

EYES ON THE COURT

By Patricia Beety, League of Minnesota Cities

Helmberger v. Johnson Controls Inc., 839 N.W.2d 527 (Minn. 2013)

The Minnesota Supreme court recently held that private businesses contracting with government entities are not required to comply with the Minnesota Government Data Practices Act (“MGDPA”) when there is no notice requiring statutory adherence in the underlying contract. The question about what type of contracts between government entities and private contractors are subject to the MGDPA was left unanswered. Many were watching this case to see if the lower court decisions adopting a multi-factored test for what constitutes a “governmental function” would be followed by the supreme court. Instead, we were given a primer on following the plain language of a statute and adhering to core principles of contract law in this much anticipated decision, leaving the governmental function question for another day and another case.

The facts of the case are fairly common place in government contracting situations. Independent School District 2142 (“District”) planned to build two new schools and entered into contracts with Johnson Controls Inc. (“Johnson”) for design services. The contracts permitted Johnson to act as general contractor and use subcontractors. One of the subcontracts Johnson entered into was with Architectural Resources (“AR”). Helmberger, a local newspaper publisher, made a data practices request to the District to obtain certain information regarding the school construction projects including a copy of Johnson’s subcontract with AR. Johnson refused to produce the subcontract and so Helmberger sought an advisory opinion from IPAD. Determining that the subcontract was government data, IPAD opined that Johnson was required to disclose it because Johnson was performing a “governmental function” for the District.

Johnson continued to withhold the subcontract, and Helmberger proceeded with a complaint and evidentiary hearing before the office of administrative hearings. The ALJ dismissed Helmberger’s complaint concluding that Johnson was not required to comply with the MGDPA because it was not performing a governmental function. The ALJ applied a narrow definition of governmental function reasoning that the Legislature had not directed school districts to undertake the kind of architectural services that are contemplated by AR’s subcontract with Johnson, and that the contracted services were not traditionally performed by the District or by Minnesota school districts generally.

Helmberger appealed and the Minnesota Court of Appeals reversed holding that Johnson had contracted to perform a government function because school districts have a statutory duty to furnish school facilities. *Helmberger v. Johnson Controls, Inc.*, 821 N.W.2d 831 (Minn.App. 2012). The court of appeals specifically rejected Johnson’s argument that even if a government function was involved, the MGDPA only applies to private entities that have received the contract notice required by Minn. Stat. 13.05, subd. 11(a) which reads

If a government entity enters into a contract with a private person to perform any of its functions, the government entity shall include in the contract terms that make it clear that all the data created, collected, received, stored, used, maintained, or disseminated by the

private person in performing those functions is subject to the requirements of this chapter and that the private person must comply with those requirements as if it were a government entity.

In this case, Johnson's contract with the District lacked this notice and contained no provisions referencing the MGDPA.

When review was granted by the Minnesota Supreme Court, this case became the subject of discussion by many government attorneys as well as those who routinely contract with governmental entities in the state (amici curiae were American Council of Engineering Companies of Minnesota, American Institute of Architects Minnesota, and Minnesota State Bar Association Construction Law Section.) The Johnson Controls decision was filed by the Minnesota Supreme Court on November 20, 2013. The majority opinion written by Chief Justice Gildea centered on the fact that the contract at issue was between two private businesses – Johnson and AR – and Minn. Stat. § 13.05, subd. 11(a) is simply a notice provision that addresses the contractual terms that a government entity must include when contracting with a private business to perform a government function. The supreme court found that no provision of the MGDPA imposes a direct, affirmative obligation on private businesses that enter contracts with the government and nothing in the statute makes a contract between two private businesses public. So, even if Johnson had contracted to perform a government function, as the court of appeals concluded, the result would be the same. The primary holding and takeaway principle is that because Johnson did not agree to be bound by the MGDPA, it had no actual or statutory duty to disclose the subcontract.

This decision disappointed many data practices gurus because it did not reach the question of whether Johnson was performing a government function. Justice Page address the government function issue in writing a concurring opinion, joined by Justice Wright, which found that data in the possession of a private person as a result of a government contract is public if the contractor is performing a government function, regardless of whether the underlying contract has the specific statutory notice. Finding the majority's interpretation of Minn. Stat. § 13.05, subd. 11(a) would lead to an absurd result, Justice Page said, “[i]t cannot be the case that the Legislature intended for the obligation to comply with the Act to exist only for those private persons whose contracts include the required notice and not those whose contracts lack the notice.” Justice Page agreed that Johnson did not have to release the AR subcontract, however, because he concluded the court of appeals definition of “government function” was too broad finding significant the fact that the District's contract with Johnson did not delegate any of the District's decision-making authority such as in the areas of budgeting, project scheduling and features of the schools to be built.

