

Minnesotans for Open Government (MNGO)¹
Written Testimony of Matt Ehling, MNGO board member
March 3, 2025

Dear Chair Latz, Lead Limmer, and members of the Senate Judiciary and Finance Committee,

The board members of Minnesotans for Open Government endorse SF 794, and thank Senator Limmer for bringing the bill forward.

SF 794 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 13.08." 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,

¹ Formerly Minnesota Coalition on Government Information

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:

... “[A] danger signal we consider is the failure of the MPCA to document its request that the EPA delay submitting written comments on the draft permit or the EPA concerns regarding the draft permit. The MPCA deleted evidence of its request to the EPA, and the administrative record does not explain the reasoning for the request.”

... “According to the district court, the MPCA “knew” that if the EPA submitted written comments during the public comment period, “the comments would become part of the administrative record” and “the public would find out” about “the EPA’s specific concerns about the permit.”

... “We conclude that the general lack of documentation of the MPCA’s communications with the EPA—the federal agency overseeing compliance with the CWA—is an irregularity in procedure that constitutes a danger signal of arbitrary and capricious decision-making.”

- *In RE Denial* (Minn. 2023)

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

SF 794, which simply recognizes and codifies what the Minnesota Supreme Court held in the *Halva* case.

Sincerely,

Matt Ehling
Board Member
Minnesotans for Open Government