

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil/Other

Andrew Cilek and Minnesota Voters
Alliance,

Plaintiffs,

SUMMONS

v.

Office of the Minnesota Secretary of State
and Steve Simon in his official capacity as
Minnesota Secretary of State,

Defendants.

THIS SUMMONS IS DIRECTED TO the Office of the Minnesota Secretary of State and Steve Simon in his official capacity as Minnesota Secretary of State:

1. YOU ARE BEING SUED. The Plaintiffs have started a lawsuit against you. The Plaintiffs Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS. You must give or mail to the person who signed this summons **a written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons at the address below:

Erick G. Kaardal
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, Minnesota 55402

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS. If you do not answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written answer to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: August 10, 2017.

/s/Erick G. Kaardal
Erick G. Kaardal, 229647
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, Minnesota 55402
Telephone: 612-341-1074
Facsimile: 612-341-1076
Email: kaardal@mklaw.com
Attorneys for Plaintiffs

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil/Other

Andrew Cilek and Minnesota Voters
Alliance,

Plaintiffs,

COMPLAINT

v.

Office of the Minnesota Secretary of State
and Steve Simon in his official capacity as
Minnesota Secretary of State,

Defendants.

INTRODUCTION

Plaintiffs Andy Cilek and the Minnesota Voters Alliance seek the enforcement of its request for certain voter data requested under the Minnesota Government Data Practices Act from the Office of the Minnesota Secretary of State. In particular, the requested data includes, but is not limited to, the voter's history and status. The Secretary of State refused to disclose the requested data asserting that it is "private;" however, there is nothing under the governing statute or statutes that suggest voter history or status is "private." Accordingly, it is public data subject to disclosure. The Secretary of State's refusal is a violation of the law.

Under Minnesota's Government Data Practices Act, if a governmental entity refuses to disclose public data, it is subject to litigation in district court for enforcement. Mr. Cilek and the Minnesota Voters Alliance seek declaratory relief and a judicial decree that the Secretary of State is required to grant immediate access to the requested public data.

PARTIES

Plaintiff Minnesota Voters Alliance

1. Plaintiff Andy Cilek is a Minnesota resident and a registered voter.
2. Minnesota Voters Alliance is an organization with members who seek to ensure, as part of their association objectives, public confidence in the integrity of Minnesota's elections, in election results and election systems, processes, procedures, and enforcement, and that public officials act in accordance with the law in exercising their obligations to the people of the State of Minnesota. Its membership includes individual registered voters and taxpayers.

Defendants Office of the Minnesota Secretary of State and Secretary of State Steve Simon

3. The Defendant Minnesota Secretary of State's Office is a constitutional executive office. The Secretary of State acts on behalf of the State of Minnesota in exercising his duties regarding federal, state, county and local state-wide elections, promulgating and executing election laws within the State. Defendant Steve Simon is presently the Minnesota Secretary of State. The Secretary is also responsible, it is believed, for the collection, use and dissemination of any set of data related to conduct of elections or gathering of information about voters under Minnesota election laws, such as Minnesota Statute Chapter 200-211 and the Minnesota Government Data Practices Act under Minnesota Statute Chapter 13. References to "the Secretary of State" or "the Office of the Secretary of State" are collectively and inclusive of both Defendants in this present action.

JURISDICTION

4. The court's jurisdiction is proper under Minnesota's Government Data Practice Act, Minnesota Statutes § 13.01, et seq. Specifically, Minnesota Statutes § 13.08, subdivision 4, provides, in part, that "any aggrieved 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 and may recover costs and disbursements, including reasonable attorney's fees, as determined by the court."

5. The court's jurisdiction is also proper under Minnesota's Declaratory Judgment Act, Minnesota Statute § 555.01, et seq. Under the Act courts have the power to declare rights, status, and other legal relations, liberally construed and administered, whether or not further relief is or could be claimed. Under the Declaratory Judgments Act, courts have the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minnesota Statute § 555.01. The Declaratory Judgments Act "is remedial, intended to settle and to afford relief from uncertainty with respect to rights, status, and other legal relations." *Holiday Acres No. 3 v. Midwest Fed. Savs. & Loan Ass'n of Minneapolis*, 271 N.W.2d 445, 447 n. 2 (Minn.1978); see also Minn. Stat. § 555.12 (stating that the Act "is to be liberally construed and administered").

6. District courts of Minnesota are courts of general jurisdiction. Minn. Stat. § 484.01; Minn. Const. art. VI, § 3. Under Minnesota Rules of Civil Procedure, Rule 65, district courts also have the authority to grant injunctive relief.

7. Venue in Ramsey County is proper under Minnesota Statute § 13.08, subd. 3.

8. Plaintiffs seek declaratory relief, injunctive relief, and all other relief this Court deems just.

FACTUAL BACKGROUND

Data requested under the MGDPA is rejected by the Secretary contrary to Information Policy Division opinions.

9. On July 21, 2017, Andy Cilek, individually and as Executive Director of the Minnesota Voters Alliance (“MVA”), sent a letter to the Minnesota Office of the Secretary of State requesting data under the Minnesota Government Data Practices Act. Exhibit A.

10. The July 21, 2017 the Cilek and MVA data request included “access to and an electronic copy of data contained in the Statewide Voter Registration System.” Exhibit A.

11. The July 21, 2017 the Cilek and MVA data request sought data related to “[v]oter registration, status and voting history information on every Minnesota voter, whether active, inactive or deleted whom the secretary of state maintains or has maintained voter registration data from January 1st, 2016 to present.” Exhibit A.

12. The July 21, 2017 the Cilek and MVA data request also delineated the information requested as to voter data:

- Voter ID #
- First middle and last names and any suffix
- Address
- Phone number (if available)
- Year of birth
- Voter history indicating ballot type (i.e., in-person or absentee)
- Voter status (ie: active, inactive, deleted, challenged, etc)
- Reason for challenge or other status (i.e., felon, address, etc)
- All other data routinely provided on the public information CD (“detailed history for all elections”).

Exhibit A.

13. The Cilek and MVA data request did not ask for any master list. *See* Exhibit A.

14. The Cilek and MVA data request did not ask for any informational list. *See* Exhibit A.

15. The Cilek and MVA data request did not ask for social security numbers. *See* Exhibit A.

16. The Cilek and MVA data request did not ask for driver's license numbers. *See* Exhibit A.

17. The Cilek and MVA data request did not ask for any data not classified as non-public or private. *See* Exhibit A.

18. On August 1, 2017, the Office of the Secretary of State, through the Office's legal advisor Bert Black, sent a letter responding to the Cilek and MVA data request. Exhibit B.

19. The August 1, 2017 Secretary of State letter agreed that under the Cilek and MVA data request, and in accordance with Minnesota Statute § 201.091, subds. 4 and 5, Cilek and the MVA were entitled to data which includes the

- Voter name;
- Voter address;
- Year of birth of the voter;
- Voter history;
- Information on the voting districts in which the voter resides and is eligible to vote, and
- The telephone number, if available.

Exhibit B.

20. The August 1, 2017 Secretary of State letter further stated that “the other information you requested is not part of the Public Information List, and is therefore unavailable to you.” Exhibit B.

21. As a result of the August 1, 2017 Secretary of State letter, the Secretary of State denied the Cilek and MVA’s Data Practices Act request regarding information on a voter’s status whether active, inactive, deleted, or challenged or the reason for the challenge or other status, such as a felon or address issue, or other voter registration data maintained by the Secretary of State not classified as non-public or private. See Exhibit A.

22. The August 1, 2017 Secretary of State letter did not state that the information was not collected or not available, only that the data was unavailable to Mr. Cilek and the MVA because it was “not part of the Public Information List.” Exhibit B.

23. In an advisory opinion issued on September 14, 2000, Information Policy Analysis Division, Advisory Opinion 00-038, it stated that “pursuant to Minnesota Statutes, section 13.03, subdivision 1, the ‘challenge status’ of a voter as set forth on the polling place roster, are data that are accessible to the public.” Exhibit C.

24. The Information Policy Analysis Division (“IPAD”), presently known as the Data Practices Office, is part of the Minnesota Department of Administration.

25. The September 14, 2000, IPAD Advisory Opinion also stated that “Challenge status data are government data and are subject to the requirements of Chapter 13. Pursuant to the presumption set forth in section 13.03, subdivision 1, government data are public unless otherwise classified. Although section 201.091 does classify certain voter data as not public,

it does not classify challenge status data (active, challenged, felon, or guardianship) as not public.” Exhibit C.

26. On October 22, 2012, IPAD Advisory Opinion 12-016 issued another opinion that reiterated the Advisory Opinion of September 2000 (Advisory Op. 00-038):

The plain language of section 201.091, subdivision 4, makes clear that other voter information, in addition to the elements identified on the public information list, may be accessible by the public. Furthermore, while the master list is properly withheld from the public, the *Zenith City Weekly* was not requesting access to it. In fact, voter challenge status is not an element on the master list. The general presumption that government data are public is not reversed in the case of data on registered voters. Here, where there is no statutory classification of data, the data are presumptively public.

Exhibit D.

27. Under Minnesota Statute § 13.072, subd. 2, IPAD opinions “must be given deference by a court or other tribunal in a proceeding involving data.”

28. On January 14, 2015, IPAD wrote to Andy Cilek and the MVA regarding their request for an advisory opinion concerning the “right as a member of the public to gain access to certain data documenting the status of voters in Minnesota.” Exhibit E.

29. The January 14, 2015 IPAD letter to Mr. Cilek and the MVA did not issue an advisory opinion, but noted that the IPAD Commissioner “has opined on the subject in two previously issued opinions” and attached those opinions (IPAD Advisory Op. 00-038 and IPAD Advisory Op. 12-016). Exhibit E.

30. The January 14, 2015 IPAD letter to Mr. Cilek and the MVA also reiterated the actions of the Secretary of State regarding the accessibility of “challenge status” data

recorded on polling place rosters found in IPAD Advisory Opinion 00-038 (Exhibit C) and reflects the Secretary's deference to public data:

31. In Advisory Opinion 00-38, the then Secretary of State Mary Kiffmeyer asked the Commissioner "to opine on the accessibility of 'challenge status' data recorded on polling place rosters. Prior to requesting an advisory opinion, the Secretary had proposed a rule to resolve the apparent inconsistency in the treatment of the rosters. The administrative law judge (ALJ) hearing the proposed rule concluded that the portion of the proposed rule that restricted access to the roster conflicted with Minnesota Statutes, Chapter 13, and recommended that the SOS delete the reference to challenge status. The Commissioner agreed with the ALJ and concluded that the polling place roster was governed by Minnesota Statutes, section 201.091, and that neither that section nor any other provision of law classified challenge status as not public. Therefore, the data are classified as presumptively public." Exhibit E. See also Exhibit C.

32. The January 14, 2015 IPAD letter to Mr. Cilek and the MVA further stated, referencing and quoting from IPAD Advisory Opinion 12-016, that the Commissioner "concluded once again that voter status is a presumptively public element under Chapter 13":

As noted above, the plain language of section 201.091, subdivision 4, makes clear that other voter information, in addition to the elements identified on the public information list, may be accessible by the public The general presumption that government data are public is not reversed in the case of data on registered voters. Here, where there is no statutory classification of data, the data are presumptively public. (Emphasis added).

Exhibit E.

33. The January 14, 2015 IPAD letter to Mr. Cilek and the MVA further stated, quoting from IPAD Advisory Opinion 12-016 that in the opinion, “a newspaper requested access to the names and/or numbers of voters who were ineligible to vote and the reason for their ineligibility, i.e., their voter registration status.” The [IPAD] Commissioner wrote:

Read together, Minnesota Statutes 201.091, subdivision 4, and Minnesota Rule, part 8200.9120, provide that the data on the polling place roster (which includes voter challenge status) should be treated substantially the same as the data elements contained in the public information list, i.e., publically accessible for the purposes specified.

34. Minnesota Statute § 201.091, subd. 4 states in part: “The secretary of state may provide copies of the public information lists and other information from the statewide registration system for uses related to elections, political activities,”

35. Minnesota Statute § 201.091, subd. 4 also states that “[t]he county auditor shall make available for inspection a public information list which must contain the name, address, year of birth, and voting history of each registered voter in the county.”

36. Minnesota Rule, part 8200.9120 states that “[a]n individual who asks to inspect a polling place roster used on election day must provide the county auditor with identification and a written request stating the information required by Minnesota Statutes, section 201.091, subdivision 4. Before fulfilling the request for inspection, the auditor must conceal the month and day of birth of each person on the roster.”

37. At all times the Office of the Secretary was aware of IPAD Advisory Opinions 00-038 and 12-016.

CLAIM I

The Secretary of State's violation of and continuing violation of Minnesota Statute §13.03, subd. 2, requires remedies, including an injunction to prevent any further violation of Minnesota law.

38. All previous paragraphs are incorporated as if fully restated in support of the instant claim for relief.

39. The Office of the Secretary of State's refusal to provide the voter status or reason for the challenge or other status, or other voter registration data maintained by the Secretary of State not classified as non-public or private violates Minnesota Statute § 13.03, subd. 3(a).

40. Thus, the Office of the Secretary of State has wrongfully prevented the Plaintiffs Andy Cilek and the Minnesota Voters Alliance ("MVA") from receiving public data to which it is entitled under Minnesota law.

41. The Office of the Secretary of State's refusal to provide the voter status, reason for the challenge or other status or other voter registration data maintained by the Secretary of State not classified as non-public or private, does not conform to the written opinions of the IPAD Commissioner identified as IPAD Advisory Opinions 00-038 and 12-016 (Exhibits C and D).

42. The Office of the Secretary of State's refusal to conform to the written opinions of the IPAD Commissioner identified as IPAD Advisory Opinions 00-038 and 12-016 is willful conduct.

43. The Office of the Secretary of the State is also aware of Minnesota Statute § 13.072, subd. 2 which otherwise protects the Office from compensatory or exemplary

damages and award of attorney fees if the Office acts in conformity of written IPAD opinions:

A government entity, members of a body subject to chapter 13D, or person *that acts in conformity with a written opinion of the commissioner issued to the government entity, members, or person or to another party* is not liable for compensatory or exemplary damages or awards of attorneys fees in actions for violations arising under section 13.08 or 13.085, or for a penalty under section 13.09 or for fines, awards of attorney fees, or any other penalty under chapter 13D.

Emphasis added.

44. The Office of the Secretary of State has not acted in conformity of the IPAD Advisory Opinions written opinions of the IPAD Commissioner identified as IPAD Advisory Opinions 00-038 and 12-016 (Exhibits C and D).

45. Moreover, Minnesota Statute § 13.072, subd. 2, states that IPAD opinions “must be given deference by a court or other tribunal in a proceeding involving the data.”

46. Because the Office of the Secretary of State has violated and is continuing to violate the Minnesota Government Data Practices Act (“MGDPA”), this Court should enjoin the Office, under Minnesota Statute § 13.08, subd. 2, from using or employing any practices which violate the MGDPA.

47. Additionally, this Court should declare the Office of the Secretary of State liable for violating the MGDPA, and award Plaintiffs Andy Cilek and the MVA compensatory or exemplary damages and attorney fees and costs for violating the MGDPA.

CLAIM II

Action to Compel Compliance

The Secretary of State should be compelled to provide the data requested.

48. All previous paragraphs are incorporated as if fully restated in support of the instant claim for relief.

49. The Office of the Secretary of State's refusal to provide the voter status or reason for the challenge or other status, or other voter registration data maintained by the Secretary of State not classified as non-public or private violates Minnesota Statute § 13.03, subd. 3(a).

50. Thus, the Office of the Secretary of State has wrongfully prevented Plaintiffs Andy Cilek and the Minnesota Voters Alliance ("MVA") from receiving public data to which it is entitled under Minnesota law.

51. Because the Office of the Secretary of State has violated and continues to violate the Minnesota Government Data Practices Act ("MGDPA"), this Court should enter an order to compel its compliance with the MGDPA under Minnesota Statute § 13.08, subd. 4, and provide to the Plaintiffs Andy Cilek and the MVA the requested data, inclusive of the voter status or reason for the challenge or other status, or other voter registration data maintained by the Secretary of State not classified as non-public or private.

52. The Office of the Secretary of State has not acted in conformity of the IPAD Advisory Opinions written opinions of the IPAD Commissioner identified as IPAD Advisory Opinions 00-038 and 12-016 (Exhibits C and D).

53. At all times, the Office of the Secretary of State knew of the IPAD Advisory Opinions 00-038 and 12-016 (Exhibits C and D).

54. Moreover, Minnesota Statute § 13.072, subd. 2, states that IPAD opinions “must be given deference by a court or other tribunal in a proceeding involving the data.”

55. The Office of the Secretary of State’s refusal to conform to the written opinions of the IPAD Commissioner identified as IPAD Advisory Opinions 00-038 and 12-016 is willful conduct.

56. Minnesota Statute § 13.072, subd. 2, states that IPAD opinions “must be given deference by a court or other tribunal in a proceeding involving the data.”

57. Further, in an action to compel compliance under Minnesota Statute § 13.08, subd. 4(a), “[f]or actions under this subdivision, in addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved 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 and may recover costs and disbursements, including reasonable attorney's fees, as determined by the court. ... If the court issues an order to compel compliance under this subdivision, the court may impose a civil penalty of up to \$1,000 against the government entity.”

58. Minnesota Statute § 13.08, subd. 4(6)(c) states that “[t]he court shall award reasonable attorney fees to a prevailing plaintiff who has brought an action under this subdivision if the government entity that is the defendant in the action was also the subject of a written opinion under section 13.072 and the court finds that the opinion is directly related to the cause of action being litigated and that the government entity did not act in conformity with the opinion.”

59. Because the Office of the Secretary of State has violated and continues to violate the MGDPA, this Court should enter an order to compel the Office of the Secretary of State's compliance under Minnesota Statute § 13.08, subd. 4.

60. This Court should also hold the Office of the Secretary of State liable for violating the MGDPA and award the Plaintiffs Andy Cilek and the MVA compensatory or exemplary damages and award attorney fees and costs to Mr. Cilek and the MVA because the Defendants violated the MGDPA.

CLAIM III

Declaratory Relief

This Court should settle the controversy and afford relief from uncertainty that Andy Cilek and the MVA are entitled to the data requested under the MGDPA.

61. All previous paragraphs are incorporated as if fully restated in support of the instant claim for relief.

62. The Plaintiffs Andy Cilek and the Minnesota Voters Alliance ("MVA") are entitled under Minnesota's Declaratory Judgment Act, Minnesota Statute §§ 555.02, et seq., to a judicial decree of their rights.

63. The Declaratory Judgment Act is applicable to this dispute and was enacted to enable Andy Cilek and the MVA to assert their rights and seek a remedy or remedies as to the Office of the Secretary of State's wrongs as provided under Minnesota Statute § 555.12: "[t]his chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered."

64. The Minnesota Supreme Court stated that declaratory judgment actions were created “to allow parties to determine certain rights and liabilities pertaining to an actual controversy before it leads to repudiation of obligations, invasion of rights, and the commission of wrongs.” *Culligan Soft Water Serv. of Inglewood, Inc. v. Culligan Int'l Co.*, 288 N.W.2d 213, 215–16 (Minn. 1979).

65. Under Minnesota’s Government Data Practices Act (“MGDPA”), Andy Cilek and the MVA assert that they have a statutory right to the data they have requested, including, but not limited to, the voter status or reason for the challenge or other status, or other voter registration data maintained by the Secretary of State not classified as non-public or private.

66. The Office of the Secretary of State refuses to provide the data requested. It has specifically stated that “[t]he other information you requested is not part of the Public Information List, and is therefore unavailable to you.” (Exhibit B).

67. A controversy exists: the parties disagree regarding Mr. Cilek’s and the MVA’s rights to access to the requested data under the MGDPA from the Secretary of State.

68. This Court should settle this controversy and afford declaratory relief from the uncertainty and insecurity with respect to Mr. Cilek’s and the MVA’s rights to the requested information under the MGDPA by granting a declaratory judgment stating that the Office of the Secretary of State is required to grant Mr. Cilek and the MVA immediate access to the requested public data.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs Andrew Cilek and the Minnesota Voters Alliance respectfully request this Court to enter judgment their favor, including, but not limited to:

1. An order determining and declaring that the Plaintiffs Andrew Cilek and the Minnesota Voter's Alliance have a statutory right to obtain and have access to all public data requested, including the voter status or reason for the challenge or other status, or other voter registration data maintained by the Secretary of State not classified as non-public or private, according to the provisions of the Minnesota Government Data Practices Act;
2. An order enjoining the Minnesota Office of the Secretary of State, including Secretary of State Steve Simon, from refusing to provide all public data requested by the Plaintiffs Andrew Cilek and the Minnesota Voters Alliance, including the voter status or reason for the challenge or other status, or other voter registration data maintained by the Secretary of State not classified as non-public or private, according to the provisions of the Minnesota Government Data Practices Act;
3. An order compelling the Office of the Secretary of State to immediately provide all public data requested by the Plaintiffs Andrew Cilek and the Minnesota Voters Alliance, including the voter status or reason for the challenge or other status, or other voter registration data maintained by the Secretary of State not classified as non-public or private, according to the provisions of the Minnesota Government Data Practices Act;

4. Ordering the Minnesota Office of the Secretary of State and Secretary of State Steve Simon to pay all compensatory and exemplary fines or other civil penalties required under statutory laws including the Minnesota Government Data Practices Act for violations of the law as this Court may determine;
5. Ordering all other equitable and legal relief to which the Plaintiffs Andrew Cilek or the Minnesota Voters Alliance or both are entitled;
6. Granting to the Plaintiffs Andrew Cilek and the Minnesota Voters Alliance all attorney fees, costs, and disbursements allowed under the law; and
7. Any and all other relief the Plaintiffs Andrew Cilek or Minnesota Voters Alliance or both this Court deems just.

Dated: August 10, 2017.

/s/Erick G. Kaardal
Erick G. Kaardal, 229647
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, Minnesota 55402
Telephone: 612-341-1074
Facsimile: 612-341-1076
Email: kaardal@mklaw.com
Attorneys for Plaintiffs

ACKNOWLEDGMENT

The party(ies) by their attorney acknowledge that sanctions may be imposed under Minnesota Statute § 549.211, that by the undersigned's personal knowledge, information and belief, formed after a reasonable inquiry under the circumstances that the matter or document served upon the opposing party(ies) or attorney(ies) serve a proper purpose warranted by existing law or with merit for the extension, modification, or reversal of existing law, or to establish new law, and that allegations, contentions, or defenses are supportable after further investigation or discovery is made, and any denials of factual contentions are warranted specifically or upon information and belief.

Dated: August 10, 2017

/s/ Erick G. Kaardal
Erick G. Kaardal



Minnesota Voters Alliance ■ P.O. Box 4602 ■ Saint Paul, MN 55104
www.mnvoters.org ■ info@mnvoters.org ■ 612-990-2533

July 21, 2017

Office of the Secretary of State
180 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

Attn: Responsible Authority
Re: Data Practices Act Request for Information

To whom it concerns,

I am writing to you as the responsible authority in the office of the secretary of state for compliance with Minnesota's Data Practices Act.

Pursuant to Minnesota Statutes, chapter 13, this is a formal request for access to non-private government data maintained by the office of the secretary of state.

If there is a different designee to whom I should direct my data request, please inform me promptly.

I request access to and an electronic copy of data contained in the Statewide Voter Registration System:

Voter registration, status and voting history information on every Minnesota voter, whether active, inactive or deleted whom the secretary of state maintains or has maintained voter registration data from January 1st, 2016 to present.

The information requested includes, but is not limited to the following voter data:

- Voter ID #
- First middle and last names and any suffix
- Address
- Phone number (if available)
- Year of birth
- Voter history indicating ballot type (ie: in-person or absentee)
- Voter status (ie: active, inactive, deleted, challenged, etc)
- Reason for challenge or other status (ie: felon, address, etc)
- All other data routinely provided on the public information CD ("detailed history for all elections")

I request the information be provided electronically in a "flat file" format, such as csv, xls, xlsx.

I understand that there may be a fee for providing this information. Please respond promptly with the charge to be assessed.

If you determine that you will redact or withhold any otherwise responsive data, please promptly inform me in writing of the specific statutory basis for your denial.

EXHIBIT A

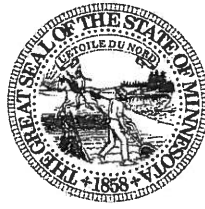
If you have any questions or need clarification of this request, please contact me. I can be reached at info@mnvoters.org or 612-990-2533.

Thank you for your expeditious response.

Sincerely,

A handwritten signature in black ink that reads "Andrew Cilek". The signature is written in a cursive, flowing style.

Andy Cilek,
Executive Director
Minnesota Voters Alliance



STATE OF MINNESOTA
Office of Minnesota Secretary of State
Steve Simon

August 1, 2017

Andrew Cilek
Minnesota Voters Alliance
P.O. Box 4602
Saint Paul MN 55104

Dear Mr. Cilek,

Thank you for your letter and request dated July 21, 2017, which requests various items of election data. A copy of your letter is attached.

You asked for a variety of data, some of which you have requested in the past.

Pursuant to section 201.091, subds. 4 and 5, you, as a registered Minnesota voter, are entitled only to the public information list. The information on the public information list includes the voter name, voter address, year of birth of the voter, voting history, information on the voting districts in which the voter resides and is eligible to vote, and the telephone number, if available. The information is available only for the limited purposes of elections administration, political activity, and law enforcement. The Minnesota Court of Appeals has reaffirmed this in the case of McGrath v. Minnesota Secretary of State, A11-613, "But by statute, the only list available for inspection by members of the public is the public information list." (Id. at 11).

The other information you requested is not part of the Public Information List, and is therefore unavailable to you.

We can provide you with a current statewide public information list for the fee of \$46, should you wish to purchase that data.

Thank you for your request.

Best regards,

A handwritten signature in black ink, appearing to read "B. Black".

BERT BLACK
Legal Advisor
Office of the Secretary of State

Minnesota Department of Administration Advisory Opinion 00-038

This is an opinion of the Commissioner of Administration issued pursuant to section 13.072 of Minnesota Statutes, Chapter 13 - the Minnesota Government Data Practices Act. It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

For purposes of simplification, the information presented by the government entity that requested this opinion are presented in summary form. Copies of the complete submissions are on file at the offices of IPA and, except for any data that are not public, are available for public access.

On July 14, 2000, IPA received a letter dated July 13, 2000, from Mary Kiffmeyer, Secretary of the State of Minnesota. In her letter, Secretary Kiffmeyer asked the Commissioner to issue an advisory opinion regarding the classification of certain voter registration data.

A summary of the facts is as follows. Secretary Kiffmeyer related that Minnesota Statutes, section 201.091, governs access to registered voter lists. Pursuant to subdivision 4 of section 201.091, every county auditor must make a public information list available for inspection. This public information list must contain the name, address, telephone number (if provided), year of birth, and voting history of each registered voter in the county. Any individual wishing to inspect the public list must provide identification to the county auditor and state in writing that any information obtained from the list will not be used for purposes unrelated to elections, political activities, or law enforcement.

Secretary Kiffmeyer further related that pursuant to Minnesota Statutes, section 204C.10, each registered voter, before voting on election day, must sign a polling place roster. The polling place roster is a list of registered voters who live in a particular precinct. It contains the voter's name, address, entire date of birth, and voter registration status. No statute or rule specifically discusses the inspection of polling place rosters. However, because a roster is a list of registered voters produced from the statewide voter registration system, the Secretary of State's Office has held the opinion that the provisions of Minnesota Statutes, section 201.091, govern the inspection of the roster.

To resolve any confusion or inconsistency regarding inspection of polling place rosters, the Secretary of State's Office recently proposed a rule that Administrative Law Judge Barbara Neilson heard on July 11, 2000. The proposed Rule states:

An individual who asks to inspect a polling place roster used on election day must provide the county auditor with identification and a written request stating the information required by Minnesota Statutes 201.091, subdivision 4. Before fulfilling the request for inspection, the auditor must conceal (1) the month and day of birth and challenge status of each person on the roster; and 2) all information concerning a registrant under court-ordered protection who has submitted a written request for omission under Minnesota Statutes 201.091, subdivision 4.

Judge Neilson issued her report on August 11, 2000. She concluded:

The Administrative Law Judge finds that the majority of the proposed rule is needed and reasonable to effectuate the requirements of Minnesota Statutes 201.091. Subdivisions 4 and 5 of that statute, taken together, authorize the Secretary of State to withhold from public inspection the month and day of birth of a registered voter. Subdivision 4 of that statute further authorizes the Secretary to withhold from the public information list the name of any registered voter placed under court-ordered protection if the voter so requests and provides a copy of the court order. The Administrative Law Judge concludes, however, that the portion of the proposed rules requiring auditors to conceal a voter's "challenge status" from public inspection conflicts with [Chapter 13]....To cure this defect, the Administrative Law Judge suggests that the Secretary of State revise the language of the second sentence of the proposed rule [sic] delete the reference to challenge status.

Issues:

In her request for an opinion, Secretary Kiffmeyer asked the Commissioner to address the following issues:

1. Is the inspection of polling place rosters governed by Minnesota Statutes, section 201.091?
2. Is the "challenge status" of a voter as set forth on the polling place roster, data that are or are not accessible to the public if the Secretary of State's proposed rule, 8200.9120 - Inspection of Polling Places Rosters - is adopted

Discussion:

Issue 1

At this time, Minnesota Statutes, section 201.091, does not state explicitly that it regulates polling place rosters. However, the Commissioner agrees that because the roster is a list of registered voters produced from the statewide voter registration system - which is governed by section 201.091 - it is appropriate that section 201.091 control access to the rosters. Applying the same access standards currently in effect for registered voter lists to polling place rosters will ensure consistency.

The Commissioner would like to add, however, that the best way to eliminate any possible confusion over the issue of access to polling place rosters is for the Legislature to amend section 201.091 so that it clearly governs rosters.

Issue 2

In her opinion request, Secretary Kiffmeyer provided detail about "challenge" or "voter registration" status. She wrote,

"...the status may be active'; challenged' (usually due to residency questions); felon' (disfranchised until the restoration of voting rights); or guardianship' (disfranchised until the guardianship of the person is ended)."

In her report, Judge Neilson, reviewed the three types of data in the proposed rule for which the Secretary proposed protection. The Judge noted that language in section 201.091 specifically authorizes the Secretary to withhold birth day and birth month data, and data about a registrant under court-ordered protection. She further noted that there is no statutory provision protecting data relating to "challenge" status. She concluded, therefore, based on the presumption that all government data are public unless otherwise classified (see Minnesota Statutes, section 13.03, subdivision 1), that protection of the "challenge status" data would conflict with Chapter 13.

The Commissioner agrees with Judge Neilson's conclusion on this matter and opines that "challenge status" data are public. Challenge status data are government data and are subject to the requirements of Chapter 13. Pursuant to the presumption set forth in section 13.03, subdivision 1, government data are public unless otherwise classified. Although section 201.091 does classify certain voter data as not public, it does not classify challenge status data (active, challenged, felon, or guardianship) as not public. Therefore, based on the presumption set forth in section 13.03, subdivision 1, the Commissioner opines that the challenge status data are public.

Opinion:

Based on the facts and information provided, my opinion on the issues that Secretary Kiffmeyer raised is as follows:

1. The inspection of polling place rosters is appropriately governed by Minnesota Statutes, section 201.091.
2. Pursuant to Minnesota Statutes, section 13.03, subdivision 1, the "challenge status" of a voter as set forth on the polling place roster, are data that are accessible to the public.

Signed:

David F. Fisher
Commissioner

Dated: September 14, 2000

© Copyright 2014. Information Policy Analysis Division, [Minnesota Department of Administration](#)

201 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155 • Phone: 651-296-6733 or 800-657-3721 • info.ipad@state.mn.us • [Contact Us](#) • [Advisory Opinions RSS](#)



Advisory Opinion 12-016

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2012). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On September 7, 2012, the Information Policy Analysis Division (IPAD) received a letter, dated August 20, 2012, from Jennifer Martin-Romme of the *Zenith City Weekly*. In her letter, Ms. Martin-Romme asked the Commissioner to issue an advisory opinion about the classification of certain data administered by St. Louis County.

IPAD, on behalf of the Commissioner, wrote to Gary Eckenberg, Deputy St. Louis County Administrator and Data Practices Compliance Official for the County, in response to Ms. Martin-Romme's request. The purposes of this letter, dated September 14, 2012, were to inform him of Ms. Martin-Romme's request and to ask him to provide information or support for the County's position. In an email dated October 10, 2012, Mr. Eckenberg wrote, "I believe you have the position of the St. Louis County Auditor and the St. Louis County Attorney regarding this Data Practices Information Request, as conveyed to the Zenith City Weekly through earlier communications." IPAD also solicited comments from Secretary of State, Mark Ritchie. Bert Black, Legal Advisor to the Secretary of State, responded on October 5, 2012, in a letter dated the same.

A summary of the facts follows. Ms. Martin-Romme wrote in her opinion request:

On April 4, we called St. Louis County Director of Elections Patricia Stollee [sic] to request "the names and/or number of voters in Morse Township whose eligibility to vote was challenged by the St. Louis County Board of Elections with regards to the March 13, 2012 election" and "the reason(s) their eligibility to vote was challenged." Ms. Stollee [sic] asked us to send her the request in writing, which we did on April 9.

...

On April 11, Ms. Stollee [sic] responded in writing that the data are not public pursuant to [Minnesota Statutes, section] 201.091.

...

On April 23, we resubmitted our request, citing [Advisory Opinion 00-038]. On May 3, we received a reply from Deputy Administrator Gary Eckenberg, indicating that the county attorney had denied our request: "[I]t remains the opinion of the County Attorney that Minn. Stat. 201.091

prohibits the release of the information you have requested. The statute has been amended several times since the IPAD opinion you provided was written.”

The *Zenith City Weekly* resubmitted its request on July 2, 2012, asking for summary data. Mr. Eckenberg responded in a letter dated July 10, 2012, stating, “my May 3 response to your initial Data Practices Information Request represents St. Louis County’s final position on this matter.”

Issue:

Based on Ms. Martin-Romme’s opinion request, the Commissioner agreed to address the following issue:

Pursuant to Chapter 13, did St. Louis County respond appropriately to a request for the names and/or numbers of voters in Morse Township whose eligibility to vote was challenged and the reasons for those challenges, by stating that the data were not public under Minnesota Statutes, section 201.091?

Discussion:

Pursuant to Minnesota Statutes, section 13.03, subdivision 1, government data are public unless otherwise classified.

Minnesota Statutes, section 201.091, subdivision 1, provides:

Each county auditor shall prepare and maintain a current list of registered voters in each precinct in the county which is known as the master list... It must show the name, residence address, and date of birth of each voter registered in the precinct. The information contained in the master list may only be made available to public officials for purposes related to election administration, jury selection, and in response to a law enforcement inquiry concerning a violation of or failure to comply with any criminal statute or state or local tax statute.

Section 201.091, subdivision 1, does not classify data, instead it restricts public access to the “master list.” Subdivision 4, however, refers to other data in the statewide registration system that are accessible to the public:

The county auditor shall make available for inspection a public information list which must contain the name, address, year of birth, and voting history of each registered voter in the county. The telephone number must be included on the list if provided by the voter. The public information list may also include information on voting districts... The secretary of state may provide copies of the public information lists *and other information from the statewide registration system* for uses related to elections, political activities, or in response to a law enforcement inquiry from a public official concerning a failure to comply with any criminal statute or any state or local tax statute.

... Requests to examine or obtain information from the public information lists *or the statewide registration system* must be made and processed in the manner provided in the rules of the secretary of state. [Emphasis added.]

The plain language of section 201.091, subdivision 4, anticipates providing access to data on the public information lists, “and other information from the statewide registration system.” Access to the “master list” is restricted, however, not all of the data in the statewide registration system are treated thus. The statute provides that the Secretary of State will provide rules regarding access to the data.

In 2000, the Commissioner opined on the classification of voter challenge status data that were the subject of a rule then *proposed* by the Secretary of State. (See Advisory Opinion 00-038.) Pursuant to Minnesota Statutes, section 204C.10, voters must sign a polling place roster, which is a list of voters within a given precinct. The polling place roster includes: the voter’s name, address, entire date of birth, and voter registration status. Voter registration status includes, “‘active’; ‘challenged’ (usually due to residency questions); ‘felon’ (disfranchised until the restoration of voting rights); or ‘guardianship’ (disfranchised until the guardianship of the person is ended).” At that time, no statute or rule specifically addressed the issue of inspecting polling place roster data. The proposed rule included a provision to deny access to voter challenge status. After a hearing on the rule, an Administrative Law Judge concluded that voter challenge status data are public based on the general presumption. In 00-038, the Commissioner agreed.

The Secretary of State subsequently promulgated Minnesota Rules, part 8200.9120, which provides:

An individual who asks to inspect a polling place roster used on election day must provide the county auditor with identification and a written request stating the information required by Minnesota Statutes, section 201.091, subdivision 4. Before fulfilling the request for inspection, the auditor must conceal the month and day of birth of each person on the roster.

Read together, Minnesota Statutes, section 201.091, subdivision 4, and Minnesota Rule, part 8200.9120, provide that the data on the polling place roster (which includes voter challenge status) should be treated substantially the same as the data elements contained in the public information list, i.e., publically accessible for the purposes specified.

Mr. Black, on behalf of the Secretary of State, argues that, *McGrath v. Minnesota Secretary of State*, No. 15-3500-21801-HV (Minn. Ct. App. Nov. 21, 2011) (unpublished), answers the question at issue in this opinion: “[w]e believe ... that election data, in the wake of the *McGrath* opinion, is private unless otherwise designated.” The Commissioner respectfully disagrees. (Before discussing this unpublished opinion, it is important to note that pursuant to Minnesota Statutes, section 480A.08, subdivision 3(c), unpublished opinions of the Court of Appeals are not precedential.)

McGrath involved a Help America Vote Act (HAVA) complaint against the Secretary of State. One of the issues on appeal was whether the relators had adequate opportunity for discovery. Specifically, they wanted access to a complete master list of voting history for each registered voter. (While voting history is an element of the public information list, the public information list is not as “complete” as the master list, since some voter information may be withheld or removed from the public information list based on various factors or circumstances.) The Court stated, “[i]t was relators’ wish to have access to the private master list. But by statute the only

list available for inspection by members of the public is the public information list.” [Emphasis added.]

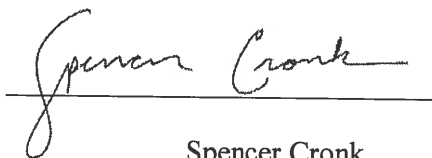
As noted above, the plain language of section 201.091, subdivision 4, makes clear that other voter information, in addition to the elements identified on the public information list, may be accessible by the public. Furthermore, while the master list is properly withheld from the public, the *Zenith City Weekly* was not requesting access to it. In fact, voter challenge status is not an element on the master list. The general presumption that government data are public is not reversed in the case of data on registered voters. Here, where there is no statutory classification of data, the data are presumptively public.

The Commissioner reiterates his comments in 00-038, that the best way to eliminate confusion over access to data maintained in the statewide registration system is for the Legislature to provide statutory clarity.

Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issue Ms. Martin-Romme raised is as follows:

Pursuant to Chapter 13, St. Louis County did not respond appropriately to a request for the names and/or numbers of voters in Morse Township whose eligibility to vote was challenged and the reasons for those challenges, by stating that the data were not public under Minnesota Statutes, section 201.091.

A handwritten signature in cursive script, reading "Spencer Cronk", written over a horizontal line.

Spencer Cronk
Commissioner

October 22, 2012



Information Policy
Analysis Division

201 Administration
Building
50 Sherburne Avenue
St. Paul, MN 55155

Vox: 651.296.6733
800.657.3721
Fax: 651.205.4219

January 14, 2015

Andrew Cilek
Minnesota Voters Alliance
P.O. Box 4602
Saint Paul, MN 55104

By email

Re: Your request for a Commissioner of Administration advisory opinion

Dear Mr. Cilek:

On January 6, 2015, IPAD received your request for an advisory opinion. I am writing to inform you that the Commissioner will not be moving forward with an opinion on the issues you raised regarding your data request to the Office of the Secretary of State (SOS). However, pursuant to Minnesota Statutes, section 13.072, subdivision 2, both you and the SOS may rely on previously-issued advisory opinions. That subsection provides, in part:

A government entity, members of a body subject to chapter 13D, or person *that acts in conformity with a written opinion of the commissioner issued* to the government entity, members, or person or *to another party* is not liable for compensatory or exemplary damages or awards of attorneys fees in actions for violations arising under section 13.08 or 13.085, or for a penalty under section 13.09 or for fines, awards of attorney fees, or any other penalty under chapter 13D. (Emphasis added.)

You asked about your right as a member of the public to gain access to certain data documenting the status of voters in Minnesota. The Commissioner has opined on this subject in two previously-issued opinions. Those opinions are attached here.

In Advisory Opinion 00-038, the Secretary of State asked the Commissioner to opine on the accessibility of “challenge status” data recorded on polling place rosters. Prior to requesting an advisory opinion, the Secretary had proposed a rule to resolve the apparent inconsistency in the treatment of the rosters. The administrative law judge (ALJ) hearing the proposed rule

Minnesota Department of Administration

EXHIBIT E

Cilek/SOS

concluded that the portion of the proposed rule that restricted access to the roster conflicted with Minnesota Statutes, Chapter 13, and recommended that the SOS delete the reference to challenge status. The Commissioner agreed with the ALJ and concluded that the polling place roster was governed by Minnesota Statutes, section 201.091, and that neither that section nor any other provision of law classified challenge status as not public. Therefore, the data are classified as presumptively public.

In Advisory Opinion 12-016, the Commissioner concluded once again that voter status is a presumptively public element under Chapter 13. In that opinion, a newspaper requested access to the names and/or numbers of voters who were ineligible to vote and the reason for their ineligibility, i.e., their voter registration status. The Commissioner wrote:

Read together, Minnesota Statutes, section 201.091, subdivision 4, and Minnesota Rule, part 8200.9120, provide that the data on the polling place roster (which includes voter challenge status) should be treated substantially the same as the data elements contained in the public information list, i.e., publically accessible for the purposes specified.

...

As noted above, the plain language of section 201.091, subdivision 4, makes clear that *other voter information, in addition to the elements identified on the public information list, may be accessible by the public....* The general presumption that government data are public is not reversed in the case of data on registered voters. Here, where there is no statutory classification of data, the data are presumptively public. (Emphasis added.)

I hope this information is helpful to both you and the Office of the Secretary of State. If either of you has any questions on the above, please feel free to contact me by phone at 651-201-2502 or email at taya.moxley-goldsmith@state.mn.us.

Sincerely,

LAURIE BEYER-KROPUENSKE
DIRECTOR, COMMUNITY SERVICES DIVISIONS



By: Taya Moxley-Goldsmith
Policy Analyst