78:2 (admitting Defendants are unable to name any other applicable exemption).

113. Confronted with these documents years later, and on behalf of the City, Zenzen testified that Part 4 of Plaintiff's Request did not actually seek data "in which coaching is described as a form of discipline" but only sought data in which a supervisor or the Chief describes it that way or otherwise acknowledges that coaching is a form of discipline. *Id*. at 41:13-22.

114. There is no evidence that anyone employed by the City actually interpreted Part 4 of the Request in this manner—or asked Plaintiff for clarification—when it made its Request back in 2021, despite that being Defendants' standard practice. *Compare supra* ¶¶ 33, 36, 38, *with* ¶¶ 43, 48-50.

115. Moreover, asked when she first arrived at her interpretation of Part 4 of Plaintiff's Request, Zenzen testified as follows:

> A. When did I come up with that rationale? I suppose in—in discussions about—
>
> Enslin: Objection to the form.
>
> Q. Did you come up with that rationale last week?
>
> Enslin: Objection to the form. You are not [to] answer any questions about the discussions we had. …
>
> Q. I'm asking about an approximate time frame. That's all. Don't tell me what your counsel told you. When did you come up with that rationale?
>
> A. I would say upon my re-review of this request that I had forgotten about, so last week, correct.
>
> Q. Did you come up with it on your own?
>
> A. No.

Ex. E (Zenzen Tr.) at 41:23-42:19, 51:23-52:2.

B. Failure to disclose personnel data responsive to Plaintiff's Request

116. With regard to the personnel records listed above, Defendants' position is that—despite what the documents say on their face—no one intended or understood B-level coaching to be disciplinary, therefore it is not disciplinary and not public. *See, e.g.*, Ex. F (Schoenberger Tr.) at 71:10-80:17; 78:5-80:17; Ex. 335 at 1 ("The fact that a few documents may use the word 'discipline' in the context of coaching does not transform a process the relevant parties uniformly treat as non-disciplinary into something else."). Evidence of what MPD officers were (or were not) told about coaching and what they did (or did not) understand as a result is set forth below.

1. Documents cited by Defendants as explaining to officers that B-level coaching is nondisicplinary say no such thing.

117. According to Defendants' corporate designee, the policies of MPD are "generally accurate," and "[w]e should assume" a policy "reflects what's actually happening" "until we identify discrepancies" "[b]ecause in almost all cases, it does." Ex. F (Schoenberger Tr.) at 21:3-6, 23:6-12.

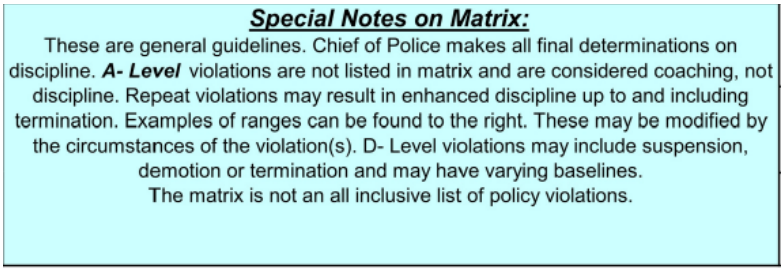
118. He also testified that "[w]e should generally assume that what the City says is accurate." *Id.* at 29:20-23.

119. Looking to these policies, then, Huffman testified that the discipline matrix, Exhibit 59 at CITY.001553, is "a very fundamental communication that sets expectations for [MPD's] employees," that it is a "a very direct communication intended to go to employees that specifically answers" the question of whether coaching is discipline, that it is something that the "average street cop" is familiar with because it is "widely distributed and discussed," and that it is "the standard by which all conduct will be judged going forward." Ex. B (Huffman Tr.) at 164:3-166:9;* *see also* Ex. F (Schoenberger Tr.) at 136:24-137:17 (testifying as Defendants' corporate designee that the discipline matrix is "the document that conveys to police officers that

coaching is not discipline" and that he could not point to any other document that conveyed that); Ex. D (Schmidt Tr.) at 27:12-29:20 (testifying as Federation's corporate designee that discipline matrix says coaching is nondisciplinary); *see also* Ex. 59 at CITY.001528-001531 (Chernos's letter to PCOC that also relied on the discipline matrix, as well as MPD's Policy and Procedure Manual and Discipline Manual).

120. Huffman also testified that MPD "make[s] an attempt to be really clear on the discipline matrix about what is and what is not discipline," Ex. B (Huffman Tr.) at 61:23-62:9,* and that the discipline matrix "is very specific in saying that coaching is not discipline," *id.* at 30:15-20; s*ee also id.* at 149:17-150:2* ("[I]t says in the discipline matrix that coaching is not discipline."), 165:5-11 ("[T]he discipline matrix has been very faithful at representing that coaching is not discipline.").

121. In fact, the *only* reference to coaching in the discipline matrix is on the last page of the document, where a brief notation clarifies that "***A level*** violations are not listed in the matrix and are considered coaching, not discipline," *id.* 168:16-24 (emphasis in original); Exhibit 59 at CITY.001553.



Special Notes on Matrix:

These are general guidelines. Chief of Police makes all final determinations on discipline. ***A- Level*** violations are not listed in matrix and are considered coaching, not discipline. Repeat violations may result in enhanced discipline up to and including termination. Examples of ranges can be found to the right. These may be modified by the circumstances of the violation(s). D- Level violations may include suspension, demotion or termination and may have varying baselines.
The matrix is not an all inclusive list of policy violations.

122. Thus, as Huffman acknowledged, the matrix "doesn't actually say anything about whether coaching [] B, C or D level violations is nondisciplinary." Ex. B (Huffman Tr.) at 168:25-169:4; *see also id*. at 166:15-21 (acknowledging that the discipline matrix says only that "A level violations and coaching are not discipline"), 177:6-178:2 (conceding that the discipline

matrix talks only about A-level coaching, not B-level coaching and that other documents that discuss coaching are "inconsistent"), 200:4-6 (conceding it is "established" that "the discipline matrix doesn't talk about coaching B level" misconduct).

123. Defendants' corporate designee also agreed that the discipline matrix "is absolutely silent on the issue of B-level coaching." Ex. F (Schoenberger Tr.) at 139:24-140:21. He testified as follows:

> Q. So where in this document does it tell officers that coaching is not discipline?
>
> A. It doesn't.
>
> …
>
> Q. … Tell me where it says to rank and file officers that coaching is not discipline?
>
> A. It doesn't say that specifically.
>
> Q. Okay. What does it say that is supposed to help them understand that coaching is not discipline?
>
> A. It says, "A-level violations are not listed in the matrix and are considered coaching, not discipline."
>
> Q. Okay. So A-level violations are not discipline, but where does it say coaching is not discipline?
>
> A. It doesn't specifically say that in the Discipline Matrix.

Id. 145:5-146:24.

124. So too for the Federation's corporate designee:

> Q. … You're not aware of any written policy that addresses B level coaching, correct?
>
> A. Correct.
>
> Q. All the written policies on coaching talk about it at the A level as far as you're aware; is that correct?

A. Yes.

Ex. D (Schmidt Tr.) at 219:8-14.

125. Various witnesses for Defendants and the Federation also referred to the Discipline Process Manual, Ex. 59 at CITY.001538, as another document telling officers that coaching is never discipline, *see, e.g.*, Ex. F (Schoenberger Tr.) at 140:22-141:6.

126. This document, however, also does not state that coaching is not discipline. As Defendants' corporate designee testified:

> Q. I'd just like you to point me to the sentence [in the Discipline Process Manual] that tells officers that coaching is not discipline?
>
> A. It's the header, "Non-Discipline Category A coaching documentation. Category A violations can only result in nondisciplinary corrective actions."
>
> Q. So that said Category A violations are nondisciplinary, right?
>
> A. Yes.
>
> …
>
> Q. … [T]his document doesn't say anything about whether coaching is disciplinary when it's used for a B level right?
>
> A. Yes.
>
> Q. [The Discipline Matrix and the Discipline Process Manual] are the only two documents you can identify?
>
> A. Yes.
>
> …
>
> Q. Can you think of any other place where it might be?
>
> A. I cannot
>
> …
>
> Q. Any policy?

A. Not that I can think of.

Q. Any public website?

A. No.

Id. 147:10-149:20.

127. Finally, Chernos also pointed to the Policy and Procedure Manual as stating that coaching is not discipline. Ex. 59 at CITY.001527.

128. However, it was not until amendments adopted in December 2020—*after* Floyd's murder and *after* the press and public started asking about coaching, *see supra* ¶¶ 1-9—that the Manual was revised to even mention coaching. *See* Compl. Ex. 5.

129. Prior to January 2021—just a few weeks before Plaintiff made its Request, *see* Ex. 2—the Manual described *all* violation levels (A through D) as "disciplinary categories." *Id*. § 1-102.01.

130. The pre-January 2021 Manual also ***mandated*** discipline in cases of sustained violations of certain policies. *See id*. § 5-101.02 ("Discipline shall be imposed following a sustained violation."); *id*. § 1-202 ("use of the verb 'shall' or 'will' means that the specified course of action is mandatory").

131. Confronted with these policy documents and many other City documents that describe coaching as discipline, *see supra* ¶ 78, the City's corporate designee backed away from his prior statements that what the City says is generally accurate, and he repeatedly testified that such documents cannot be taken at "face value." Ex. F (Schoenberger Tr.) at 92:11-101:11.

132. This testimony included statements that the Manual in effect through December 30, 2020, did "not reflect reality," that portions of it were unenforceable, and that public statements by Chernos in her September 2020 letter to the PCOC interpreting the Manual were "not accurate." *Id.* at 19:19-25; 20:1-3; 26:9-17; 28:3-24:19.

133. In the end, Schoenberger testified that it would not matter to him what the City's policies or documents showed:

> Q. Is there any document I could show you that says coaching is discipline that would change your position that coaching is not discipline?
>
> A. I don't believe so.
>
> Q. That's just your position no matter what the documents might say?
>
> A. Yes.

Ex. F (Schoenberger Tr.) at 101:21-102:2; *see also* Ex. C (Ferguson Tr.) at 42:12-43:4 (same); Ex. H (Chernos Tr.) at 143:22-144:1 (same).

2. Officers within MPD consistently grieve B-level coaching on the basis that it is disciplinary.

134. As discussed above *see supra* ¶¶ 108-109, the Federation has over the past decade submitted multiple grievances over B-level coaching on grounds that such coaching is disciplinary.

135. Despite this, Huffman testified that MPD officers understand all coaching to be not disciplinary:

> A. So I can tell you that over my career I have always understood that coaching is not disciplinary. … I believe that that understanding is widely shared. … I believe it is consistently understood by the employees with whom I've interacted, so.
>
> ….
>
> Q. What if they get a letter that says as discipline for this B level misconduct you're being coached, do you think they would understand that to be discipline?
>
> A. I think that the word coaching will put them in the frame of not discipline.
>
> Q. And this is your speculation?
>
> …

> A. I haven't talked to all 560 officers in the Minneapolis Police Department to ask that question, so no, I can't say that every one of them would understand the letter the same way.

Ex. B (Huffman Tr.) at 146:14-149:8;* *see also id.* at 177:6-178:25 (conceding that the disciplinary matrix does not address B-level coaching, admitting again that other City documents are inconsistent, yet stating that officers "widely" understand that coaching is not disciplinary); *id*. at 196:2-15.

136. Asked to explain, why, if officers understand coaching to be nondisciplinary, they would grieve it, Huffman said she was not aware of any such grievances. *See id.* at 119:20-24 (no knowledge of attempts to grieve coaching decisions), 179:9-21 ("I haven't seen grievances related to coaching.").

137. When the above-referenced grievances were then presented to her, Huffman conceded that, based on the plain language of the documents, the officers "believed [they] had been disciplined," even though coaching was the only consequence. *Id.* at 188:22-189:18 (regarding Ex. 86), 195:14-196:1 (regarding Exs. 15, 56, 76).

138. The Federation's designee, Schmidt, also testified regarding these grievances, including Exhibit 76, for which she served as the Federation representative. In that grievance, Schmidt referred to coaching as discipline, *id.*, and in her testimony she agreed that she "wouldn't say something [she didn't] mean," Ex. D (Schmidt Tr.) at 127:25-128:9.

139. Meanwhile, Schmidt testified on behalf of the Federation that it remains concerned about B-level coaching "to this day," *id.* at 76:11-77-18; *see also id.* at 133:5-13 (same), and that it *continues* to file grievances over B-level coaching, *id.* at 128:16-129:15.

140. More specifically:

> Q. And so concerns about B level coaching have continued at the Federation even though the city told you that coaching is not disciplinary. Is that accurate?

A. Yes.

…

Q. Let me get this right. Tell me where I'm wrong.

There's a B level coaching, you file a grievance, they say you can't grieve it, coaching is not discipline. And you say, well, we're going to leave it open for the reckoning period.

A. Yes.

Id. at 255:19-256:21; *see also id.* at 228:4-23.

141. Schmidt further explained the reason for the concern: the Federation grieves coaching when "the City has decided that they were going to put coaching on what would be called a B level violation" because "that would be considered disciplinary." *Id.* at 31:23-32:9.

142. She made this point over and over during the course of her day-long deposition as the Federation's corporate designee:

- [W]ithin MPD there are five types of misconduct and that "B through D would be … your discipline. A is not a discipline thing" and coaching should only be used for A-level violations. *Id*. at 40:10-17, 46:2-7, 50:14-19.
- The Federation would "grieve a B level coaching" because "[w]e are allowed to grieve things that are considered disciplinary. When they [] put[] coaching on a B level, which is discipline, we grieve." *Id.* at 57:8-19.
- "Bs are considered [] discipline—the severity of a B, by the City's own definitions, is discipline," whereas only A-level violations are considered eligible for nondiscipline. *Id.* at 73:19-74:3.
- B-level coaching is part of the "disciplinary process." *Id.* at 116:16-21.
- Anything "at a B or higher … it's categorized as discipline." *Id.* at 161:22-162:4.
- What matters to the Federation is whether a finding of misconduct "becomes disciplinary and categorized as disciplinary" and that turns on how long the finding of misconduct "is held against you" and that's why

"B and higher is discipline," because "those can be used against you for a longer period of time." *Id.* at 188:7-25.

- "A referral to coaching for a B level" could be "deemed" punishment." *Id.* at 283:8-10.

143. Defendants' corporate designee did not disagree, testifying that "[t]he City generally determines Category B violations that are sustained to be discipline or punishment." Ex. F (Schoenberger Tr.) at 40:3-6.

144. Moments later he again testified:

Q. And anything Category B is discipline?

A. Generally.

Id. at 40:24-25; *see also id.* 120:1-2 (agreeing "that B levels are disciplinary").

3. Defendants and the Federation cannot distinguish between B-level coaching and a "warning," which they concede is disciplinary.

145. As Chernos explained to the PCOC in May 2021, and Huffman testified in this case, the CBA between the City and the Federation does *not* list the types of discipline available to the Chief. Rather, the CBA *only* lists what is grievable. Ex. 35 at 30:11-31:8; Ex. B (Huffman Tr.) at 124:8-13.*

146. Chernos further explained that, rather than the CBA, it is Rule 11.04 of the CSCRs that lists the types of discipline used within the City enterprise, including within MPD. Ex. 35 at 30:10-31:8; *see also* Ex. B (Huffman Tr.) at 278:9-25 (admitting that CSCRs govern MPD's disciplinary options); *id.* at 165:2-4 (same).

147. That rule lists the following: Warning, Written Reprimand, Suspension, Demotion, and Discharge. Ex. 50; *see also* Ex. B (Huffman Tr.) at 163:20-21* (acknowledging "the Civil Service rules have designated a warning as disciplinary"); Ex. F (Schoenberger Tr.) at 59:21-24 (admitting that CSCRs govern warnings within MPD).

148. Thus, it is within the Chief's discretion to issue a warning as a form of disciplinary action. Ex. 336 at RFA No. 52 (Defendants admitting that Chief can issue a warning); Ex. B (Huffman Tr.) at 127:2-12 (same), *id.* at 139:4-9, 279:7-15 (admitting that CBA explicitly contemplates an officer may be disciplined with a warning); Ex. F (Schoenberger Tr.) at 61:14-25 (same); Ex. D (Schmidt Tr.) at 80:16-81, 82:16-25, 221:9-13, 222:11-20 (acknowledging that warning is available to Defendants as disciplinary option).

149. Indeed, although the CBA does not recognize warnings (or any oral consequence) as grievable, *see* Ex. 48 § 12.02, it explicitly contemplates that the Chief may discipline officers by issuing a warning, *id.* § 30.08(C).

150. Moreover, before B-level coaching began in 2015, MPD used warnings as a form of discipline. *See* Ex. 96 (in 2011, to settle a grievance, Chief Dolan agrees to "reduce the discipline to an A-level violation with a warning letter").

151. The CSCRs define a "Warning" as follows:

> A disciplinary warning includes a verbal discussion between the employee and supervisor covering the details of the problem, plans for correcting the problem and a written memo to document the event.

Ex. 50.

152. This definition maps squarely onto the form on which coaching is supposed to be documented: coaching involves a verbal discussion with a supervisor, at which the supervisor is expected to explain the complaint/problem to the employee and elicit a response from the employee before making a recommendation on how the problem should be corrected or otherwise addressed. Ex. 32; *see also* Ex. 337, Rog. 2 (admitting in Interrogatory response that "coaching involves a conversation between the employee and supervisor"); Ex. F (Schoenberger Tr.) 35:7-9 (coaching is corrective), 37:7-12 (coaching involves an oral sit-down meeting with the supervisor where the issue is discussed and then is documented for accountability after the

meeting), 38:5-10 (coaching is an oral, documented, correction); Ex. B (Huffman Tr.) 63:11-64:9* (coaching is oral).

153. Asked to explain how receiving coaching is meaningfully different than receiving a warning, Huffman testified, "I think that a disciplinary warning and coaching are different categories of things because we've said they're different categories of things." Ex. B (Huffman Tr.) 163:12-14.*

154. But beyond this explanation, the City's witnesses were unable to articulate a difference. For example, Schoenberger testified as follows:

> Q. … when there is a [form] completed for a B level, tell me how—what the warning requires is different than what this [coaching] form requires.
>
> A. The details are more or less the same.
>
> Q. So I've written down one difference you've identified, and that is that a warning is discipline and coaching is not. Can you give me any other difference?
>
> A. That's the primary difference.
>
> Q. … You don't have anything else to say in terms of differences, right?
>
> A. No.

Ex. F (Schoenberger Tr.) 126:4-18; *see also id.* 124:3-11.

155. Other witnesses for Defendants and the Federation also conceded that, except for how the City labels them, coaching and a warning are the same. Ex. B (Huffman Tr.) 163:5-171:23* (testifying that the only difference between a warning and coaching is how Defendants have chosen to describe them, while admitting that both involve a verbal discussion, a plan for correcting the problem, and a written memorandum to document the event); Ex. C (Ferguson Tr.) 102:24-103:09 (no basis to distinguish between coaching and a warning).

156. In fact, the Federation's corporate designee could not articulate any difference between the effect of a warning and the effect of coaching. Ex. D (Schmidt Tr.) at 205:23-206:7.

157. Beyond warnings recognized by the CSCRs, Defendants have also used other forms of oral discipline over the years. For example, the pre-2021 Policy and Procedure Manual lists a "documented oral correction" and a "documented oral reprimand" among "disciplinary categories" for violations of MPD policy and procedure. *See* Compl. Ex. 5 § 1-102.01.

158. Asked to distinguish between a documented oral *correction* and a documented oral *reprimand*, Defendants' corporate designee's only response was that a reprimand is "punishment" because it is for B-level violations and those are "discipline or punishment." Ex. F (Schoenberger Tr.) at 39:12-40:6; *see also* Ex. 52 at CITY.000496 (defining "Coaching Investigation" as "investigation of an A-level complaint conducted by the focus officer's supervisor that may lead to an oral reprimand (coaching session)," but providing "B-Level Violation" could "result in oral or written reprimand").

159. For another example, at least through September 2020, the Discipline Process Manual listed "Education Based Discipline" for violations at the B-level and above. Ex. 59 at CITY.001548.

160. Defendants' corporate designee first attempted to explain that education-based discipline is nondisciplinary before testifying that, at least sometimes, education in the form of training, retraining, or policy review with a supervisor is disciplinary. Ex. F. (Schoenberger Tr.) at 118:1-121:13.

161. Defendants also consider coaching to be a form of education and training. Ex. 59 at CITY.001528.

4. B-level coaching feels like punishment to officers who receive it.

162. MPD leadership have long been aware that the "OPCR Coaching process … ***is often viewed by the involved employee as being . . . discipline***." Ex. 209 (2013 memorandum, with comment to then-IAU Commander Arradondo and then-OPCR Director Michael Browne) (emphasis added).

163. The Federation's corporate designee testified that a "referral to coaching for a B level" could be "deemed" to be "punishment." Ex. D (Schmidt Tr.) at 282:25-283:10.

164. She further testified as follows:

> Q. … You think coaching is a positive process?
>
> A. I think it can be, yes.
>
> Q. Can it also be negative?
>
> A. I think people—I believe people could perceive it that way.
>
> Q. Why would they perceive it as negative?
>
> A. Because it comes out of a complaint against you.
>
> Q. So is it your testimony that the impact on a member of the Federation, whether it's discipline or coaching, could be identical?
>
> A. … Yes. I think a member could see coaching as a negative, and the could—and discipline as negative as well.

Id. at 98:15-99:4, 109:10-22 (coaching "can feel like a punishment or a penalty"), Ex. B (Huffman Tr.) at 233:4-15 (coaching is not "fun" but rather "feels bad").

165. At a more individual level, one chain of emails produced in discovery describes how an officer was made to choose between "accepting" an A-level violation and what MPD alternatively called a "chat" or "counseling/coaching session" with the Chief, or having a B-level violation sustained with a one-day suspension. Ex. 81.

166. The officer ultimately accepted the A-level finding and the "chat," but found the options offered to him deeply unfair, claiming it prevented him from "clearing [his] name" while placing him "under duress to sign off now to a minor offense or have a more serious offense sustained against [him]." *Id*.

167. The officer characterized the referral to coaching as being "strong armed." *Id*.[17]

168. Unlike mentoring, coaching can be used to enhance discipline. Ex. D (Schmidt Tr.) at 66:24-67:1, 73:4-9; *see supra* ¶¶ 13, 142 (discussing reckoning periods).

169. As such, it is a component of MPD's progressive discipline model, Ex. B (Huffman Tr.) at 64:23-25; *see supra* ¶¶ 13, 142.

170. Also unlike mentoring, B-level coaching is documented through a determination letter designed to look like a discipline letter. *See supra* ¶¶ 86-103.

171. No witness for Defendants or the Federation identified a single instance in which coaching had been issued as a commendation or to otherwise recognize or highlight *positive* behavior. Ex. D (Schmidt Tr.) at 133:21-134:1, 207:23-25; Ex. F (Schoenberger Tr.) at 36:10-16, 153:3-6.

172. Rather, coaching within MPD is "complaint-based," as Defendants' corporate designee put it. Ex. F (Schoenberger Tr.) at 150:19-151:6 (distinguishing how human resources describes coaching from "complaint-based coaching" which is a "separate process").

[17] While the officer acknowledges that the referral to coaching for an A-level violation was not grievable, the correspondence says nothing about appealability of B-level coaching. *Id*.

VIII. The parties conducted discovery related to the Court's definition of "disciplinary action."

A. Defendants disagree with the Court's definition of "disciplinary action."

173. The Court defined "disciplinary action" as "an action . . . to punish or penalize," *see supra* ¶ 57.

174. Defendants' position, however, is that both coaching and discipline alike should be "corrective" rather than punitive, and they reject the Court's definition as inconsistent with long-standing principles of the Civil Service Commission and MPD policy. Ex. F (Shoenberger Tr.) at 89:10-90:9.

175. Specifically, Defendants' corporate designee testified as follows:

> Q. [Do you agree with the statement] that "Discipline is intended to be corrective rather than punitive."
>
> A. It is intended to be corrective.
>
> Q. Rather than punitive?
>
> A. Yes.
>
> …
>
> Q. If someone were to define "Disciplinary action" as punitive, would you agree or disagree with that?
>
> …
>
> A. I think we've said that the definition of "discipline" is that it's intended to be corrective, not punitive. So if somebody said they felt like it was punitive or if they defined it as punitive—I'm not sure what you're asking.
>
> …
>
> Q. Disciplinary action is punitive. Do you agree or disagree with that.
>
> …
>
> A. I'll say no.

Q. You disagree with the definition?

A. Yes.

Id. at 130:6-136:19.

176. Likewise the Federation, through counsel, has repeatedly taken the position that "[e]ver since the 1920 City charter established the Civil Service Commission, there have been two principles that have governed the discipline of all City employees: (1) discipline must be for just cause; and (2) ***discipline is intended to be corrective rather than punitive***." Ex. 132 at 3-4 (empahsis added); *see also* Ex. 133 at 6 ("Discipline is considered excessive . . . if it is punitive rather than corrective").

177. In fact, according to a prior version of MPD's own Policy and Procedure Manual, for discipline to be "[e]ffective" it must be "a positive process" with a "purpose . . . to train or develop by instruction." Ex. 115 at CITY003010.

178. Neither Defendants nor the Federation informed the Court of these positions or principles when, *sua sponte* and before discovery commenced, it asked for briefing on the definition of "disciplinary action."

B. The process that precedes B-level coaching is the same process that precedes recognized forms of disciplinary action.

179. In addition to defining "disciplinary action" as a "decision to . . . punish or penalize," this Court said it must be "consistent with the rights and obligations between the government entity and the individual data subject as established by law and/or collective bargaining." *See supra* ¶ 57.

180. As Huffman explained, every disciplinary case requires an "administrative investigation" that is a very "adversarial process," Ex. B (Huffman Tr.) at 66:8-12, 69:5-8.

181. It typically involves a "long investigation" and compliance with the Police Officer Discipline Procedures Act, as well as the holding of what's known as a "Loudermill hearing" and the issuance of what's known as a "Garrity warning." *Id.* at 66:13-67:12.

182. Thus, she told the PCOC in May 2021, A-level coaching, which goes through the joint supervisors process and happens relatively quickly, and the "administrative investigation that can result in discipline are two very different animals." Ex. B (Huffman Tr.) at 69:1-3; *see also* Ex. 35 at 48.

183. But during discovery Huffman admitted that the process leading up to B-level coaching is the same as that leading up to disciplinary action (and as a result, B-level coaching can take *years* before it actually takes place):

> Q. [You made the point] to the PCOC that coaching is quicker because we don't have to do all that, correct?
>
> A. That is correct.
>
> Q. Okay, But when coaching is issued in a determination letter, at least some of that process has been complied with, correct?
>
> A. Yes. …
>
> Q … [F]or example, Exhibit Number 21, a coaching decision issued by the chief on a determination letter, we can assume that that went through the adversarial pathway leading up to the decision, correct?
>
> A. That's correct.
>
> …
>
> Q. Okay. And so during the [PCOC] meeting you were talking about coaching that never reaches the chief's desk, correct?
>
> A. Correct.
>
> Q. And that kind of coaching doesn't go down the administrative investigation path, correct?

A. Correct.

…

Q. And then there is some coaching that does get to the chief, correct?

A. Correct.

Q. And he issues a determination letter, correct?

A. Correct.

Q. And by the time he has done that, a very adversarial process has occurred, correct?

A. Correct.

Q. That entire administrative investigation has occurred, correct?

A. Correct.

Ex. B (Huffman Tr.) at 67:13-68:4, 70:5-23; *see id.* at 79:4-8.*

184. A bit later in her deposition, Huffman put it even more succinctly:

Q. … [R]eferring back to 21 as sort of our sample, a Loudermill hearing would have occurred in all likelihood before that decision issued, correct?

A. Correct.

Q. And is it fair to say that the Minneapolis Police Department complied with all rights of the police officer and obligations it owed the police officer before issuing a decision like that?

…

A. Yes. In theory there would have been all of the requirements covered from the formal statement on through a Loudermill.

Id. at 95:8-20.

185. Beyond Huffman's testimony, Defendants stipulated that misconduct that results in B-level coaching is treated as if it might be subject to discipline from the moment the investigation begins. Ex. 214.

186. In particular, Defendants do not dispute that, with regard to specific instances of B-level coaching:

> the employees were provided sufficient process such that, under the Labor Agreement and/or law, for any violation of an MPD or City policy, the Chief of Police could instead have imposed either (a) one of the forms of corrective action recognized as disciplinary action by Defendant City of Minneapolis and the Federation pursuant to Article 12 of the Labor Agreement between the City of Minneapolis and the Federation or (b) one of the forms of discipline set forth in Section 11.04 of the Minneapolis Civil Service Rules, to the extent the Chief of Police has the discretion to issue that form of discipline."

Id. ¶ 4.

IX. Oral discipline at MPD is not grievable, nor is it required to be in order to reach "final disposition."

187. Defendants and the Federation both acknowledge that coaching—like a warning, an oral reprimand, a documented oral correction, or a documented oral reprimand—is an oral or verbal process, not a written one. *See* Ex. B (Huffman Tr.) at 63:4-64:4;* Ex. D (Schmidt Tr.) at 48:4-8, 48:25-50:7; Ex. F (Schoenberger Tr.) at 37:1-12, 38:5-6.

188. A prior CBA between the City and the Federation (in effect 2009 to 2011) permitted the Federation to grieve oral reprimands. Ex. 146 § 4.2.

189. At some point, however, this provision dropped out of the agreement, even though MPD policies expressly permit the Chief to impose oral reprimands to this day. *Compare* Ex. 48 § 12.02, *with* Ex. 146 § 4.2; *see* Ex. D (Schmidt Tr.) at 167:8-12, 168:1-169:9.

190. These days, the CBA between the City and the Federation only allows for written reprimands, suspensions, demotions, transfers, or terminations to be appealed through the agreed-upon grievance procedure, and does not contemplate grievances of verbal or oral discipline. *See* Ex. 48 § 12.02.

191. For example, neither coaching nor a warning nor an oral reprimand appear on the list of what is grievable in the CBA, *id*. § 12.02, even though the CBA expressly contemplates that officers could receive a warning, *see id*. § 30.08(C).

X. Defendants admit the Chief could coach "murder" if he wanted to, and in fact serious misconduct has been addressed solely through coaching.

192. According to Defendants' corporate designee, it would be up to the Chief if he wanted "to impose coaching for murder." Ex. F (Schoenberger Tr.) at 86:11-17.

193. Discovery did not reveal that ever happening, but it did reveal the following:

- A K-9 officer was coached for a sustained B-level violation of the Code of Conduct, Ex. 12, for letting his police dog off leash. The canine attacked a nearby civilian. Where the coaching memo requires the supervisor to document the discussion with the officer about their plans for correcting the problem in the future, the supervisor noted that a similar incident would not reoccur because the officer "no longer works as a K-9 handler," as he had been "promoted." Ex. 121.

- Three officers received sustained B-level violations with coaching for mishandling department-issued firearms, Exs. 14, 21, 22, one of whom fired his gun into the wall of one of the police precincts. *See* Ex. 322; Exs. 317, 122.

- One officer received coaching for a sustained B-level violation of the Use of Force policy and a sustained A-level violation of the Code of Conduct. Ex. 123.

- Another officer received coaching for two sustained B-level violations for failing to document and report another officer's use of force, which resulted in injury to the individual in custody. Ex. 318.

- An officer was coached for violating the Fourth Amendment to the U.S. Constitution and Article I, Section 10 of the Minnesota Constitution. Ex. 90. According to the supervisor's coaching memo, the officer improperly detained an individual in the backseat of his squad in violation of constitutional protections against unreasonable seizure and conducted an illegal search of this person. *Id*.

- Another officer was similarly coached for a constitutional violation after he "searched [a] vehicle without any apparent legal authority to do so." Ex. 91.

- One officer received a sustained B-level violation with coaching for failure to maintain her squad lights and sirens activated continuously while responding to an emergency call, Exs. 13, 321, a failure that poses significant danger to nearby civilians. *See, e.g.*, Ex. 330 (documenting instance where another officer failed to maintain sirens activated continuously, resulting in crash with another vehicle who did not hear approaching squad car).

- Two officers received coaching for sustained B-level violations for violating MPD's pursuit policy. Exs. 319, 320. In the course of a traffic stop, officers "retrieved the [individual's] driver's license," "returned to [their] squad and ran a [license] and warrant check on [the] driver. Driver came back with a felony warrant. . . . Driver sped off, officers went back to their squad and gave chase." The officers later admitted "there was no reason to pursue the vehicle," since they had all of the driver's information (name, address, license, and plate number) to be able to apprehend them later. Exs. 118, 46.

- One officer received coaching for a Code of Conduct violation after being "recorded on squad video telling" a civilian "to Get your hands on the f___ing car' and additionally [to] 'shut the f___ up.'" Exs. 88, 89.

194. These examples are in addition to the several, serious instances of misconduct that the Department of Justice described in its recent report about MPD, for which officers received or were referred to (but sometimes never completed) only coaching or training. *See* Ex. 40 at 71-76.

LEGAL STANDARDS

I. Summary Judgment, Minnesota Rule of Civil Procedure 56

Under Minn. R. Civ. P. 56.01, parties may move for summary judgment in their favor as to all or part of the claims at issue. Summary judgment must be granted where "the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." *Id*. It is based on a review of the documentary evidence in the record, including the pleadings, filings, admissions, stipulations, depositions, and discovery responses. *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997); Minn. R. Civ. P. 56.03. A fact is only "material" if its resolution will affect the outcome of a case, *Valtakis v. Putnam*, 504 N.W.2d 264, 266 (Minn. Ct. App. 1993), and a genuine issue of material fact exists only where a rational trier of fact could find for the nonmoving party. *See DLH*, 566 N.W.2d at 69. Conversely, "where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Id*. (cleaned up).

II. The Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13

The MGDPA guarantees "the right of the public to know what [its] government is doing." *Montgomery Ward & Co. v. Cnty. of Hennepin*, 450 N.W.2d 299, 307 (Minn. 1990) (quoting Gemberling & Weissman, *Data Privacy: Everything You Wanted to Know About the Minnesota Government Data Practices Act – From "A" to "Z"*, 8 Wm. Mitchell L. Rev. 573, 575 (1982)). The statute "establishes a presumption that government data are public and are accessible by the public." Minn. Stat. § 13.01, subd. 3; *id*. § 13.03, subd. 1 ("All government data . . . *shall* be public." (emphasis added)). So important is this presumption that the Minnesota Supreme Court has deemed it "the heart of the" MGDPA. *Demers v. Minneapolis*, 468 N.W.2d 71, 73 (Minn. 1991).

Data subject to the MGDPA, *see* Minn. Stat. § 13.02, subd. 7, must be "prompt[ly]" made available for inspection or copying "[u]pon request to a responsible authority or designee," *id*. § 13.03, subds. 2(a), 3(a), unless it is expressly exempt from disclosure, *id*. § 13.03, subd. 1. The Responsible Authority is required to "cite the specific statut[e] . . . on which" they are relying to withhold responsive information, in whole or in part. *Id*. § 13.03, subd. 3(f). A Responsible Authority may not deny in its entirety a request where it is possible to "separat[e] public from not public data," *id*. § 13.03, subd. 3(c) or provide the requestor with "summary data," *i.e.*, data "derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable," *id*. § 13.02, subd. 19; *see id*. § 13.05, subd. 7 (requiring preparation of summary data "derived from private or confidential data on individuals").

While some "personnel data"[18] is exempt from public disclosure, certain personnel data is presumptively public. *See* Minn. Stat. § 13.43, subd. 2. Relevant here, "the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action" is public data. *Id*. subd. 2(a)(5). Disciplinary action reaches final disposition "when the government entity makes its decision about the disciplinary action, regardless of the possibility or any later proceedings or court proceedings" or in the case of an action subject to arbitration, "at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect" to arbitrate. *Id*. subd. 2(b).

The MGDPA creates a private right of action for individuals to sue over violations of the statute. Minn. Stat. § 13.08. "[A] responsible authority or government entity which violates any

[18] "[P]ersonnel data means government data on individuals maintained because the individual is or was an employee of . . . a government entity." *Id*. § 13.43, subd. 1.

provision of" the MGDPA "is liable," and may be subject to an action for damages by any person "who suffers any damage as a result of the violation" or an action to compel compliance by any person "seeking to enforce the person's rights under this chapter or obtain access to data" requested. *Id*. subds. 1, 4. The Responsible Authority may also "be enjoined by [a] district court" in order "to prevent the use or employment by any person of any practices which violate" the MGDPA. *Id*. subd. 2.

ARGUMENT

Defendants egregiously violated the MGDPA in at least three ways. *First*, Defendants committed a *per se* violation of the MGDPA when they summarily denied and closed Plaintiff's MGDPA Request in a matter of minutes, without first identifying, collecting, or reviewing a single potentially responsive document. *Second*, Defendants violated the MGDPA by improperly withholding public, facially responsive nonpersonnel data without citing any relevant basis to justify the withholding. Indeed, no such exemption exists, as Defendants concede. *Third*, Defendants violated the MGDPA by improperly withholding facially responsive personnel records that are presumptively public under Minn. Stat. § 13.43, subd. 2(a)(5) as the "final disposition of disciplinary action."

In order to establish Defendants' violations of the MGDPA, Plaintiff need only show that: (1) Defendants are subject to the statute, (2) the data withheld from Plaintiff is responsive to its Request, and (3) no exemption to disclosure applies to that data. With respect to the documents on which Plaintiff now moves for partial summary judgment, Plaintiff easily satisfies these elements and thus qualifies as an "aggrieved person" whose legal rights were violated.

Plaintiff is therefore entitled to the full relief it seeks, which, at this juncture and on this Motion for Partial Summary Judgment, is an order compelling Defendants to comply with the

MGDPA and publicly release a specified set of documents. On all remaining issues, Plaintiff expressly reserves its right to a jury trial.

I. It is undisputed that Defendants are subject to the MGDPA.

Defendants have never disputed that they are subject to the MGDPA. Nor could they. The City is a municipal corporation, organized under the laws of the State of Minnesota, Defs.' Joint Ans. ¶ 2, and thus a "political subdivision" and a "government entity" as defined by the MGDPA. *See* Minn. Stat. § 13.02, subd. 7a, 11. Defendant Casey Carl is the City's designated Responsible Authority. *See* SUMF ¶ 31; Minn. Stat. § 13.02, subd. 16(b). The CBA between the City and the Federation also designated the Chief of Police and the City's Chief Human Resources Officer as "responsible authorit[ies]" for purposes of the MGDPA "with regard to all personnel data gathered or maintained by the City with regard to employees governed by" the CBA—*i.e.*, officers of MPD. *See* Ex. 48 § 12.03.

II. Plaintiff is an "aggrieved person" under the MGDPA.

Plaintiff, a non-profit organization incorporated under the laws of the State of Minnesota, *see* SUMF ¶ 22 (citing MNCOGI Decl. ¶ 2), is a "person," as defined by the MGDPA. *See* Minn. Stat. § 13.02, subd. 10. It submitted a request for data on February 20, 2021, which Defendants summarily denied and closed on March 26 without producing a single document. SUMF ¶¶ 23, 40-41, 47-48, 50.

The MGDPA expressly contemplates that any person "seeking to enforce the person's rights under this chapter or obtain access to data may bring an action in district court to compel compliance with this chapter." Minn. Stat. § 13.08, subd. 4. Plaintiff has sued Defendants in an effort to obtain the data sought in its Request but to which Defendants denied it access, and thus is an "aggrieved party" under this provision of the MGDPA. *See Wiegel v. City of St. Paul*, 639 N.W.2d 378, 384 (Minn. 2002) ("when the government . . . refuses to grant access to data . . . the

person denied access is an 'aggrieved person' under" the MGDPA); *Davis v. City of Minneapolis*, 2007 Minn. App. Unpub. LEXIS 709, at *8 (Minn. Ct. App. July 17, 2007) ("a member of the public is an 'aggrieved person' under the MGDPA when he or she had been denied information to which he or she is entitled as a matter of right").

Defendants' failure to produce responsive, public data to Plaintiff upon request also caused it harm for which it is entitled to monetary relief pursuant to Minn. Stat. § 13.08, subd. 1. It is axiomatic that "every injury imports a damage." *See Larson v. Chase*, 50 N.W. 238, 239 (Minn. 1891); *id*. ("whenever . . . the invasion of a legal right is established, the law infers some damage . . . by awarding nominal damages"). The invasion of any legal right entitles a plaintiff to recovery of, at least, nominal damages. *Geo. Benz & Sons v. Hassie*, 293 N.W. 133, 137-38 (Minn. 1940). So too here. The very fact that Defendants have improperly withheld public data responsive to Plaintiff's MGDPA for nearly three years is a harm for which it is entitled to at least nominal damages. *See* MNCOGI Decl. ¶¶ 13-16.

III. It was a *per se* violation of the MGDPA for Defendants to summarily close Plaintiff's Request without taking a single step to determine whether they had responsive data and whether the data was subject to public disclosure, in whole or part.

Defendants summarily denied and closed Plaintiff's Request within three minutes of first considering it. SUMF ¶¶ 47-48. They did so without taking even a single step to identify, collect, or review potentially responsive records. *Id*. ¶¶ 49-50. The law, however, requires that a Responsible Authority conduct at least some sort of search for or review of documents in order to comply with the statute's obligations. As the Court of Appeals succinctly put it: "Compliance with any data request requires a search." *Webster v. Hennepin Cnty.*, 2017 Minn. App. Unpub. LEXIS 308, at *12 (Minn. Ct. App. Apr. 10, 2017), *affirmed in relevant part*, 910 N.W.2d 420 (Minn. 2018).

Beyond case law, the MGDPA itself requires that a Responsible Authority make public government data available for "inspect[ion] and copy[ing]" "[u]on request," "separat[e] public from not public data" for production, and, when withholding any data, "cite the specific" exemption on which it relies to do so. Minn. Stat. § 13.03, subd. 3(a), (c), (f). It should go without saying that, for a Responsible Authority to determine which exemption applies to specific records, it must first collect and review the potentially responsive records. So too for separating public from not public data.

Finally, even Defendants' own policies and procedures require some modicum of effort in response to an MGDPA request. According to the City's Responsible Authority, it is the City's policy and practice that every MGDPA request go through four stages—intake, collection, review, and production—and that summarily closing an MGDPA request without taking a single one of these steps does not comply with the MGDPA. SUMF ¶¶ 32, 39, 52. Defendants also admitted they would handle Plaintiff's Request differently today, rather than summarily closing it. *Id*. ¶ 51.

Simply put, Defendants were required to conduct some bare minimum due diligence in searching for, identifying, collecting, and reviewing potentially responsive documents before denying and closing the Request. They did not do so and, for that reason alone, the Court can and should find that Defendants *per se* violated the MGDPA.[19]

[19] Undersigned counsel searched for and found no cases in which a government entity was excused of liability under the MGDPA for failure to look for responsive records before denying a data request. Conversely, courts in other states have had no trouble holding that such failure is a *per se* violation of the state's public records law. *See, e.g.*, *Neighborhood All. of Spokane Cnty. v. Spokane Cnty.*, 261 P.3d 119, 130 (Wash. 2011) ("An adequate search is a prerequisite to an adequate response, so an inadequate search is a violation of the [public records act] because it precludes an adequate response."); *State ex rel. Cleveland Ass'n of Rescue Emps. v. City of Cleveland*, 2023 Ohio LEXIS 1732, at *12-13 (Ohio Sept. 7, 2023) (holding public records provision "requires a public office to meaningfully review each public-records request" and

IV. Defendants also violated the MGDPA by failing to disclose data in their possession that was responsive to Plaintiff's Request and not subject to any exemption.

In addition to Defendants' *per se* violation of the MGDPA, discovery has conclusively established that they violated the statute by improperly withholding four categories of data in their possession, facially responsive to Plaintiff's Request, and not subject to any exemption: (1) nonpersonnel data that characterizes coaching as discipline, (2) determination letters that characterize coaching as discipline, (3) notices of discipline that included coaching, and (4) grievances by the Federation that characterize coaching as discipline.

A. At the time Plaintiff made its Request, Defendants possessed at least four categories of documents facially responsive to the Request.

Clearly, the documents that comprise these four categories, listed more specifically, *supra*, in SUMF ¶¶ 78, 83, 86-107, 109, were documents in the City's possession. First, all of the documents bearing a Bates number with the prefix "CITY" are documents Defendants produced in this litigation, and thus were in the City's possession. Second, many of the documents—including determination letters issued by the Chief—were actually authored by City employees. Third, all of the grievances by the Federation were submitted to the City for resolution of the grievance. Fourth, any remaining documents make clear on their face that they were in the City's possession. *See, e.g.*, Exs. 5 (an OPCR, i.e., City department, report), 11 (another OPCR document), 156 (metadata reflecting author was Jodi Hanslick, a City employee), 167 (presentation by City Attorney's Office).

"search for responsive records" "before denying [the request] out-of-hand"); *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161, 1170 (Pa. Commw. Ct. 2018) ("The [public records act] requires an agency to make a good faith effort to find and obtain responsive records before denying access. . . . Where an agency did not perform a search of its records under the [law] until the matter was in litigation, the agency denied access in willful disregard of the public's right to public records.").

These documents are also facially responsive to Plaintiff's Request, as set forth below:

(1) Nonpersonnel Data: All of the nonpersonnel documents on which Plaintiff seeks summary judgment are responsive to Part 4 of Plaintiff's Request, which sought data "in which coaching is described as a form of discipline or acknowledged by a supervisor or the Chief of Police to constitute a form of discipline." *See* Ex. 2.

- Exhibits 5, 10, 11, and 306 are OPCR documents in which the City characterized coaching as a "discipline type" issued by the Chief.
- Exhibits 7, 9, and 167 are policy documents by the City in which coaching is listed as a disciplinary option.
- Exhibits 133 and 308 are documents provided to the City in which coaching is described as discipline.
- Exhibits 156 is a document created by the City referring to coaching as part of the "records of discipline issued to sworn personnel."
- Exhibits 209 and 213 are documents created by the City, including Arradondo who was then Commander of IAU, expressing that officers "often view[]" coaching "as being . . . discipline" and noting that "OPCR Coaching" can, in fact, result in "discipline."

Despite Knudsen's claim that "MPD has no responsive data," SUMF ¶ 41, multiple witnesses for Defendants admitted many of these documents are responsive to Part 4 of Plaintiff's Request, including Carl, the City's Responsible Authority. SUMF ¶¶ 80-81.

(2) Coaching Determination Letters: All of the coaching determination letters on which Plaintiff seeks summary judgment are responsive to Part 4 of Plaintiff's Request for the same reason—they describe coaching as a form of discipline. In addition, some of them are responsive to other parts of Plaintiff's Request. *See* Ex. 2.

- Exhibits 12, 13, and 14—determination letters in which officers are told that "***[a]s discipline for this incident you will receive coaching***" are responsive to Part 4 of Plaintiff's Request. Not only do they describe coaching as a form of discipline but, because the Chief issued them, these letters also constitute data "in which coaching is . . . acknowledged by a supervisor or the Chief of Police to constitute a form of discipline." *See* Ex. 2.

- Exhibit 13, a determination letter from February 2020 imposing coaching as the sole consequence for a sustained B-level violation, is also responsive to Part 3 of Plaintiff's Request, which sought data "from January 1, 2020, to present, related to coaching of any officer resulting from a sustained complaint where the original complaint alleged a B-, C-, or D-Level Violation where coaching was the only corrective action taken." *See* Ex. 2.

- Exhibits 15, 17, 20, 23, 88, and 92—determination letters in which the Chief advised officers that additional violations of policy "***may result in more severe disciplinary action up to and including discharge***"—are responsive to the Part 4 of Plaintiff's Request. *See* Ex. 2.

- [redacted]

Defendants have not disputed that these determination letters are responsive to Plaintiff's Request.

(3) Notices of Discipline Including Coaching: All of the determination letters in which the Chief imposed a recognized form of disciplinary action in addition to coaching are likewise responsive to Part 4 of Plaintiff's Request, as data "in which coaching is described as a form of discipline or acknowledged by a supervisor or the Chief of Police to constitute a form of discipline." *See* Ex. 2.

- Exhibits 16, 72, 73, 75, 312, 313, 314, 323, 324, and 325 impose suspensions and/or letters of reprimand *plus* coaching "[a]s discipline for this incident."

- Exhibits 323 and 324 also advise officers that additional violations of policy "may result in more severe disciplinary action up to and including discharge."

Again, Defendants have not disputed that these determination letters imposing education-based discipline are responsive to Plaintiff's Request.

(4) Federation Grievances: Each of the grievance documents on which Plaintiff seeks summary judgment is responsive to Part 4 of Plaintiff's Request, as data "in which coaching is described as a form of discipline." Ex. 2.

- Exhibit 76 provides that there was "[n]o just cause for the discipline" of coaching. *Id*. at FED001171.

- Exhibit 86 refers to a notification letter an officer received as "Final Discipline Letter, Coaching" and complains that "Steps 3, 4, and 5 of the complaint manual process for the issuance of 'B' level discipline was [*sic*] skipped" *Id*. at FED003256. The B-level discipline referenced was coaching.

- Exhibit 87 refers to a meeting where an officer was coached and then "informed [by the supervisor] that this concluded the discipline in this case" and "that this discipline would not be put into his personnel file" because "the incident date" occurred more than a year before "this discipline meeting." *Id*. at FED003226. According to the document, the officer was later "summoned to another discipline meeting," but told by another supervisor that the "appropriate discipline in this case" was coaching. *Id*. at FED003227. This document also satisfies the second, independent piece of Part 4 of Plaintiff's Request: data "in which coaching is . . . acknowledged by a supervisor or the Chief of Police to constitute a form of discipline." Ex. 2.

- Exhibit 140 notes the Federation's disagreement with "the discipline of B level coaching" because sustaining the discipline at the B level meant the discipline "remains with the disciplined party" for a reckoning period of 3 years—"[t]his form of discipline is holding it against the grievant for an extended period of time, and can be used against him in enhanced discipline." *Id*. at FED003265.

- Exhibit 215 includes a letter from the Federation in which it states that it is the Federation's position that coaching "is, in fact, discipline subject to the grievance process," *id*. at CITY073232, and exhibits involving a grievance over two sustained B level violations with coaching, stating that the officer received "discipline" through this letter, *id*. at CITY073234.

Once again, Defendants have not disputed that these grievances are responsive to Plaintiff's Request.

B. The responsive data in Defendants' possession was not and is not exempt from public disclosure under the MGDPA.

Despite possessing scores of facially responsive documents, Defendants did not produce a single one in response to Plaintiff's Request. SUMF ¶¶ 41, 47, 77, 103, 106, 110. Instead,

Defendants summarily denied and closed it, claiming that all of the requested data were private under the MGDPA's personnel data provision, Minn. Stat. § 13.43. *Id*. ¶ 41. Not so.

1. Defendants cited no exemption for their failure to produce nonpersonnel data responsive to Plaintiff's request, and indeed, none exists.

As a threshold matter, should the Court agree that any one of the nonpersonnel data is responsive to Part 4 of Plaintiff's MGDPA Request, it need go no further to conclude that Defendants violated the MGDPA not only by failing to conduct any due diligence whatsoever but also by wrongfully withholding responsive documents in their possession—and that Plaintiff is therefore entitled to judgment as a matter of law.

Minn. Stat. § 13.03, subd. 3(f) requires that, if a Responsible Authority denies access to requested data, it must "cite the specific statutory section . . . on which the determination is based." Here, when Knudsen denied Plaintiff's Request, she stated that "[t]he data you are requesting is private" under the personnel data provision. SUMF ¶¶ 41, 42. Obviously, the nonpersonnel documents are not private pursuant to the personnel data provision, as Knudsen later admitted. *See, e.g.*, Exs. 5, 7, 9, 10, 11; SUMF ¶¶ 111, 112. Defendants failed to cite any other exemption to justify the withholding of the nonpersonnel data, and in fact no such exemption exists, as Defendants also admit. SUMF ¶ 79.

In other words, a finding that any of the nonpersonnel documents is responsive to Plaintiff's Request necessarily means that Defendants violated the MGDPA and that Plaintiff is entitled to partial summary judgment.

2. Section 13.43 does not actually exempt the personnel data on which Plaintiff moves for summary judgment.

With regard to the personnel data at issue here—coaching letters, notices of discipline that include coaching, and grievances—none qualify as private personnel data exempt from

public disclosure under Minn. Stat. § 13.43 because all constitute or reflect the "final disposition of disciplinary action."

Minn. Stat. § 13.43 defines "personnel data" to be "government data on individuals maintained because the individual is or was an employee of . . . a government entity." *Id*., subd. 1. That same provision makes certain "personnel data" public such that it must be provided upon request, including "[t]he final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action." *See id*. § 13.43, subd. 2(a).

Before a single record was produced in discovery in this case, counsel for Defendants conceded that the plain language of a document matters. In fact, when it comes to an MGPDA request, it is all that matters. As counsel put it:

> The structure of the act is that there's a responsible authority with each entity. And a request comes in, the responsible authority has to gather the data . . . and provide a response. If every time we have to look at – that responsible authority has to analyze or start interviewing people to find out did you intend to punish, there's nothing workable about that. Following a rule where you require, on the face of the document, for it to say, "this is discipline; you have been disciplined," the responsible authority knows whether this is disciplinary action. They have to find out if it's final disposition, but they know it's disciplinary action. Everybody knows it's disciplinary action, because it says it.

SUMF ¶ 35.

After counsel made this unequivocal representation to the Court, Defendants produced in discovery documents that *explicitly* tell officers they would receive discipline in the form of coaching, as well as grievances in which officers described (and complained about) coaching they received as discipline. SUMF ¶¶ 83, 86-107, 109. If what Defendants tell this Court is to be believed, these documents should have been disclosed in response to Plaintiff's Request for the simple reason that "the face of the document[s]" say "this is discipline."

Yet Defendants now take the untenable position that these letters don't mean what they say and that no officer took these letters at face value. SUMF ¶¶ 116, 135. Setting aside how

"unworkable" that position is for the City's Responsible Authority, Defendants' argument was dead on arrival—again, because their counsel preemptively disclaimed it in representations to this Court.

Specifically, counsel told this Court—without hesitation—that the "way you know if you've been disciplined is the rules of your workplace tell you this is discipline and you get a letter that says, 'Here's the discipline.'" SUMF ¶ 59. Indeed, counsel even told the Court that a letter that looks like disciplinary action is, in fact, disciplinary action "when it says, 'You are being disciplined.'" *Id*.

This is not the first time members of the City Attorney's Office have said as much. Before the PCOC, Chernos likewise said that the way the City "always make[s] sure that an employee" knows "whether discipline has occurred" is through "what's called a determination letter in the City," that says "in the body of that letter" that what the employee is receiving "is a disciplinary measure." SUMF ¶¶ 16-17. Nor was it the last: As Defendants' former Chief Human Resources Officer testified in this case, the best practice to convey to an employee that they have been disciplined is in writing, SUMF ¶ 102—precisely what exists here.

These concessions alone suffice to find that the data are disciplinary action, such that they are public pursuant to Minn. Stat. § 13.43, subd. 2(a)(5). But the Court need not rely on just the representations of counsel. According to Defendants, the Commissioner for the Department of Administration ("DOA") is "an expert as it relates to the MGDPA," and "it is not the province of this Court to overturn [its] interpretation[s]." *See* Defs' Mem. for Partial Summ. J. at 8. Also according to Defendants, DOA's opinions make "abundantly clear" that whether a document is disciplinary action "turns on an examination of the actual data" on a document-by-document basis. *See* Oct. 24, 2022 Pl.'s Mem. iso Rule 56.04 Mot. at 5.

Indeed, in resolving the parties' partial cross motions for summary judgment, the Court relied on DOA opinions, citing DOA's analyses favorably. *See* Summ. J. Order at 19-22. Now, with the full benefit of discovery, those very opinions establish that the data on which Plaintiff moves for summary judgment are, as Plaintiff has always claimed, *disciplinary action*.

In one particularly on point opinion, DOA concluded that a memo in question was disciplinary action because the employee was directed to take some action (apologize), the letter advised the employee that additional violations of policy could result in "further discipline" up to dismissal, and the supervisor imposing the consequence "apparently . . . view[ed] the" consequence "as a form of discipline," based on the document alone. *See* Adv. Op. 96-045, *Minn. Comm'r of Admin. Adv. Op. 96-045* ("Opinion 96-045") (Oct. 30, 1996), *available at* https://mn.gov/admin/data-practices/opinions/library/opinions-library.jsp?id=36-267502.

So too here. In each of the coaching determination letters and notices of discipline at issue here, the Chief or his designee informed the recipient officer that "[a]s discipline for this incident" they would receive coaching or that additional violations of policy could result in "more severe disciplinary action up to and including" termination. *See, e.g.*, Exs. 12-17, 20, 23, 88, 92, 215. These letters are materially indistinguishable from the one at issue in Opinion 96-045—in fact, many of them are even more explicit.[20]

The Court should therefore reject the notion that Defendants should not be bound by the plain language of documents their own employees' authored. Moreover, Defendants' argument

[20] The case for compelling disclosure of the notices of discipline that include coaching is particularly strong, as Defendants' corporate designee conceded these should be public at his deposition, testifying that when coaching or training is imposed as part of "a written reprimand with education-based discipline," then "the education is part of the disciplinary outcome." SUMF ¶ 105. In addition, the City itself has several times posted or released documents pursuant to an MGDPA request on police misconduct cases without redacting the references to such "education-based discipline." SUMF ¶ 107.

that the documents don't mean what they say fails to recognize that the personnel records at issue here also bear many other recognized indicia of disciplinary action, as set forth below.

a. MPD's policies uniformly treat coaching of sustained misconduct at the B level or above as disciplinary.

Looking to MPD's "workplace rules," as counsel for Defendants instruct, SUMF ¶ 59, its policies uniformly support Plaintiff's argument that, when coaching is imposed at the B level or above, it is intended and understood as disciplinary action at MPD.

Specifically, MPD's discipline matrix and Discipline Process Manual are *silent* on the issue of B-level coaching, describing as nondisciplinary *only* A-level coaching. Meanwhile, they consistently discuss misconduct at the B level or above as "disciplinary." SUMF ¶¶ 119-126. Indeed, before Defendants changed the Policy and Procedure Manual in December 2020, it defined *all* levels of misconduct as "disciplinary categories." SUMF ¶¶ 127-130. Beyond these policies, many other documents responsive to Plaintiff's Request describe coaching as disciplinary. SUMF ¶¶ 78, 83, 86-107, 109.

The CBA is no help to Defendants, either—it is likewise silent on what actually constitutes discipline, defining only what is grievable, and does not mention coaching at all. SUMF ¶¶ 20, 145, 191.

Meanwhile, beyond self-serving testimony specifically manufactured for this case, Defendants have not a shred of evidence that supports their supposed "policy" that all coaching is nondisciplinary. SUMF ¶¶ 119-130. Indeed, one of Defendants' corporate designees all but admitted that the City Attorney's Office spoonfed her testimony in this case for the sole purpose of escaping liability. SUMF ¶ 115. Ultimately, numerous (current and former) City officials, including Defendants' other corporate designee, testified that it does not matter to them what Defendants' policies or documents actually say—coaching is not discipline simply by their own

ipse dixit. SUMF ¶¶ 133, 153, 155; *see* Ex. J (Jan. 18, 2022 Hr'g Tr.) at 22:17-18 (coaching is not discipline "because the Chief says it's not").

b. Coaching is indistinguishable from a warning, and the coaching determination letters were intentionally designed to look like a disciplinary letter.

The CSCRs, which also govern MPD, include "warning" in their list of discipline types, and there is no dispute that the Chief has discretion to issue a warning—indeed, the CBA even contemplates that he will. SUMF ¶¶ 146-149. Meanwhile, a warning is indistinguishable from coaching. SUMF ¶¶ 152-156. Both include a verbal discussion, plans for correcting the problem, and a written memo to document the event. SUMF ¶ 152. Neither Defendants nor the Federation has ever been able to come up with a coherent explanation for how the two actions differ. SUMF ¶¶ 153-161. There is no evidence that MPD has issued a warning in recent years. But tellingly, prior to 2015—when B-level coaching came into vogue—it did. *See* SUMF ¶ 150.

Moreover, Defendants *deliberately* made coaching look and feel like disciplinary action to officers, down to the letter through which officers are notified of the imposition of coaching. SUMF ¶¶ 93, 95-101. According to Defendants' corporate designee, this was done so officers "receiving the letters" would "know what it is that they're getting." SUMF ¶ 101. Unsurprisingly, evidence revealed that what officers thought they were getting was discipline.

c. MPD officers have said coaching feels and looks like discipline, and through the Federation, they grieve it like it's disciplinary action.

Officers have long conveyed that they view coaching as disciplinary action, including because it can feel like punishment. SUMF ¶¶ 162-164. One officer even described being "strong armed" into coaching. SUMF ¶¶ 165-167. Perhaps the best indicator of officers' understanding of coaching as disciplinary is not only that they grieve it but also that their grievances explicitly refer to coaching as "discipline." SUMF ¶ 109. *See* Exs. 76, 86, 87, 140, 215. As the Federation

explained in its deposition, it grieves coaching at the B level or above precisely because "[w]e are allowed to grieve things that are considered disciplinary." SUMF ¶ 142.

d. The coaching on which Plaintiff now moves occurred only after MPD complied with all the procedural hallmarks of discipline.

Discovery also revealed—again contrary to representations Defendants made early in this case—that B-level coaching issued by the Chief occurs only after MPD affords officers the same due process as they do before imposing other, recognized forms of discipline. SUMF ¶¶ 62, 66, 68, 180-181, 183-186. Huffman, for example, testified that before B-level coaching is issued, officers would have been afforded "all of the requirements covered from the formal statement on through a Loudermill." SUMF ¶ 184. Indeed, so clear was the evidence on this point that Defendants stipulated that, in at least 25 instances of coaching disclosed to Plaintiff in discovery, Defendants would "not dispute that . . . the employees were provided sufficient process such that, under the Labor Agreement and/or law, for any violation of an MPD or City policy, the Chief of Police could have instead imposed" some other form of disciplinary action. SUMF ¶¶ 185-186 (citing Ex. 214).

Then, after the coaching determination letter is issued, it is maintained by MPD, at least sometimes in the officer's personnel file. There—as part of MPD's "progressive discipline model"—it can be accessed for up to 1, 3, or 5 years, depending on the violation level, and used against the officer during that period to enhance discipline if he commits additional infractions. SUMF ¶¶ 168-169; *see also id*. ¶¶ 44, 46, 142. It is no wonder officers who go through this process and face this prospect consider themselves disciplined by—and many grieve—B-level coaching.

* * *

Simply put, the evidence in this case uniformly supports—indeed, the records themselves state—that the coaching data on which Plaintiff now seeks judgment constitute or reflect disciplinary action.

V. The personnel data at issue here reflect not only disciplinary action, but also "final disposition" of disciplinary action.

Under the MGDPA,

> a final disposition occurs when the government entity makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings. . . . In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement.

Minn. Stat. § 13.43, subd. 2(b). Here, the City and Federation have set out in their CBA those forms of disciplinary action which the Federation may grieve, and coaching is not one of them (neither is a warning or any other recognized form of oral discipline, such as a documented oral reprimand). SUMF ¶¶ 149, 190-191. Thus, where coaching was imposed as disciplinary action in the above instances, it reached final disposition upon imposition on the officer and documents reflective of the coaching are public.

The inability to grieve coaching under the CBA therefore does not somehow render coaching not disciplinary action or not final, as the City Attorney's Office concedes. Ex. 59 at CITY.001533 (Chernos: "The lack of opportunity to grieve a case is not determinative of whether coaching is discipline, such that coaching could become public. . . . if there is no written discipline, the employer's action is not subject to the grievance procedure."). Indeed, the Public Employee Labor Relations Act ("PELRA") requires only that "contracts must include a grievance procedure providing for compulsory binding arbitration of grievances" for "***written*** disciplinary action." Minn. Stat. § 179A.20, subd. 4(a) (emphasis added). Defendants and the Federation both acknowledge that coaching is an oral or verbal process, not a written one. SUMF

¶¶ 19, 152, 187.[21] PELRA thus does not require that it be subject to a grievance or compulsory binding arbitration requirement.

The instances of coaching documented in the letters at issue here have also reached final disposition for another reason. Regardless whether coaching is technically grievable under the CBA or not, *the Federation has, in fact, been filing grievances over B-level coaching*. SUMF ¶¶ 108-109, 134, 137-140. According to the Federation's corporate designee, it grieves B-level coaching as a matter of course, and leaves the grievance open for the reckoning period. SUMF ¶ 140.

For those instances of coaching the Federation has grieved and on which Plaintiff seeks summary judgment, the time has long elapsed for the Federation to pursue further action. *See* Exs. 76 (from 2015), 86 (from 2014), 87 (from 2014), 140 (from 2016), 215 (from 2015, and requesting to go to arbitration); *see also* Exs. 15, 214 (per stipulation, grieved and withdrawn). Thus, each of these documents reflects disciplinary action that has indisputably reached "final disposition."

Meanwhile, where the Federation elected *not* to grieve coaching, that was a choice and its members have no grounds to object to disclosure of coaching data now. By 2015, the Federation was on notice that MPD was coaching B-level misconduct, and it was around that time it started routinely grieving coaching. SUMF ¶¶ 98, 108-109. As new instances of B-level coaching occurred, the CBA gives members 21 days to begin the process, assuming, as the Federation did, that coaching is grievable at all. *See* Ex. 48 § 11.02. Thus, the time to commence a grievance

[21] In this way as well, coaching is like a warning, which both Defendants and the Federation admit is disciplinary and similarly acknowledge is an oral process. SUMF ¶¶ 152, 187. What's more, Defendants admit that the Chief could impose a warning, SUMF ¶¶ 148, 191, and that it would not be grievable, SUMF ¶¶ 149, 191. The same is true of an oral reprimand. SUMF ¶¶ 188-189, 191.

proceeding for each of the coaching determination letters or notices of discipline at issue here has long since passed. Indeed, the most recent of those is filed as Exhibit 13 and was in 2020.

Even being charitable to the Federation, and assuming *arguendo* that it learned of these instances of coaching in the course of this litigation, it has had all of these records since (at the latest) February 2024 and still has not initiated grievances over them, despite offering to "start[] the grievance process" on all coaching memoranda if permitted to intervene. Ex. K (Oct. 14, 2021 Hr'g Tr.) at 10:15. These documents, too, therefore reflect disciplinary action that reached "final disposition."

VI. Plaintiff is entitled to both injunctive and declaratory relief for Defendants' violation of the MGDPA.

A. The Court should declare that all of the documents on which Plaintiff has moved for summary judgment, as well as settlement agreements imposing coaching and notices of discipline imposing training, are public under the MGDPA.

The Uniform Declaratory Judgments Act provides a cause of action for any person to seek a declaration of their "rights, status, [or] other legal relations," Minn. Stat. § 555.01, in order "to settle and to afford relief from uncertainty and insecurity with respect to those" things, *id*. § 555.12. "In the context of the MGDPA," declaratory judgment is properly sought to "determin[e] whether particular records are public, private, or confidential." *Adams v. Harpstead*, 947 N.W.2d 838, 845 (Minn. Ct. App. 2020).

Based on the analysis above, Plaintiff is entitled to a declaration that Exhibits 12, 13, 14, 15, 16, 17, 20, 23, 72, 73, 74, 75, 76, 86, 87, 88, 92, 140, 215, 312, 313, 314, 323, 324, and 325 constitute public government data under the MGDPA. They reflect the final disposition of disciplinary action, pursuant to Minn. Stat. § 13.43, subd. 2(a)(5).

In addition to these documents—which are all responsive to Plaintiff's Request—Defendants produced in discovery a number of agreements between the City and the Federation

that did not exist at the time Plaintiff submitted its Request but in which coaching was imposed as "final discipline" for sustained misconduct in order to settle a pending grievance. *See* Exs. 77 and 79. Defendants improperly marked these documents—as well as Exhibit 96, another settlement agreement (though not involving coaching)—"Confidential," despite recognition by the City Attorney's Office that "[t]he complete terms of any agreement settling any dispute" are public. *See* Minn. Stat. § 13.43, subd. 2(a)(6); SUMF ¶¶ 82-83; *compare* Exs. 77, 79, *with* Ex. 18 (which Defendants concede is a public document). Although Plaintiff does not move for summary judgment on these records, the Court should nevertheless order their public, unredacted release in accordance with the MGDPA.[22] And to the extent Defendants possess similar agreements that impose coaching beyond these three examples and that pre-date Plaintiff's MGDPA Request, such data should have been produced in response to Plaintiff's Request.

Discovery also revealed another category of documents that, while not responsive to Plaintiff's Request, was improperly designated "Confidential" by Defendants: documents in which an officer received a determination letter imposing a more severe form of disciplinary action, such as a letter of reprimand, as well as a requirement to attend training. Exs. 45, 46, 74, 310, 311, 315, 316. For the same reasons that those determination letters imposing a recognized form of discipline plus coaching are public data, *see* SUMF ¶¶ 96, 104-107 & n.20, these are too. The Court should therefore order their public, unredacted release as well.

Thus, the complete list of documents that are not technically responsive to Plaintiff's Request but which the Court should nevertheless declare public is Exhibits 45, 46, 74, 77, 79, 96, 310, 311, 315, and 316. Plaintiff is within its rights under the Uniform Declaratory Judgments

[22] In addition, these settlement agreements are public because they constitute the final disposition of disciplinary action in those cases.

Act to move for a declaration on the status of these documents under the MGDPA. *See Adams*, 947 N.W.2d at 845. These documents were improperly designated "Confidential" by Defendants and the Federation when produced in discovery. Plaintiff seeks a declaration from this Court that these data are public, pursuant to Minn. Stat. § 13.43, subd. 2(a)(5) and (6).

B. The Court should order Defendants to produce public documents to Plaintiff without restriction or redaction.

Both subdivisions 2 and 4 of Minn. Stat. § 13.08 permit the Court to fashion the appropriate injunctive relief when a government entity or Responsible Authority violates the MGDPA to ensure its compliance with the statute. This is such a case.

As established above, Defendants violated the MGDPA by (1) summarily denying and closing Plaintiff's Request in under three minutes without searching for a single document, (2) withholding from Plaintiff facially responsive nonpersonnel data without citing any relevant exemption for doing so, and (3) denying Plaintiff access to the public personnel records it sought.

The Court should therefore order Defendants to comply with the MGDPA by requiring them to:

- publicly disclose (i.e., without redactions or restrictions on dissemination) to Plaintiff those documents on which Plaintiff has moved for summary judgment and declaratory relief;
- publicly disclose to Plaintiff the specific reasons for the action taken against the officers in those documents, and the data documenting the basis of the action; and
- publicly file the same with the Court.

The Court should further order the following injunctive relief, requiring Defendants to:

- conduct a search for all documents, dating January 1, 2011, through the date of the Court's Order, that are the same or similar to the documents on which Plaintiff has sought any form of relief;

- provide Plaintiff with those documents that Defendants collected through their search, pursuant to the Amended Protective Order dated May 9, 2024;
- meet and confer with Plaintiff regarding the public disclosure of those documents or whether they require adjudication at trial.

VII. Plaintiff reserves certain issues for trial.

Plaintiff has moved for partial summary judgment and declaratory relief on a narrow set of documents, but expressly reserves all other issues for adjudication at or after trial, including: whether additional, documented instances of coaching for misconduct sustained at the B level or above (other than those identified herein) constitute the final disposition of disciplinary action such that they too are public under the MGDPA; the full nature and scope of prospective injunctive relief to which Plaintiff is entitled for Defendants' violations of the MGDPA; Plaintiff's compensatory damages; whether Defendants' violations of the MGDPA were "willful," entitling Plaintiff an award of exemplary damages of up to $15,000 per violation; the imposition of a civil penalty; and Plaintiff's right to recover its legal costs and reasonable attorneys' fees.

CONCLUSION

Plaintiff respectfully requests that the Court enter summary judgment in its favor on the documents on which Plaintiff has moved, grant Plaintiff the declaratory and injunctive relief sought herein, reserve for determination at trial all other issues, and grant such other and further relief as the Court deems right and just.

Dated: May 29, 2024

BALLARD SPAHR LLP

By: *s/Leita Walker*
Leita Walker (No. 0387095)
Isabella Salomão Nascimento (No. 0401408)
J. Matt Thornton (No. 0402271)
80 South Eighth Street
2000 IDS Center
Minneapolis, MN 55402-2119
Tel: (612) 371-3211
walkerl@ballardspahr.com
salomaonascimentoi@ballardspahr.com
thorntonj@ballardspahr.com

Emily Parsons (admitted *pro hac vice*)
1909 K Street NW, 12th Floor
Washington, D.C. 20006
Tel: (202) 661-7603
parsonse@ballardspahr.com

AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA

By: *s/ Teresa Nelson*
Teresa Nelson (No. 0387095)
Dan Shulman (No. 0100651)
P.O. Box 14720
Minneapolis, MN 55414
Tel: (651) 645-4097
tnelson@aclu-mn.org
dshulman@aclu-mn.org

Attorneys for Plaintiff

ACKNOWLEDGEMENT

Plaintiff, by the undersigned, hereby acknowledges that pursuant to Minn. Stat. § 549.211 sanctions may be imposed under this section.

/s/Isabella Salomão Nascimento
Isabella Salomão Nascimento