House Judiciary Finance
and Civil Law Committee
March 29, 2022

Written Testimony of Matt Ehling
Board Member, Minnesota Coalition on Government Information (MNCOGI)

Dear Chair Becker-Finn and members of the House Judiciary Finance and Civil Law Committee,

I write today in regard to HF 4603, a bill that would classify a range of government data — including names; contact information; and certain "other" data — related to individuals who participate in hunting and fishing activities. Such data is currently, with certain exceptions, presumptively public under Minnesota law. HF 4603 would change the classification of such data to "private."

I write to provide some background information about this matter, as well as to detail the multiple implications of such a classification change.

First, the pertinent background information: Within recent years, the Minnesota Department of Natural Resources (DNR) sought to modify state law to classify all data on minors maintained by the department as "private data on individuals." MNCOGI opposed that initial idea due to its over-breadth, and inquired as to why the classification was sought. The agency responded that they were collecting certain sensitive data on minors (home addresses, contact info, etc.), and they were seeking a "not public" classification for that data for safety purposes. In response, MNCOGI suggested that DNR instead classify a specific list of data about minors as "private," rather than classifying all data on minors. After some discussion, a list of specific, tailored data elements on minors (such as home addresses and on-line contact information) became classified as "private." (See Minn. Stat. § 84.0873.) Members will recall that this committee acted last year on the bill that made this statutory change.

MNCOGI's understanding at the time was that DNR was just targeting data on minors due to specific safety concerns, and that classification changes would end there.

Earlier this year, SF 3935 was introduced (the original Senate bill to which HF 4603 is a companion), and MNCOGI took note of the fact that it had a much broader scope than the DNR bill on minors we helped to negotiate, since it extended to a wide range of data on anyone - minor or not - who participated in hunting and fishing activities. The scope of the bill's classification would also extend beyond any one specific agency to cover such data anywhere, in any government entity within Minnesota. MNCOGI would not

recommend a classification change with this kind of broad scope, for the reasons listed below:

1. MNCOGI's understanding of the genesis of SF 3935 was that it was developed in response to a very specific data request made to a Minnesota municipality that employed volunteer hunters to cull the deer population within that city's boundaries. Apparently, a Data Practices Act request was made to that city seeking the names of the volunteer hunters, and the city subsequently sought a legislative change so that similar requests could not be made in the future.

MNCOGI sees several problems with classifying the names of volunteer hunters working for the government as "private." As a purely technical matter, such a classification would be at odds with current state law (Minn. Stat. § 13.43) which classifies the names of volunteers working for government entities as "public" data. While this technical issue could be addressed, underlying policy issues militate in favor of keeping the names of volunteer hunters public.

First, § 13.43 (the "personnel data" section of the Data Practices Act) has long treated volunteers the same as government employees in terms of data classification, out of a recognition that <u>any</u> individual acting on behalf of the government should have the same basic information (including "name" information) available for public review.

Secondly (and very specifically related to this matter) if armed individuals are acting on behalf of the government, those individuals should be publicly identifiable* for the purposes of oversight and accountability. At present, if a volunteer hunter discharges a round that accidentally strikes a nearby house, that volunteer's name is available to the media or any member of the public. If the classification change sought by HF 4603 becomes law, that volunteer's name would no longer be available to the press, to community members, or to any other members of the public who make inquiries into what occurred (at least until a police report and/or criminal charges are filed).

2. From a more prosaic standpoint, classifying the names and contact information of <u>all</u> individuals who participate in hunting and fishing activities would cause problems for government entities that provide recreational or tourism information related to hunting or fishing. For instance, to the extent that a local government tourism office maintains a list of fishing guides for distribution to visiting tourists, such an activity would become barred by state law, since the names and contact information for those individuals would become "private" data, and could no longer be publicly disseminated.

*The only exception in current law is for police officers working in an undercover capacity, and MNCOGI is not interested in expanding that narrow exception further.

In similar fashion, the State of Minnesota would have to halt the promotion of the Governor's annual participation in Minnesota's fishing opener, since the Governor's name — as an individual participating in hunting or fishing activities — would be classified as "private" data.

3. Other long-standing Minnesota traditions would also be curtailed by the data classification sought by HF 4603. Line 1.19 (classifying "any other data") in conjunction with Line 1.10 ("name" data) would bar the DNR — or even local cities — from publishing, posting, or otherwise disseminating name-captioned photos of people who caught the biggest fish on a particular Minnesota lake. This is a common practice that would be eliminated by this bill, since publishing such captioned photos would then involve disseminating private data in violation of state law.

4. Making names and contact information for all persons who participate in hunting and fishing "private" would also eliminate a means by which members of the press could contact citizens who are interested in these activities.

While "name" data for certain DNR-licensed activities is currently "private" under § 84.0874, name data elsewhere is presumptively public. Thus, if a municipality operates a city fishing club through a recreation center, for instance, the names of the participating individuals would currently be public. If a reporter made inquires about speaking with members of such a club, the municipal government would be unable to provide name or contact information for anyone in the club after the classification change sought be HF 4603 takes effect.

5. Finally, making the names of people who participate in certain activities "not public" in all instances could set a precedent that might spread to other areas of government data in future legislation. MNCOGI is generally cautious about creating new "not public" classifications due to the fact that classifications beget future classifications, as government entities will use current law as a model for future law-making.

Due to the issues discussed above, MNCOGI's recommendation is that HF 4603 not be acted on in its current form. Thank you for your consideration of our position on this matter, and please contact us with any related questions.

Sincerely,

Matt Ehling
MNCOGI board member