

**Fraud Prevention and State Agency Oversight Policy Committee
September 17, 2025**

**Minnesotans for Open Government
Written Testimony of Matt Ehling, Board Member**

RE: Clarifying status of “withholding of payment” data

Dear Chair Robbins, Vice Chair Anderson, and Lead Pinto,

I write to you on behalf of Minnesotans for Open Government (MNOG), a volunteer-led, non-partisan, nonprofit organization focused on public access to government information.

MNOG seeks to protect the public’s ability to observe and understand governmental operations — including for the important purpose of identifying and evaluating problems that occur in government. These problems can include waste, fraud, and related abuses of taxpayer funds — all of which are matters that fall within this committee’s purview.

MNOG submits the following written testimony about an impediment to the public’s understanding of governmental operations that bears on this committee’s jurisdiction.

Executive Summary: MNOG urges the Minnesota Legislature to clarify the status of data relating to the “withholding of payments” to government contractors when those contractors are suspected of fraud. This issue arose at the very end of the 2025 Regular Session, as well as in the 2025 Special Session, resulting in two laws that are in tension. Earlier this summer, the Department of Human Services (DHS) used one of those laws (Minn. Stat. § 13.46, as modified during the Special Session) to deny a press entity access to data about the agency’s withholding of payments. Data showing that DHS has chosen to withhold payments to a specific contractor, at a specific time, should be publicly accessible.

This is particularly the case since the “payment withholding” language added in the Regular Session requires an agency to notify a contractor if their payments are going to be withheld. The public who is providing the tax monies to underwrite those payments should have access to the same information.

Background: The 2025 Regular Legislative Session included much discussion about bills aimed at addressing waste and fraud in governmental programs. MNOG took part in extensive discussions about some of these bills, with an eye toward ensuring that information relevant to public oversight of government operations was preserved and protected.

“Withholding of Payment” amendment SCS3045A124

Towards the end of the 2025 Regular Session, MNOG was alerted to the existence of a proposed amendment to SF 3045 — what became the 2025 State Government Omnibus bill. The amendment (coded SCS3045A124) related to the withholding of payments by government agencies in circumstances that involved suspected fraud.

Amendment SCS3045A124 would allow agencies to withhold funds from vendors, contractors, or other “program participants” for up to 60 days in circumstances where the agency head “determin[ed] that a preponderance of the evidence show[ed] that the program participant ha[d] committed fraud to obtain payments under the program.”

The amendment also contained language regarding Data Practices, which specified what government data about the agency’s action would be “public” or “not public.” The amendment’s original data classification language made data about “evidence of fraud” *and* the “withholding of payments” “confidential” and “protected nonpublic” during the 60-day withholding period:

Subd. 3. Data classification and access. (a) During the administrative payment withholding period under subdivision 2, data relating to evidence of fraud and withholding of payments are classified as: (1) confidential data on individuals pursuant to section 13.02, subdivision 3; or (2) protected nonpublic data pursuant to section 13.02, subdivision 13, in the case of data not on individuals. The agency head may disclose that payments are being withheld from a program participant if the agency head determines that doing so will not jeopardize an active investigation.

Data about “evidence of fraud” relates to the actions of a “program participant” (a vendor/contractor engaged in suspected fraud), while data about the “withholding of payments” is data that documents an action agency action taken in response to suspicions of fraud.

Under the original amendment language, *both* sets of data would be unavailable to members of the public during the 60 day withholding period (unless the agency exercised its discretion to release the information under subd. 3). **At the same time, a “program participant” whose funds were being withheld would be alerted to that fact — a fact that would be withheld from the public under the original amendment language:**

(b) Notwithstanding subdivision 3, the agency head must notify the program participant of the decision to withhold payments at least 24 hours before withholding a payment.

The “notice” given to the “program participant” includes the fact that payments are being withheld; includes the date on which the withholding will begin; and states the reasons for the withholding, excluding “specific information that may jeopardize an active investigation.” The notice allows the program participant to engage in appeals or Chapter 14 proceedings, if that person believes that the payments have been withheld improperly.

Under the original amendment language, after the end of the 60-day withholding period, data “relating to evidence of fraud” and “withholding of payments” became “public . . . unless classified as not public under state or federal law.” (The most likely “not public” classifications would be for active civil or criminal investigations, if those followed the withholding period.)

MNOG review of amendment SCS3045A124

MNOG reviewed proposed amendment SCS3045A124, and advocated for a change to the text that would remove the phrase “withholding of payments” from the amendment’s “not public” data classification language — leaving “evidence of fraud” classified as “not public.” Since most data related to “evidence of fraud” would become temporarily “not public” anyway — by virtue of its eventual inclusion within active civil or criminal investigative files (*see* § 13.39 and § 13.82) — MNOG felt that this was a reasonable application of current law to this new section.

However, in regard to data about the “withholding of payments,” MNOG felt that such data should remain publicly accessible, and advocated for striking that specific text from the data classification language:

Subd. 3. **Data classification and access.** (a) During the administrative payment withholding period under subdivision 2, data relating to evidence of fraud are classified as: (1) confidential data on individuals pursuant to section 13.02, subdivision 3; or (2) protected nonpublic data pursuant to section 13.02, subdivision 13, in the case of data not on individuals.

(b) All data relating to evidence of fraud become public at the termination of the withholding period unless classified as not public data under state or federal law. The identity of a complainant is private data on individuals, as defined in section 13.02, subdivision 12.

Keeping data that documents the withholding of payments classified as “public” sheds light on a government agency’s management decisions. Furthermore, such data is presumptively “public” in most other circumstances. And finally — in instances where an agency suspects a “program participant” of fraud, it allows public access to

information that the “program participant” *already possesses* — namely, that its funds are going to be withheld, as well as the reasons for the withholding. Again, the “program participant” would be aware of these facts during the 60-day payment withholding period, but not the public. MNOG’s suggested change sought to eliminate this disparity.

MNOG provided its suggested language change to legislators, and it was included in the final version of SF 3045, which became law after the Regular Session. The relevant language can now be found in Session Laws, Chapter 39, Regular Session, Section 22 (*see also* 15.013, subd. 2):

Subd. 3. **Data classification and access.** (a) During the administrative payment withholding period under subdivision 2, data relating to evidence of fraud are classified as: (1) confidential data on individuals pursuant to section 13.02, subdivision 3; or (2) protected nonpublic data pursuant to section 13.02, subdivision 13, in the case of data not on individuals.

(b) All data relating to evidence of fraud become public at the termination of the withholding period unless classified as not public data under state or federal law. The identity of a complainant is private data on individuals, as defined in section 13.02, subdivision 12.

That section sunsets on July 1, 2027.

Special Session changed DHS-related statute to reference “withholding of payment” data in a “not public” context

The “payment withholding” section that passed into law at the end of the Regular Session continues to be in force, and classifies “evidence of fraud” as “not public” without specifying that “withholding of payment” data is “not public.” However, another change in law was made just weeks afterwards, during the brief 2025 Special Session. This change affected Minn. Stat. § 13.46 — a law that applies to the Department of Human Services (DHS) and other components of the “welfare system.”

That Special Session change modified the existing investigative data provision of § 13.46 to state that the discretionary language of that section now encompasses investigations pertaining to the “withholding of payments.” This new language appears to have been added to ensure that an agency’s actions regarding the “withholding of payments” are clearly seen to be part of “not public” investigative data — data that the agency has the option of disclosing if it wishes under § 13.46 subd. 3, but which is otherwise classified as “not public” during the pendency of the investigation. (See Session Laws, 2025 Special Session, Article 17, Section 1).

Press has sought out data on “withholding of payments” by DHS

Earlier this summer, MNOG was contacted by a member of the press who had asked

DHS for data documenting any payments to vendors and contractors that it had withheld. The reporter told MNOG that DHS had replied that such data was not publicly available, and the agency cited Minn. Stat. § 13.46, subd. 3 in support.

The practical effect of the agency using § 13.46 in this way is that members of the press (and the public) are currently unable to understand whether DHS has withheld payments from its vendors and contractors in circumstances involving suspected fraud. At the same time, all vendors and contractors suspected of fraud will have been notified of agency withholding actions pursuant to the terms of the “payment withholding” section added at the end of the 2025 Regular Session (*see* 15.013, subd. 2).

The “payment withholding” section requires a report about agency withholding actions to be compiled by March 1, 2026 (*see* 15.013, subd. 5). DHS is covered by this requirement. At that time, the public will have access to summary data about agency withholding actions. However, there is only one public report required, even though the “payment withholding” section continues for more than another year (until July 1, 2027). This functionally means that the public will not have access to DHS payment withholding data until six months from now, and then will lose access to it again for another year — or perhaps longer, given how DHS is employing § 13.46, subd. 3.

Clarity should be brought to “payment withholding” data

At present, the Special Session change to the investigative data provision of § 13.46 is in tension with the “payment withholding” provision added during the Regular Session.

The net effect is that the public does not have access to data about the withholding of DHS payments due to alleged fraud — even though vendors and contractors suspected of fraud are provided that information.

This situation should be reviewed by the Minnesota Legislature, and clarity should be brought to the applicable statutes to ensure that the public has access to important data about governmental operations. The statutory clarification should specify that “payment withholding” data is public even during the pendency of an active investigation.

Sincerely,

Matt Ehling,
MNOG Board Member

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