

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

AMERICAN CIVIL LIBERTIES UNION OF
MINNESOTA; and NAACP OF
MINNEAPOLIS,

Court File No.: _____

Judge: _____

Plaintiffs,

v.

COMPLAINT

MINNESOTA DEPARTMENT OF PUBLIC
SAFETY; MONA DOHMAN, in her capacity
as Commissioner of Public Safety;
MINNESOTA BUREAU OF CRIMINAL
APPREHENSION, a division of the
Minnesota Department of Public Safety; and
DREW EVANS, in his capacity as
Superintendent of Criminal Apprehension,

Defendants.

For their Complaint, Plaintiffs American Civil Liberties Union of Minnesota (“ACLU”) and the NAACP of Minneapolis (“NAACP”) (collectively, “Plaintiffs”), state and allege as follows:

INTRODUCTION

Almost three months ago, officers from the Minneapolis Police Department shot and killed an unarmed African American man named Jamar Clark. Conflicting accounts of Clark’s encounter with the officers soon arose. Witnesses stated that Clark was shot in the head while handcuffed and lying on the ground, whereas officials representing the police department (who did not witness the shooting) maintain that the officers’ actions were justified. Despite this uncertainty and multiple requests from Plaintiffs and the public, state officials have refused to disclose video footage that could potentially shed light on the incident (the “Videos”).

Plaintiffs therefore ask this Court to require the Minnesota Department of Public Safety; Mona Dohman, in her capacity as Commissioner of Public Safety; the Bureau of Criminal Apprehension, a division of the Minnesota Department of Public Safety; and Drew Evans, in his capacity as Superintendent of Criminal Apprehension (collectively, “Defendants”) to comply with the Minnesota Government Data Practices Act (“MGDPA”) and release the Videos. Any and all Videos of the incident are public pursuant to Minn. Stat. § 13.03, subd. 1, and Minn. Stat. § 13.82, subd. 2, 6, and must be released as soon as possible. Moreover, the Videos should be released pursuant to Minn. Stat. § 13.82, subd. 7, because the benefit to the public from release of the Videos greatly outweighs any potential harm to the public, to the BCA, and to the individuals captured on the Videos.

THE PARTIES

1. Plaintiff ACLU is a nonprofit Minnesota corporation that works to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country.

2. Plaintiff NAACP is a nonprofit Minnesota corporation that works to ensure the political, educational, social, and economic equality rights of all persons and to eliminate race-based discrimination.

3. Defendant Minnesota Department of Public Safety (“DPS”) is a government entity charged with overseeing law enforcement, the state fire marshal, emergency management, and driver/vehicle licensing in Minnesota. It is located in St. Paul, Minnesota.

4. Defendant Mona Dohman is the Commissioner of Public Safety (“DPS Commissioner”). The DPS Commissioner is charged with directing the BCA to “perform such functions and duties as relate to statewide and nationwide crime information systems.” Minn. Stat. § 299C.01, subd. 4. Her office is located in St. Paul, Minnesota.

5. Defendant Minnesota Bureau of Criminal Apprehension (“BCA”), a division of DPS, provides investigative and specialized law enforcement services to prevent and solve crimes in partnership with law enforcement, public safety, and criminal justice agencies. It is located in St. Paul, Minnesota.

6. Defendant Drew Evans is the Superintendent of Criminal Apprehension (“BCA Superintendent”). The BCA Superintendent is charged with conducting investigations that, “with the approval of the commissioner of public safety, may deem necessary to secure evidence which may be essential to the apprehension and conviction of alleged violators of the criminal laws of the state.” Minn. Stat. § 299C.03. C.03. His office is located in St. Paul, Minnesota.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Minn. Stat. § 13.08, which specifically authorizes the District Court to award damages and issue injunctive relief for a violation of the MGDPA. Minn. Stat. § 13.08, subd. 2 (“The court may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate this chapter.”).

8. The DPS and BCA are government entities, subject to the MGDPA’s requirements. Minn. Stat. §§ 13.02, subd. 7a, 13.03, subd. 1.

9. This Court has personal jurisdiction over Defendants because they are located within Ramsey County. Minn. Stat. § 484.01.

10. Venue is proper in Ramsey County pursuant to Minn. Stat. §§ 13.08, subd. 3, 13.82, subd. 7.

THE MINNESOTA GOVERNMENT DATA PRACTICES ACT

11. The MGDPA is Minnesota’s freedom of information law, which requires that Defendants provide the public with access to inspect 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. § 13.03, subd. 1.

12. The MGDPA requires Defendants to “keep records containing government data . . . easily accessible for convenient use,” and that a person seeking access shall be permitted to inspect and copy public government data “[u]pon request.” Minn. Stat. § 13.03, subd. 1, 3(a).

13. The MGDPA “establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” Minn. Stat. § 13.01, subd. 3.

14. The MGDPA expressly provides that data documenting law enforcement actions to “cite, arrest, incarcerate or otherwise substantially deprive an adult individual of liberty *shall be public at all times.*” Minn. Stat. § 13.82, subd. 2 (emphasis added). Additionally, data that document law enforcement’s “response to a request for service . . . , or which describe actions taken by the agency on its own initiative *shall be public government data.*” *Id.*, subd. 6 (emphasis added).

15. A court’s determination of a government entity’s obligations under the MGDPA should be expedited and public. Minn. Stat. § 13.08, subd. 4.

THE JAMAR CLARK SHOOTING

16. At approximately 12:45 a.m. on November 15, 2015, police responded to a disturbance call across the street from the Elks Lodge on the 1600 block of Plymouth Avenue North, Minneapolis.

17. A neighbor, Nekelia Sharp, said an ambulance was called after Jamar Clark and his girlfriend got into an argument. According to Sharp, Clark tried to talk to his girlfriend while paramedics were taking her away.

18. A statement from the Minneapolis NAACP said that according to “numerous witness accounts . . . [u]pon arriving at the scene, the police placed [Clark] in handcuffs and slammed him to the ground.” Other witnesses stated that the officers held Clark to the ground.

19. The NAACP statement quoted witness Teto Wilson, who said Clark “was just laying there. He was not resisting arrest. Two officers were surrounding [Clark] on the ground, an officer maneuvered his body around to shield [Clark]’s body, and I heard the shot go off.”

20. The BCA Superintendent confirmed to the media that there were “handcuffs at the scene.”

21. The Minneapolis Police Department stated that police were called to the scene because Clark was confronting the paramedics and disrupting their ability to treat his girlfriend.

22. Although he did not view any of the Videos, the head of the Minneapolis police union alleged that two officers attempted to restrain Clark. Clark attempted to gain control of one of the officers’ firearms, and one of the officers shot Clark in the ensuing struggle.

23. Clark died on November 16, 2015 from a gunshot to the head.

THE AFTERMATH

24. On November 16, 2015, hundreds of people peacefully marched several blocks down Plymouth Avenue North from the scene of the shooting to the Minneapolis Police Department’s Fourth Precinct headquarters. They hoisted a banner over the entrance and set up a tent, saying they would stay until their demands were met.

25. Among the demonstrators' demands was release of any video of the incident involving Clark. Images of demonstrators who are peacefully demanding release of the Videos are attached hereto and incorporated herein collectively as Exhibit A.

26. Later that night, protesters blocked the westbound lanes of Interstate 94. Forty-two people were arrested, and at least thirty-three of them were charged with nonviolent misdemeanors.

27. The BCA has led the investigation of Clark's death. On November 17, 2015, the BCA Superintendent said that "[p]arts of the incident were recorded on several cameras, but no video shows the entire incident." The BCA Superintendent also stated that the agency would not release the Videos at this point in the investigation because it could contaminate witness statements.

28. The BCA Superintendent said: "Releasing [the Videos] would impact the integrity of the investigation that's ongoing currently, and would impact the integrity of the eventual prosecutorial review process that will be pending at the conclusion of our investigation."

29. The ACLU and the NAACP called for the Videos to be released. ACLU Legal Director Teresa Nelson stated: "the state's argument to not release videos for fear of tainting witness statements could make sense, but most witness interviews should be done in the first couple days after an incident anyway."

30. Protests continued at the Fourth Precinct police station. On November 18, 2015, police moved in to physically remove a small group of protestors from the precinct vestibule, sparking a tense standoff in which protestors reported being sprayed with pepper spray, shot with rubber bullets and marker rounds, crushed when police used bicycles to move a line of demonstrators back when there was no room for people to move back, and having guns pointed

at protestors including a City Council member and the son of U.S. Congressman Keith Ellison. Images of confrontations between police and peaceful demonstrators at the Fourth Precinct protest are attached hereto and incorporated herein collectively as Exhibit B. Two women have sued the Minneapolis Police Department alleging that they were beaten by police in an alley that night. The Minneapolis Police Department and the City of Minneapolis have asked the U.S. Department of Justice Community Oriented Policing Services to review the Police Department's handling of the Fourth Precinct occupation and protests.

31. On November 23, 2015, in a racially charged incident, five protestors were shot near the Fourth Precinct police station, allegedly by individuals who have espoused white supremacist rhetoric in the past.

32. Despite the BCA's statement that the Videos would not be released to the public, upon information and belief, the BCA released the Video to Governor Dayton on November 23, 2015. Governor Dayton stated that he had seen video from the ambulance camera and that it did not confirm either side's allegations of what happened.

33. On information and belief, Governor Dayton is not "an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the [Minnesota Board of Peace Officer Standards and Training], charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest." Nor is Governor Dayton an attorney licensed to practice law in the State of Minnesota; nor does Governor Dayton have any constitutional or statutory authority to interfere with or become involved in a BCA investigation. Thus, Governor Dayton's right to view the Videos is no greater than the public's right to view the Videos.

34. On December 3, 2015, Minneapolis police removed protestors from outside the Fourth Precinct police station. Later that day, a few hundred protestors peacefully occupied the rotunda of Minneapolis City Hall for several hours to rally against their removal from the Fourth Precinct station and demand answers about Clark's death.

35. On December 23, 2015, about a dozen people were arrested during a peaceful protest organized by Black Lives Matter and involving hundreds of people. The protest started at the Mall of America and moved to the Minneapolis-St. Paul International Airport. The protestors continued to call for release of the Videos of the events leading to and including Clark's shooting.

36. On January 18, 2015, on Martin Luther King, Jr. Day, protestors organized a "Tale of Two Cities" march in which, *inter alia*, concerned Minneapolis residents rallied for release of the Videos.

37. The BCA continues to refuse to release the Videos to the public.

THE DATA REQUESTS

38. On January 4, 2016, the ACLU sent the BCA a data request pursuant to the MGDPA (the "ACLU Request"). A true and correct copy of the ACLU Request is attached hereto and incorporated by reference herein as Exhibit C.

39. The ACLU Request sought access to, or a copy of, all audio and video relating to the November 15, 2015 shooting of Jamar Clark by officers of the Minneapolis Police Department.

40. On January 7, 2015, the BCA responded, refusing to grant the ACLU's data request and denying the ACLU access to or a copy of the Videos (the "ACLU Denial Letter"). A

true and correct copy of the ACLU Denial Letter is attached hereto and incorporated by reference herein as Exhibit D.

41. In the ACLU Denial Letter, the BCA stated that it would not release the Videos because they “are part of the BCA’s active criminal investigation.” The BCA relied on the following language from Minn. Stat. § 13.82, subd. 7: “investigative data collected or created by a law enforcement agency in order to prepare a case against a person, whether known or unknown, for the commission of a crime or other offense for which the agency has primary investigative responsibility are confidential or protected nonpublic while the investigation is active.”

42. The ACLU Denial Letter did not provide any evidence to support the denial, and it did not identify any potential harm to the BCA that would allegedly result from the release of the requested Videos.

43. On January 15, 2016, the NAACP also sent the BCA a data request pursuant to the MGDPA (the “NAACP Request”). A true and correct copy of the NAACP Request is attached hereto and incorporated by reference herein as Exhibit E.

44. Like the ACLU Request, the NAACP Request sought access to, or a copy of, all audio and video relating to the November 15, 2015 shooting of Jamar Clark by the Minneapolis Police Department.

45. As it did in the ACLU Denial Letter, in response to the NAACP Request, the BCA denied the NAACP access to or a copy of the Videos on January 20, 2015 (the “NAACP Denial Letter”). A true and correct copy of the NAACP Denial Letter is attached hereto and incorporated by reference herein as Exhibit F.

46. The NAACP Denial Letter relied on the same language from Minn. Stat. § 13.82, subd. 7: “investigative data . . . are confidential or protected nonpublic while the investigation is active.”

THE IMPORTANCE OF THE WITHHELD VIDEOS

47. The police killing of Jamar Clark laid bare the broken relationship that exists between the Minneapolis Police Department and the community it serves, particularly its relationship with people and communities of color in Minneapolis. Secrecy and lack of transparency has served to deepen the chasm between police and the community by reinforcing the community’s fear that police will not be held accountable for their acts of misconduct.

48. The withheld videos may shed significant light on the numerous witness accounts of the incident that state that Clark was restrained when he was shot to death by the police. The public has heard vastly divergent accounts about what occurred—that Clark was handcuffed or otherwise restrained when he was shot in the head and that Clark had his hand on an officer’s weapon when he was shot. These divergent accounts have served to further divide the community. The withheld Videos may help the community to come to a collective understanding about what occurred the night that Jamar Clark was killed.

49. Protests and unrest have continued since the shooting of Clark and the refusal of the BCA to release the Videos. Concerned community members have stated that peaceful protests will continue until the Videos are released.

50. Protesters have been shot, and at least two women have initiated lawsuits alleging excessive force by the Minneapolis Police Department in dealing with protestors.

51. Until the community is given some measure of transparency through the release of the Videos, the relationship between the community and police department cannot begin to be

repaired. One protest organizer stated: “We’re saying if we don’t get justice for Jamar Clark, if those tapes aren’t released, if we don’t get an independent prosecutor, if we don’t get no grand jury, then our ‘or else’ is we’re going back to the Mall of America.” The same organizer also stated that demonstrations “will continue to escalate until the tapes are released.”

52. Transparency builds a strong relationship between the police department and the community. The public has a right “to know what the government is doing * * * within a context of effective government operation.” *Westrom v. Minn. Dept. of Labor & Indus.*, 667 N.W.2d 148, 150 (Minn. Ct. App. 2003) (alteration in original), *aff’d*, 686 N.W.2d 27 (Minn. 2004).

COUNT I: ACTION TO COMPEL DISCLOSURE
PURSUANT TO MINN. STAT. § 13.08

53. Plaintiffs restate and reallege Paragraphs 1 through 52 of the Complaint.

54. On January 4, 2016, the ACLU requested from the BCA any and all Videos of the incident involving Clark. The NAACP made a similar request on January 16, 2016.

55. Plaintiffs’ requests were properly made under the MGDPA.

56. The data responsive to Plaintiffs’ request includes public government Arrest Data and Response or Incident Data. Minn. Stat. § 13.82, subd. 2, 6.

57. The MGDPA governs Defendants’ response to Plaintiffs’ requests.

58. The BCA denied Plaintiffs’ requests on January 7 and January 20, 2016, respectively.

59. Defendants’ denial of access violated the MGDPA.

60. Defendants’ denial of access was willful.

61. Plaintiffs were harmed as a result of the Defendants’ violations of the MGDPA.

62. Plaintiffs have standing to challenge the BCA’s response to their requests because they made a request for government data and suffered harm because of Defendants’ violations.

63. Plaintiffs are entitled to disclosure of the requested data. Minn. Stat. § 13.08, subd. 4.

64. Defendants' violation of the MGDPA entitles Plaintiffs to their costs and disbursements, including reasonable attorney's fees. Minn. Stat. § 13.08, subd. 4.

65. Defendants' denial of Plaintiffs' requests justifies assessment of a civil penalty. Minn. Stat. § 13.08, subd. 4.

66. Plaintiffs are entitled to an immediate injunction preventing Defendants' continued violation of the MGDPA. Minn. Stat. § 13.08, subd. 2.

COUNT II: DISCLOSURE OF INVESTIGATIVE DATA
PURSUANT TO MINN. STAT. § 13.82, SUBD. 7

67. Plaintiffs restate and reallege Paragraphs 1 through 66 of the Complaint.

68. The BCA denied Plaintiffs' requests because the Videos are "part of the BCA's active criminal investigation."

69. Despite the fact that the BCA alleges that the Videos are part of an active criminal investigation, the BCA released the Videos to Governor Dayton, who is not involved in the BCA's investigation and has no constitutional or statutory authority to view the Videos. The BCA has not explained why Governor Dayton may view the Videos while the rest of the public may not.

70. The MGDPA allows disclosure of criminal investigative data if "the benefit to the person bringing the action or to the public outweighs any harm to the public, to the agency or to any person identified in the data." Minn. Stat. § 13.82, subd. 7.

71. The public has a compelling interest in learning how police wield the tremendous authority given to them to take a human life in limited circumstances. Police in the United States took the lives of over 1000 people in 2015, 26% of whom were black.

72. Disclosure of the videos will provide a substantial benefit to the public because it will help inform the public whether the police acted appropriately when they wielded deadly force and took the life of Jamar Clark; it will allow Plaintiffs and other community leaders to end their campaign to get the video released and turn their energy and resources back to the broader work of seeking justice for Jamar Clark and eliminating the persistent, widespread, systemic racial disparities that exist in Minnesota; and it will help to advance law enforcement transparency and promote Minnesota's fundamental commitment to making the operations of our public institutions open to the public.

73. Defendants have identified no harms to the public or to the BCA caused by disclosure of the Videos.

74. Because the benefits of disclosing the Videos outweigh any harms, the Court should authorize disclosure of the Videos. Minn. Stat. § 13.82, subd. 7.

PRAYER FOR RELIEF

For the reasons stated above, Plaintiffs ACLU and NAACP pray for judgment as follows:

- A. Injunctive relief against Defendants through disclosure of the Videos;
- B. Assessment of a civil penalty under Minn. Stat. § 13.08, subd. 4;
- C. Fees, costs, and disbursements, including reasonable attorneys' fees under Minn. Stat § 13.08, subd. 4 and other applicable law; and
- D. Such other, further, different, and additional relief as the Court may deem just and equitable.

Dated: February 9, 2016

MASLON LLP

By: s/ Catherine Ahlin-Halverson
Catherine Ahlin-Halverson (#350473)
Haley N. Schaffer (#313099)
Jevon C. Bindman (#0396337)
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4140
Telephone: (612) 672-8200
E-mail: catherine.ahlin@maslon.com
haley.schaffer@maslon.com
jevon.bindman@maslon.com

ACLU OF MINNESOTA

Teresa Nelson (#269736)
2300 Myrtle Ave., Suite 180
St. Paul, MN 55114
Telephone: (651) 645-4097 ext. 1220
E-mail: tnelson@aclu-mn.org

ATTORNEYS FOR PLAINTIFFS

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the parties against whom the allegations in the Summons and Complaint are asserted.

s/ Catherine Ahlin-Halverson