

RICHARD HODSDON
ATTORNEY AT LAW

2435 White Pine Way

STILLWATER, MN. 55082

EMAIL: rick_hodsdon@yahoo.com

TELEPHONE/ TEXT
651-491-5900

January 26, 2025

Senate committee on Judiciary and Public Safety
c/o Angela.cook@mnsenate.gov

RE: S.F. 730

Senators:

I apologize for not being able to appear before you in person as you consider S.F. 730, which would be a good first step in removing the veil of secrecy that surrounds the least transparent office of the executive branch of Minnesota state and local government. Because Minn. Stat. 13.65, when read with the 4-3 decision of the Minnesota Supreme Court in Energy Policy Advocates v. Ellison, 980 N.W.2d 146 (Minn. 2022) the Office of the Attorney General has been able to, and does, hide vast amounts of important government data from the public. As I will describe in this letter, I have experienced this firsthand on a topic that I believe is important to public safety and the public's confidence in our criminal justice system.

My experience with how the Attorney General uses Minn. Stat. 13.65 to hide its activities from the public began in the spring of 2024. Even though I have retired from my position as a government attorney and prosecutor, positions I held for over forty years, I continue to represent and be involved in several law enforcement and public safety entities, including serving as general counsel to them. Having said that, I hasten to add that this letter and the views I express here are solely my own and I do not represent nor speak for any organization that I am associated with whether it be a law enforcement group or a public sector entity. However, because I was contacted about the activities of the Office of the Attorney General and in particular its Conviction Review Unit (CRU), I began to explore what that unit does and how it operates.

From public sources I learned the CRU is embedded in the Office of Attorney General and is financed with a combination of public state tax dollars and a federal grant it obtained in working with a private not for profit entity that seeks to challenge and sometimes undo criminal convictions, including convictions in which the Office of Attorney General itself represented the State of Minnesota on appeals taken to the Minnesota Supreme Court. In media releases I learned much about the Attorney General's CRU, including that it solicited applications from convicted criminals through

a variety of avenues, including the state prison system, to have their convictions reviewed by this unit with the goal of potentially challenging and getting those convictions set aside. The Attorney General's Office indicates it has received about 1000 such applications and their own media releases trumpet that they are actively pursuing several cases to set aside convictions that were duly entered and affirmed on appeal. This caused me to want to know more about the operation of the CRU in general and those 1000 cases so on April 24, 2024, I made an extensive data request for the same.

Over the next several months I did get access to several thousand pages of records but in what is described as its final response dated December 20, 2024, I was denied access to every single specific case record without regard to whether they were closed or not. If this data is classified as a closed criminal investigation in every other place in state and local government it would be classified as public data under Minn. Stat. 13.82, subd. 7. If it was a closed civil case it would also be classified as presumptively public data under Minn. Stat. 13.39. The Attorney General uses Minn. Stat. 13.65 to deny any public access to these files.

What makes this denial particularly troubling from a public safety and confidence in our criminal justice system perspective is what was revealed in the data I did get. I received data that shows in some cases the Attorney General quietly closed a case because the investigation that was conducted such as DNA evidence, was even more supportive of the convicted criminal's guilt. Since I have read many statements from the Attorney General, including a letter signed by General Ellison and dated January 10, 2024, in which he opposed then H.F. 2480, which is this same bill, in which he described his office as a "law-enforcement agency" (page 1, paragraph 2), it is astonishing to me that a law enforcement agency that has evidence of a convicted criminal's guilt would bury it behind a cloak of secrecy rather than proactively share it with law enforcement and the prosecutor and the public upon request. If the Attorney General hides this data from the public, what else is being hidden? Of course, by definition we do not know and this bill if enacted might give us a start at finding out.

As I said in my introduction, this bill is a good start at public accountability in a very powerful office. Frankly, an even better option would be to repeal Minn. Stat. 13.65 in its entirety because everything that it should be appropriately used for is already allowed by other statutes such as Minn. Stat. 13.37, 13.39, 13.393 and 13.82 to name a few. I was a government attorney for over forty years and the lack of the equivalent to Minn. Stat. 13.65 never impeded me from effectively representing the public interest. I hope the Attorney General has at least as good of lawyers working in that office as I was. Could it be the Attorney General uses this lack of transparency for other reasons?

I have been involved in legislative matters for those same forty-plus years and I understand that politics is the art of the possible. I also learned long ago not to let best be used to defeat better, so as much as I would like to see it go further, I encourage you to move S.F. 730 forward.

s/Richard Hodsdon