

Eyes on the Court

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Harlow v. State of Minnesota, 883 N.W. 2d 561 (Minn. 2016); on remand A14-1342, A14-1343 (Minn. App. 2016)

Dr. Michael Harlow was an employee of the Minnesota Department of Human Services (DHS) at the Minnesota Security Hospital in St. Peter. His employment was terminated following the seclusion and restraint of a vulnerable adult patient. After the incident, two investigations were started: an employment investigation and maltreatment investigation by the DHS Division of Licensing. On the completion of the employment investigation, Harlow's employment was terminated. The maltreatment investigation resulted in an initial finding of substantiated abuse and neglect that was later modified from "substantiated" to "inconclusive."

Multiple media reports and information provided to DHS staff discussed content from the investigations. Harlow sued the DHS officials making the disclosures for defamation and violations of the Minnesota Government Data Practices Act (MGDPA). The district court found there were factual disputes that prevented a grant of summary judgement to DHS; the court of appeals concluded that public personnel data can simultaneously be classified as private when part of a maltreatment investigation.

The first issue before the Supreme Court was about the classification of the personnel data. The Court found that the investigation report and supplement constitute a final decision under Minnesota Statutes, section 13.43, subd. 2(a) (5) and so the data were public at the time they were disclosed. The second issue was whether these same data were re-classified when they were included in the maltreatment investigation report. The Court held that data that are public based on the "final disposition of discipline" language in section 13.43 remain public even though they are also included in the maltreatment investigation and so are classified as private under section 13.46, subd. 3.

Additionally, Harlow had claimed that the two DHS employees had defamed him by disclosing data. The Court of Appeals found that the employees were entitled to the protection of absolute privilege. After a lengthy analysis of the different types of privilege, the Supreme Court found that the deputy commissioner involved was entitled to absolute privilege. The extent of the privilege to which the other DHS employee was entitled was remanded to the Court of Appeals.

On remand, the Court of Appeals found that, on the question of qualified privilege, there were genuine issues of fact with respect to malice and so the district court had properly denied the State's motion for summary judgement.

KSTP-TV v. Metropolitan Council, 884 N.W. 2d 342 (Minn. 2016)

KSTP-TV (KSTP) requested video of two different recordings of incidents that occurred on Metro Transit buses. The Metropolitan Council (Met Council) denied both requests stating that the data were held as private personnel data to evaluate the bus drivers' conduct. KSTP filed a complaint at the Office of Administrative Hearings. The administrative law judge concluded that KSTP was entitled to the data and the Court of Appeals affirmed.

Of importance to the Supreme Court's decision, the videos are stored on a hard drive located on the bus. When the system's capacity is reached on each bus, new video is recorded over the oldest data first. When the Met Council needs to conduct an evaluation, it copies the video in question from the hard drive to a DVD.

Metro Transit argued that the videos were personnel data maintained on the DVDs in order to evaluate the bus driver's performance during each incident. KSTP argued that the data were originally public and that classification should not change due to the reason the data were kept by the Met Council.

The Supreme Court answered two questions: what qualifies as personnel data and when to classify the data. To answer the "what" question, the Supreme Court interpreted the phrase "maintained because" the individual is an employee of a government entity found in section 13.43. The Supreme Court found the statutory language to be ambiguous and concluded that a "single-purpose" reading of the language was better. The Court defined "single-purpose" as a situation where there are multiple reasons to maintain the data and so a single reason cannot be chosen to make the data not public.

On the question "when" to classify the data, the choices are at the time the request is made (Met Council) or when the data are initially created, received or collected (KSTP). After finding that "maintained" meant the data had to exist in a state, the Court concluded that the classification was determined at the time the request was made. Because the record did not include when the bus video systems "recorded over" the incident, the Court remanded the case to the Office of Administrative Hearings for further proceedings.

Burks v. Metropolitan Council, 884 N.W. 2d 338 (Minn. 2016)

This case also involves video of an incident on a Metro Transit bus operated by the Metropolitan Council (Met Council). In this case, the requester was the subject of the video. Both the district court and the Court of Appeals concluded that Burks was entitled to a copy of the video. The Supreme Court affirmed, finding that Burks was an "individual subject of data" under section 13.04, subd. 3. Again, the issue was whether the video was private personnel data, as argued by the Met Council.

The Supreme Court held that there is an explicit right of access in favor of an individual subject of the data held by a government entity. The Court specifically disagreed with the Met Council's argument that the privacy rights of the bus driver, under personnel data section 13.43, override Burks's right of access.

Finding that section 13.04, subd. 3, authorizes access to "stored private or public data on individuals" (emphasis in the original), the Court found that, even when there are multiple subjects of data, ". . . it does not matter that other individuals may be identifiable as well."

Scheffler v. City of Anoka, (Minn. App. A16-0252; Feb. 6, 2017)

Mr. Scheffler was the subject of a police report and a supplemental report. After not receiving the supplement he had requested, Scheffler sued the City of Anoka and its contracted city attorney. Scheffler then asked the responsible authority for the City for the supplemental report and received it. The district court allowed Scheffler to amend his complaint but then dismissed the claims against the city's attorney and granted summary judgement to the City.

Scheffler's claims failed because he had not made his initial data practices request to the City's responsible authority or designee and because the City's attorney was acting in a professional capacity for the City and so was not subject to the requirements of the MGDPA (see section 13.393).