**Minnesotans for Open Government (MNGO)[1]**
**Written Testimony of Matt Ehling, MNGO board member**
**March 4, 2025**

Chair Scott, Lead Liebling, and members of the House Judiciary Finance and Civil Law Committee,

The board members of Minnesotans for Open Government endorse HF 390, and thank Representative Scott for bringing the bill forward.

HF 390 codifies the Minnesota Supreme Court's decision in *Halva v. MNSCU* (Minn. 2021), which recognized that the remedies available in the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13, or "MGDPA") also apply to violations of Minnesota's Official Records Act (§ 15.17, or "ORA"):

> "First, subdivision 4 of the Official Records Act reads: "Access to records containing government data is governed by sections 13.03 and 138.17." Minn. Stat. § 15.17, subd. 4. Section 13.03, part of the Data Practices Act, is a statutory provision that allows members of the public to request government data, as Halva did in this case. See Minn. Stat. § 13.03 (2020). Section 13.03 can be enforced through the judicial remedies provided by section 13.08. Minn. Stat. § 13.08 (2020). Therefore, an individual aggrieved by the failure of a government body to comply with the Official Records Act has a cause of action under sections 13.03 and 13.08."
>
> **- *Halva v. MNSCU* (Minn. 2021)**

Through the *Halva* decision, persons who are aggrieved by a government entity's failure to properly preserve "official records" under the ORA can take advantage of the same statutory remedies that currently allow persons to sue for a government entity's failure to comply with the MGDPA (for instance, a failure to provide access to public, government data under the MGDPA:

> "The Data Practices Act provides that "[t]he responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use." Minn. Stat. § 13.03, subd. 1. "Government data" is defined as "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." Minn. Stat. § 13.02, subd. 7 (2020). If a government agency fails to keep a record "containing government data" in a way that is "easily accessible for convenient use," an aggrieved person can pursue both administrative and private causes of action. Minn. Stat. §§ 13.03,

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> subd. 1, .08, subd. 1 (allowing for people who suffer damages as a result of a Data Practices Act violation to bring a civil cause of action), .085 (allowing an aggrieved party to pursue administrative remedies for Data Practices Act violations) (2020). When a government agency fails to preserve a record, it assuredly has not made it "easily accessible for convenient use" and thus the agency may be liable under the Data Practices Act."
>
> **- *Halva v. MNSCU* (Minn. 2021)**

The consequences of improperly destroying official records that document important government actions have serious consequences for government accountability and public trust, as recognized by the Minnesota Supreme Court in *In the Matter of the Denial of Contested Case Hearing Request* (Minn. 2023). This opinion of the Court dealt with the application of the Administrative Procedures Act (APA) to the environmental permitting of the PolyMet mine in northern Minnesota. In the facts underlying the case, the Minnesota Pollution Control Agency (MPCA) had destroyed an e-mail that documented the MPCA's request to the federal Environmental Protection Agency (EPA) to not submit written comments regarding deficiencies about PolyMet's permit application, due to MPCA's concerns about the public attention that EPA's written comments would receive. A lower court had found that MPCA's e-mail destruction had violated the Official Records Act, which (among other factors) led the Court to find "irregularities in procedure" that violated the APA.

To ensure that Minnesota citizens clearly understand that there is a statutory remedy available to address the kind of problematic data destruction witnessed in the facts behind *In RE Denial*, Minnesotans for Open Government supports including the cross reference language included in HF 390, which recognizes and codifies what the Minnesota Supreme Court held in the *Halva* case.

Sincerely,

Matt Ehling
Board Member
Minnesotans for Open Government

# Minnesota statutory framework for the management of government records and data

## Official Records Act. (§ 15.17)

Requires that government entities record their official activities:

"All officers and agencies of the state, counties, cities, towns, school districts, municipal subdivisions or corporations, or other public authorities or political entities within the state, hereinafter "public officer," shall make and preserve all records necessary to a full and accurate knowledge of their official activities." (§ 15.17 subd. 1)*

## Records Management Statute (§ 138.17)

Sets out a procedure by which government entities establish the retention period for their records:

"Public officials shall prepare an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records, establishing a time period for the retention or disposal of each series of records. When the schedule is unanimously approved by the records disposition panel, the head of the governmental unit or agency having custody of the records may dispose of the type of records listed in the schedule at a time and in a manner prescribed in the schedule for particular records which were created after the approval." (§ 138.17 subd. 7)*

## Data Practices Act (Minnesota Statues, Chapter 13)

Governs the classification of "government data" contained in records, and establishes a framework for access to data classified as "public":

"All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential. The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records." (§ 13.03 subd. 1)*

*Cited provisions are not the only operative provisions of these chapters and sections, but are highlighted to show key attributes about the function of each.

It is worth noting that the underlined text in § 13.03 subd. 1 is the text that the Minnesota Supreme Court relied on in *Halva* to find that the existing § 13.08 and § 13.085 remedies in the Data Practices Act could be applied to violations of the Official Records Act:

> "If a government agency fails to keep a record "containing government data" in a way that is "easily accessible for convenient use," an aggrieved person can pursue both administrative and private causes of action. Minn. Stat. §§ 13.03, subd. 1, .08, subd. 1 (allowing for people who suffer damages as a result of a Data Practices Act violation to bring a civil cause of action), .085 (allowing an aggrieved party to pursue administrative remedies for Data Practices Act violations) (2020). When a government agency fails to preserve a record, it assuredly has not made it "easily accessible for convenient use" and thus the agency may be liable under the Data Practices Act."
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> ***- Halva v. MNSCU (Minn. 2021)***