

House Judiciary Finance and Civil Law Committee
February 27, 2025

Written Testimony In Support of HF 428
Matt Ehling, Board Member
Minnesotans for Open Government
(Formerly Minnesota Coalition on Government Information - MNCOGI)

Chair Scott and committee members,

I am writing to you on behalf of Minnesotans for Open Government (MNOG), an all-volunteer, non-partisan, non-profit organization that advocates for citizen access to government information.

Our organization writes in support of Representative's Scott's effort to bring standardization to the retention period for general correspondence maintained by government entities in Minnesota. HF 428 is one of the few bills introduced in recent years to address this consequential issue — an issue that grows in importance as more government entities shrink the time period for which they maintain e-mails and related records.

The body of correspondence that a government entity produces is a valuable source of information* about how that entity performs its functions, and provides critical insights for members of the public, the press, as well as policy makers.

Members of our board — both in their capacities as MNOG board members, as well as in many other capacities — have helped people from across the social and political spectrum get access to government data, including government entity correspondence. Collectively and individually, we've interacted with persons of all backgrounds and political persuasions as they have sought out the answers to public policy questions that can be found in government correspondence.

Attached to this letter are examples of such correspondence, obtained from various government entities. These examples demonstrate the unique value of such records for government oversight, policy formulation, and upholding the public's basic right to know what is being done in its name.

I plan on testifying at Thursday's hearing to speak to these records in more detail, as well as to the overall framework of government records management in Minnesota.

Sincerely,

Matt Ehling
Board Member
Minnesotans for Open Government

*The value of this kind of information — and the consequences of its absence — were made plain in a case that was decided by the Minnesota Supreme Court in 2023 (*In the Matter of the Denial of Contested Case Hearing Request*. Minn. 2023). In the facts underlying that case, the Minnesota Pollution Control Agency was found to have destroyed an e-mail that documented the agency’s request to the federal Environmental Protection Agency (EPA) to not submit written comments about deficiencies in a mining company’s permit application, due to MPCA’s concerns about the public attention that EPA’s written comments would receive.

On a purely technical level, the case deals with the interpretation of the Administrative Procedures Act (APA), but it also holds broader lessons about the informational and evidentiary value of government correspondence. In the Court’s opinion, it held that MPCA’s data destruction and “general lack of documentation” prejudiced the environmental groups that had participated in the permitting review process, leading to “irregularities in procedure” that violated the APA.

From the court’s opinion:

“We therefore hold that the term “irregularities in procedure” under section 14.68 includes any agency procedure that thwarts the purposes of the Administrative Procedure Act—agency oversight, public accountability, and public access—expressly recognized in Minn. Stat. § 14.001. These “irregularities in procedure” may constitute a danger signal of an arbitrary or capricious decision.”

... “[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.”

EXHIBIT A (Page 1 of 2)

E-mail from the staff of the Office of Minnesota Attorney General Lori Swanson to senior counsel for the president of the University of Minnesota (circa 2017)

Message

From: Kimble, Janine [/O=MN ATTORNEY GENERAL'S OFFICE/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=KIMBLE, JANINE84D]
Sent: 2/1/2017 3:41:57 PM
To: Campion, Jacob [/O=MN ATTORNEY GENERAL'S OFFICE/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Campion, jacobddc]
Subject: FW: Response to the executive order impacting visas and immigration

Janine W. Kimble
Assistant Attorney General
Bremer Tower, Suite 1100
445 Minnesota Street
St. Paul, MN 55101-2128
Direct: [REDACTED]
Fax: (651) 282-5832
[janine.kimble@\[REDACTED\]](mailto:janine.kimble@[REDACTED])

From: Barbara Shiels [mailto:shiel001@[REDACTED]]
Sent: Wednesday, February 01, 2017 9:10 AM
To: Kimble, Janine
Cc: Sarah Shaftman
Subject: FW: Response to the executive order impacting visas and immigration

Hello Janine:

Here is the message from President Kaler I mentioned yesterday. Also, I left you a voice message this morning.

Regards,

Barbara Shiels
Senior Associate General Counsel
phone [REDACTED]
fax 612-626-9624
e-mail [shiel001@\[REDACTED\]](mailto:shiel001@[REDACTED])

From: President Eric W. Kaler [mailto:noreply.kaler@[REDACTED]]
Sent: Sunday, January 29, 2017 10:22 PM
To: [shiel001@\[REDACTED\]](mailto:shiel001@[REDACTED])
Subject: Response to the executive order impacting visas and immigration



Office of the President

Dear students, faculty and staff,

The University of Minnesota is a public, land-grant institution with a long history of global engagement. We are committed to supporting all members of our community.

EXHIBIT A (Page 2 of 2)

We are proud to be an inclusive, globally-engaged University that has welcomed students and scholars from around the world for more than a century. We have built a University community that embraces diversity, and we thrive by working toward a common goal to make the world better through education and research.

Last Friday, President Donald Trump signed an executive order that impacts immigration procedures for students, refugees, immigrants, and permanent residents from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen. The wisdom of this order, its impact on our national safety, and the consequences for our students, faculty, and staff will be debated, but the issues remain of great concern to the leadership of the University. We are grateful to count among our community more than 8,000 students and scholars from around the world, including hundreds from the seven nations identified in the executive order. We have communicated with members of those communities, and we will continue to assess whether any of them have yet been adversely affected by the executive order. If so, we will help.

We remain steadfast in the commitment of our five campuses to welcome and support students, faculty, and staff from around the globe. Late Saturday, a federal judge in New York issued a stay on at least parts of the president's executive order. This is an evolving situation, and we will continue to monitor it closely.

We remind you that immigration and legal resources are available through [International Student and Scholar Services](#) and [University Student Legal Service](#) should you have specific questions.

This University will support members of our community adversely affected by the executive order. We will advocate for you. You are entitled to be treated with justice and dignity, and the University of Minnesota stands with you.

Sincerely,
Eric W. Kaler
President

This email was sent by: Office of the President, 202 Morrill Hall, 100 Church St S.E., Minneapolis, MN, 55455, USA. [Read our privacy statement](#).

EXHIBIT B (Page 1 of 1)

E-mail from "Ken Confidential" to staff of the University of Minnesota (circa 2024).
Correspondence pertains to negotiations to locate a data center.

Ken

From: Ken Confidential <ken@[REDACTED]>
Date: Monday, August 7, 2023 at 1:24 PM
To: Leslie Krueger <kruegerl@[REDACTED]>
Subject: Re: Project Bigfoot coordination meeting

Hi Leslie,

As I mentioned before, we had to move our trip to MN back to Tuesday 8/15 to Wednesday 8/16. Do you have any availability during that time I can try to work into the schedule? Maybe just 1 hour if you're busy, we can come to wherever is convenient for you.

Thank you,

Ken

From: Leslie Krueger <kruegerl@[REDACTED]>
Date: Wednesday, August 2, 2023 at 12:43 PM
To: Ken Confidential <ken@[REDACTED]>
Subject: Re: Project Bigfoot coordination meeting

Ken

Thanks for the update!

If you guys give the go ahead, I will be presenting the transaction to the Regents at their meeting on Thursday 9/7. They would vote as the Finance and Operations Committee (it is a committee of the whole) at that time, and the full Board would vote on the Committee report on 9/8. As previously discussed, the Docket materials get published the Friday before the meeting (9/1) at noon. That is when the transaction summary (price and parent company name) would become public.

I am still waiting for Xcel's comments on the License Agreements.

EXHIBIT C (Page 1 of 1)

E-mail between staffers of the Minnesota Department of Human Services (DHS) regarding a request from a contractor hired by DHS to write a report on the role of Managed Care Organizations in the administration of Minnesota's public health care programs. (E-mail circa 2013)

From: [Golden, James I \(DHS\)](#)
To: [Hudson, Mark J \(DHS\)](#)
Cc: [Leitz, Scott D \(DHS\)](#); [Breen, Chandra F \(DHS\)](#)
Subject: RE: PCG
Date: Monday, May 13, 2013 9:25:00 AM

Mark,

We do not want to ask Grassley, Nienow, Feinwachs or Robinson. We should have people/advocates like Ann Henry and Ralonda Mason. We should also ask Chandra if she wants to recommend particular advocates. See the contact information below.

[REDACTED]

[REDACTED]

JG

From: Hudson, Mark J (DHS)
Sent: Friday, May 10, 2013 11:26 AM
To: Golden, James I (DHS)
Subject: PCG

They would like to talk to any critics of MCO's as part of the value report. I am sure if I thought it would not take too long but wondered if you had ideas beyond Grassley, Marty Nienow, Feinwachs and Robinson. Let me know

Caution: This e-mail and attached documents, if any, may contain information that is protected by state or federal law. E-mail containing private or protected information should not be sent over a public (nonsecure) Internet unless it is encrypted pursuant to DHS standards. This e-mail should be forwarded only on a strictly need-to-know basis. If you are not the intended recipient, please: (1) notify the sender immediately, (2) do not forward the message, (3) do not print the message and (4) erase the message from your system.

EXHIBIT D (Page 1 of 2)

Pages 2 and 3 of General (Model) Records Retention Schedule for Minnesota Cities (2021)

GENERAL RECORDS RETENTION SCHEDULE FOR MINNESOTA CITIES					
SECTION	CODE	TITLE & DESCRIPTION	RETENTION PERIOD	CLASSIFICATION	STATUTE
ADMINISTRATION	ADM 01200	ARTICLES OF INCORPORATION	Permanent	Public	
ADMINISTRATION	ADM 01300	ATTORNEY OPINIONS-OFFICIAL COPY Official opinions of city attorney.	Permanent	Public/Private/Non-Public	MS 13.393, MS 13.39
ADMINISTRATION	ADM 01400	BIDS, QUOTATIONS, SPECIFICATIONS & RFP'S - ACCEPTED	10 after completion of project	Public/Non-Public	MS 13.37, Subd. 2, MS 13.591
ADMINISTRATION	ADM 01500	BIDS, QUOTATIONS, SPECIFICATIONS & RFP'S & - NOT ACCEPTED	6	Public/Protected Non-Public until all bids are opened.	MS 13.37, MS 13.591
ADMINISTRATION	ADM 01800	BUDGET - OFFICIAL COPY Includes city and/or departmental budgets.	Permanent	Public	
ADMINISTRATION	ADM 01900	BUDGET - SUPPORT / WORKING PAPERS	2	Public	
ADMINISTRATION	ADM 02000	BYLAWS - COMMISSIONS AND BOARDS	Permanent	Public	
ADMINISTRATION	ADM 02100	CENSUS REPORTS - CITY GENERATED Reports and any protests to census.	Permanent	Public	
ADMINISTRATION	ADM 02200	CHARTER Attorney's opinions, petitions, correspondence, etc.	Permanent	Public	
ADMINISTRATION	ADM 02300	CITY CODE/CODE OF ORDINANCES Complete list of ordinances.	Permanent	Public	
ADMINISTRATION	ADM 02400	CITY ORDINANCE VIOLATIONS Letters stating violations, court actions, etc.	5	Public	
ADMINISTRATION	ADM 02500	CITY SEAL	Permanent	Public	
ADMINISTRATION	ADM 02600	COMPLAINTS - REAL PROPERTY By citizens about the use of real property.	7	Public/Private/ Confidential	MS 13.44

EXHIBIT D (Page 2 of 2)

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GENERAL RECORDS RETENTION SCHEDULE FOR MINNESOTA CITIES					
SECTION	CODE	TITLE & DESCRIPTION	RETENTION PERIOD	CLASSIFICATION	STATUTE
ADMINISTRATION	ADM 02700	COMPLAINTS - GENERAL General city services, maintenance, repair, citizen complaints.	1 after action completed	Public	
ADMINISTRATION	ADM 02800	COPYRIGHTS & PATENTS	Until expired	Public	
ADMINISTRATION	ADM 02900	CORRESPONDENCE - GENERAL	3	Public	
ADMINISTRATION	ADM 03000	CORRESPONDENCE - HISTORICAL Correspondence to/from mayor, city manager, city administrator. Official correspondence that documents important events or major functions of the office. Usually deals with a specific topic, issue, organization, or individual.	Permanent	Public/Private	MS 13.601
ADMINISTRATION	ADM 03050	CORRESPONDENCE - MESSAGES Transitory messages, e-mail, social media, or phone messages of short-term interest which are considered incidental and non-vital correspondence. Note: Messages which relate to transactions of city business should be retained in accordance with applicable retention schedule. Data Practices classification for this is public.	Until read	Public	
ADMINISTRATION	ADM 03070	DATA PRACTICES REQUEST	3	Public/Private	
ADMINISTRATION	ADM 03100	DEPARTMENTAL REPORTS Annual.	Permanent	Public	
ADMINISTRATION	ADM 03200	DEPARTMENTAL REPORTS Monthly/ semi-annual.	1	Public	
ADMINISTRATION	ADM 03300	GRANTS Miscellaneous grant programs and stipulations.	Consult issuing agency. Typically 3 after audit State CFR 24.42, 6 after audit Federal 28USC2415(b)	Public, unless otherwise required by other governmental agency.	MS 13.599
ADMINISTRATION	ADM 03400	INVENTORIES Reports, equipment supplies, etc.	Until Superseded	Public	
ADMINISTRATION	ADM 03650	SURVEY / RESEARCH RAW DATA	While active		