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The Honorable Representative Peggy Scott
Chair, Judiciary Finance and Civil Law
Minnesota House of Representatives
St. Paul, MN 55155

The Honorable Representative Tina Liebling
DFL Lead, Judiciary Finance and Civil Law
Minnesota House of Representatives
St. Paul, MN 55155

Re: HF 20; Classification clarification of certain data maintained by the attorney general

Chair Scott, DFL Lead Liebling, and members of the House Judiciary Finance and Civil Law Committee

This Committee is considering HF 20, a proposed change to Minnesota Data Practices Act in Minnesota Statutes 13.65. 3.65 addresses specific types of data held by the Attorney General's Office ("AGO"). The AGO opposes the change suggested in HF 20 because, among other things, it would impede the statutorily mandated work of the Attorney General's Office to represent the legal interests of the State of Minnesota and to help Minnesotans afford their lives and live with dignity, safety, and respect.

Section 13.65 reflects a careful balancing of competing goals. As the chief legal officer for the State, the AGO holds a variety of sensitive data, the confidentiality of which is essential to the functioning of a legal office and a law-enforcement agency, both of which the AGO is. This includes data provided to the AGO by State agencies, non-profits, companies, and individuals that is essential to the State's efforts to pursue bad actors who violate state and federal laws. While HF 20 may appear innocuous, it would significantly alter how large amounts of data held by the Office would be classified and would substantially impact the Office's work.

Current law classifies the five types of data in 13.65, Subd. 1 as "private data on individuals" when in the possession of the AGO. This classification means that the data can be accessed by a person who is the subject of the data, but not the public generally. The change proposed in HF 20 would make that data available to anyone unless it is about an individual. It poses a number of problems with each of the statute's five classifications, which would create a host of negative effects.

The following is a non-exhaustive description of some of those negative effects: Subdivision 1(b) – Records of non-final policy and administrative decisions: This provision concerns communications and non-investigative files in the AGO, often on sensitive matters, and strikes a careful balance between the goals of allowing candid communications in forming decisions and affording public access once a final public action is taken. It is similar to the deliberative process privilege that is common in open records statutes, including the federal Freedom of Information Act. Subdivision 1(b)'s protections are appropriately focused, they allow individuals to obtain the information if the data is about them (even if not final) while allowing the general public access to final public actions. The proposed change to Section 13.65 – which its advocates present as a

narrow change – would in fact fundamentally remove the protections Subdivision 1(b) is designed to afford the AGO.

Subdivisions 1(c) & 1(d) – Records of Consumer Complaint Data: The AGO is charged with enforcement of the State’s various consumer-protection laws. As part of its mission, the AGO receives and reviews a very large volume of complaints from the public that are critical to identifying whether any entities may be violating State and federal laws. The AGO, for example, receives numerous complaints from non-profit corporations who will be less willing to come forward with knowledge of fraud if they knew their report would be publicly available. Making consumer complaint data public would substantially chill the willingness of parties to come forward with complaints for a variety of reasons, including a fear of retaliation.

Subdivision 1(d) – Inactive Civil Investigative Data: The AGO is the State’s primary law-enforcement agency for civil matters, especially with respect to enforcement of consumer-protection laws. Subdivision 1(d) permits the AGO to protect inactive civil investigative data, a protection that is essential to the Office’s investigatory work. The proposed change substantially alters what investigative data would be subject to protection from public disclosure: SF 730 would remove the protection for all investigations into non-individuals, which is a drastic change. For the first time, this proposed language would differentiate between investigative data on an individual who is suspected of violating a consumer protection statute and a company that is violating the same statute, where the latter would no longer be classified as private data.

A farm organized as an LLC, for example, might rightly fear retaliation for reporting on the conduct of the large agricultural conglomerates to which it must sell its products. Subdivision 1(d) allows the AGO to assure these entities that they can safely cooperate with the AGO without fear that their cooperation will become public through a public records request if the investigation becomes inactive.

Subdivision 1(e) – Home protection hotline data: As part of the AGO’s consumer-protection efforts, it provides important services to consumers facing the loss of their home. The AGO receives sensitive data from consumers about their income and mortgage status. At present, the only people who can access the data are the consumers themselves. HF 20 would create uncertainty about what data are in fact protected and require a document-by-document analysis of whether the data pertains to an individual or to a corporate entity.

For these reasons, we urge committee members to vote against HF 20. Thank you for the work that you do on this Committee and for allowing me to provide the perspective of the Attorney General’s Office on this bill.

Sincerely,



Keith Ellison, Attorney General