

**Minnesota House State Government Committee
March 12, 2026
HF 3656**

**Written Testimony of Matt Ehling, board member
Minnesotans for Open Government**

Co-chairs Klevorn and Nash, Representative Luger-Nikolai, and members of the committee,

Minnesotans for Open Government* writes to you regarding our concerns with HF 3656, a bill that would make changes to how civil litigation involving state agencies is handled, and would also significantly modify data and records management requirements for such agencies.

As written, the data and records management changes would negatively impact government transparency and accountability. Accordingly, we would recommend that this bill receive further modification and review before proceeding through the legislative process.

As our organization is an all-volunteer group — and as I am working on the road this week — I will be unable to attend Thursday's committee hearing. However, please find our written testimony below. I can be contacted at 651-335-2037 or contact.mnog@gmail.com to discuss it in further detail.

Issues with lines 2.5-2.9

Our organization's focus is on government records and data access, with an eye to ensuring that this access is preserved. Preserving such access permits the public and the press to understand how government operates, and also allows them to hold it to account when problems emerge.

HF 3656 makes major changes to the way that government records and data would be handled in Minnesota — constraining public access to the same.

*Minnesotans for Open Government is a non-partisan, nonprofit, all-volunteer organization focused on government information transparency, and government accountability.

Many of these concerns flow from lines 2.5-2.9 of the bill, which would institute a new concept in Minnesota law — namely, that:

“Each department, agency, board, commission, or other entity in the legislative, executive, and judicial branches of state government is the *only entity* authorized to be the custodian of its own records, documents, data knowledge, and information, and the *only entity* in possession, custody, or control of its own records documents, data, knowledge, and information.”
(*Emphasis added*)

At present, both the State’s “Official Records Act” (*see, generally*, Minn. Stat. § 15.17) and the “Records Management Statute” (*see, generally*, Minn. Stat. § 138.17) do not contain requirements about who *solely controls* government records in the fashion contemplated by the bill. **In fact, “government records” (§ 138.17 subd. 1(b)(1)) which contain “government data” (§ 13.02 subd. 7) can be — and often are — shared *between* government entities, resulting in some entities holding the records or data of *other* entities for extensive periods of time.**

The state’s Data Practices Act recognizes that data sharing occurs frequently, and it contains express provisions governing how such sharing affects the rules governing data classification. Minn. Stat. § 13.03 subd. 4 states, in relevant part, that:

“(c) To the extent that government data are disseminated to a government entity by another government entity, the data disseminated shall have the same classification at the entity receiving them as they had at the entity providing them.

(d) If a government entity disseminates data to another government entity, a classification provided for by law at the entity receiving the data does not affect the classification of the data at the entity that disseminates the data.

(e) To the extent that judicial branch data are disseminated to government entities by the judicial branch, the data disseminated shall have the same level of accessibility at the government entity receiving them as they had at the judicial branch entity providing them.”

Many Minnesota statutes specify how data may be transferred and shared between

agencies. For instance, Minn. Stat. § 13.3805 subd. 2 specifies that data related to Huntington's disease:

“... may be permanently transferred from the department [of Health] to the Hennepin County Medical Center.”

Indeed, when data sharing involves data on individuals, Minnesota law *requires* that such sharing be authorized by statute. *See, generally*, Minn. Stat. 13.05 subd. 4.

Additional sharing authority was added by the Legislature last session, in relation to combatting fraud. *See*, Minn. Stat. 13.357, which states in relevant part:

“Except where a provision of law specifically prohibits data sharing, any government entity may disclose data relating to suspected or confirmed fraud in public programs to any other government entity, federal agency, or law enforcement agency if the access would promote the protection of public resources, promote the integrity of public programs, or aid the law enforcement process.”

As these examples show, the sharing of data and records occurs frequently between Minnesota government entities, meaning that different entities may maintain — and effectively control — the records and data of other entities while they are in their possession.

Data request problems

When the Office of the Legislative Auditor (OLA) opens an audit or program review, it collects and maintains records and data from other agencies. The same is the case with the State Auditor's Office, which collects and maintains the records of the local units of government that it reviews and audits. Law enforcement and county attorneys' offices share data and records related to criminal cases on a continual basis. And the judicial branch becomes the repository for criminal investigative data from both of those other entities, once such data is entered into the court record.

Because of this, the question of which entity *controls* the records or data that it maintains is very seldom a singular matter, since data and records so frequently move between entities. This becomes an important question for the purposes of the Minnesota Government Data Practices Act (MGDPA). Government data is broadly defined by the MGDPA for the express purpose of making sure that it is accessible to the public *at the entity where it exists*. If a government entity has “collected” or

“maintained” data from anywhere — be it from a private contractor or another government entity — then the data is accessible to a public requester, so long as it is classified as public, and exists that the entity at the time a request is made.*

Under the bill’s proposed language, this long-standing premise would be thrown into confusion. Today, if public data from the Department of Human Services (DHS) exists at the OLA due to a program evaluation, a data requester can access such data by making a request to the OLA. Under the bill’s language, this could be entirely upended. If DHS asserts that it is the “*only entity* in control of its own data” it could intervene in the data request, demand that the request to OLA be halted, and then require that the requester re-submit the request to DHS. This could happen in any number of different variations, across many government entities.

This could result in extensive delays, plus withholding assertions that may not have been made at the initial entity, depending on data classification requirements (which can be changeable depending on statutory requirements, and where the data exists when it is requested).

Records retention problems

If each government entity becomes the “*only entity* in control of its records” then those entities could argue that their *own* records retention schedule governs how long records are kept by *other entities* who hold the records. This would cause significant confusion, as well as negatively impact public access to government records in some cases.

In regard to confusion: In the criminal investigative context, criminal investigative data generally originates with a police department. It is then sent to a county attorney’s office for charging. From there, if charges are filed, much of the criminal investigative data ends up in the hands of the judicial branch as case files. Under the language of HF 3656, the records retention schedule of the *individual police department* would govern how long the *judicial branch* keeps its criminal investigative data, since it is the “*only entity* in control of its records.” This is a major departure from current practice, and would cause confusion in the myriad variations of this example that would be seen across Minnesota government entities.

*There are also some cases in which a government entity may have a contractual relationship with a third party that “maintains” data on behalf of the government, and must produce it in response to a request made to the government entity. *See, generally, Pathmanathan v. St. Cloud State University* (Minn. Ct. App. 1990)

In regard to access problems: If the records retention schedule at the originating entity controls in all cases, then when records are transferred to other entities, those entities would have to destroy the records *on the schedule set forth by the originating entity*, eliminating the ability for the public or press to gain access to important data in certain instances. For instance, DHS currently has a one year retention period for e-mails that do not constitute “official records.” If the OLA became interested in a problem at DHS; instituted an audit; and collected evidence that included e-mails, DHS could use the language of this bill to try to compel OLA to destroy its e-mails according to its own one-year retention schedule.

At present, OLA maintains “data related to an audit” for three years. Today, if DHS e-mails were collected by OLA and became part of an audit, those e-mails would exist at OLA for three years, and could be accessed by members of the press interested in OLA’s audit findings once the audit is complete. Under the bill’s language, DHS could intercede and require that its e-mail data be destroyed after one year — even if the audit had not been completed — since DHS would be the “*only entity* in control of its records.”

Data Practices litigation problems

Things become similarly complicated in a Data Practices Act litigation context.

As previously stated, a government entity may hold data from other entities, and such data may be sought by data requesters at the entity where it exists.** If a government entity fails to produce the data, that entity can be sued under the MGDPA (*see, generally*, § 13.08). An example of this would be the lawsuit filed by nonprofit organization Public Record Media*** against the Minnesota Department of Public Safety (DPS) for data relating to the “after action” report on the State’s response to the civil unrest of 2020. That lawsuit involved data from multiple government entities, all of which was maintained by DPS.

Right now, a person may bring suit against a government entity for failure to disclose public data. Those suits must be filed against the entity’s “Data Practices Responsible Authority,” for the Responsible Authority’s failure to abide by the

**In some cases, an entity that has a contractual relationship with a third party to maintain certain data can be sued to produce the data it owns, per the contract terms. *Pathmanathan v. St. Cloud State University* (Minn. Ct. App. 1990)

***MNOG board member Matt Ehling is also a board member of Public Record Media.

MGDPA, on behalf of the government entity they represent.

At present, if data:

- a) travels from one government entity to another;
- b) is requested at the second entity, and;
- c) data production is illegally denied by the second entity, that second entity can be sued to produce the data it holds. The suit would be brought against the second entity's Data Practices Responsible Authority.

Under the bill's language, since each government entity would be the "*only entity* in control of its data," lawsuits against one entity for data that originated from *other* entities would become extremely difficult. The originating entity could assert its sole "control" over data held at the entity being sued, complicating discovery and records production. Such "originating" entities may assert that they have to be named parties to the lawsuit, even though they were not involved in the MGDPA violation caused by the second entity. And if they were added as parties, could a plaintiff prevail against those additional entities, if there was no evidence of a violation on their part?

More review needed

Since this bill would create major issues for data and records management in the State of Minnesota, we urge that it not move forward in its present form without far more review.

Thank you for taking our input into consideration.

Sincerely,

Matt Ehling
Minnesotans for Open Government