

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF RICE

THIRD JUDICIAL DISTRICT

Case Type: Other Civil

Benda for Common-sense, a Minnesota
Non-Profit Corporation, and Kathleen
Hagen,

Court File No. 66-CV-22-2022
Assigned to: The Honorable Carol M. Hanks

Plaintiffs,

vs.

**MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Denise Anderson, Director of Rice County
Property and Tax Elections,

Defendant.

and

Minnesota Secretary of State,

Proposed Intervenor- Defendant

On November 14, 2022, Defendant, Denise Anderson, submitted a request to dismiss Defendant Anderson through a motion for Judgment on the Pleadings. This Memorandum is submitted in opposition to this motion to dismiss.

DOCUMENTS COMPRISING THE RECORD

1. Complaint dated August 22, 2022 (“**Complaint**”);
2. Affidavit of Matthew L. Benda, verifying the Complaint dated September 1, 2022;
3. Affidavit of Kathleen Hagen, verifying the Complaint dated September 1, 2022;
4. Affidavit Matthew L. Benda in Opposition to Motion for Judgment on the Pleadings

dated November 30, 2022 (**Benda Aff. 11.30.22**).

ISSUE:

Whether Denise Anderson is a proper Defendant under the Minnesota Government Data Practices Act?

ARGUMENT

I. DEFENDANT’S REQUEST FOR DISMISSAL THROUGH A MOTION FOR JUDGMENT ON THE PLEADINGS SHOULD BE DENIED.

i) DEFENDENTS’ MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM SHOULD BE TREATED A MOTION FOR SUMMARY JUDGMENT.

Defendant submits a Motion for Judgment on the Pleadings under Rule 12.03

Minn.R.Civ..P. As in previous submissions, Defendants’ attempt to use Rule 12 is misplaced. It appears that the most likely reason for this approach is to ask this Court to, “consider only the facts alleged in the complaint...” See Defendants’ Memorandum of Law in Support of Motion for Judgment on the Pleadings at page 2. In other words, Defendant does not want the court to review the Rice County Guidelines and Procedures for the Minnesota Government Data Practices Act adopted December 14, 2021. **Benda Aff. 11.30.22**, Exhibit Benda 6, at _0061 through _0100 (“**Rice County MGDPA Policy**”). As explained below, this document clearly assigns Defendant Anderson with the role and responsibilities of complying with the Minnesota Government Data Practices Act (“**MGDPA**”).

As clearly required by Rule 12, this motion is governed by Rule 56 Minn. R. Civ. P. As specifically stated in Minn. R. Civ. P. 12.03, “the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Such procedural treatment is further supported by Defendants’ previously cited authority Butler v. City of St. Paul, 936 N.W.2d 478 (Minn. 2019). In the Butler case, the Minnesota Supreme Court is reviewing a district court ruling on summary judgment under Minn. R. Civ. P. 56.

ii) DEFENDANT ANDERSON IS A PROPER DEFENDANT IN THIS ACTION AS SHE IS A “RESPONSIBLE AUTHORITY OR DESIGNEE” UNDER THE MINNESOTA GOVERNMENT DATA PRACTICES ACT

Minn. Stat. 13.08, Subd. 4 provides a remedy under the **MGDPA** called “Action to compel compliance.” Under this subdivision, “any aggrieved person seeking to enforce the person’s rights under this chapter to obtain access to data may bring an action in district court to compel compliance with this chapter and may recover costs and disbursements, including reasonable attorney’s fees, as determined by the court.”

As articulated in Counts I of the Complaint, Plaintiffs followed the statutory pre-requisite of making a “request to a responsible authority or designee” to inspect and copy public government data. Minn. Stat. 13.03, Subd. 3. Now, Defendant Anderson is arguing that she has some type of immunity for her failure to comply with such requests as, “The MGDPA does not permit suit against a public employee who is not the responsible authority.” Defendants’ Memorandum of Law in Support of Motion for Judgment on the Pleadings at page 5.

What Defendant and her attorney¹ fail to disclose to the Court is that the **Rice County MGDPA Policy** specifically designates Denise Anderson as a “Responsible Authority Designee.” **Benda Aff. 11.30.22** at _0093. As a “designee” Anderson, “shall provide copies of public data upon request.” Minn. Stat. 13.03, Subd. 3(c). The term, “responsible authority or designee” is used interchangeably throughout Chapter 13. The definition of “designee” further clarifies Defendant Anderson’s role, “Designee means any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive

¹ As the attorney for a County Employee, the failure to disclose to the Court the existence of the Rice County MGDA Policy is on its face an affront to the requirement of Candor Toward the Tribunal for failure to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to her client.

and comply with requests for government data.” Minn. Stat. 13.02, Subd. 6 (emphasis added).

This designation requires Defendant Anderson to act and makes her subject to Court scrutiny as a defendant.

Defendants’ reliance on the case of Scheffler v. City of Anoka is likewise misplaced. 890 N.W.2d 437 (Minn. App. 2017). In the Scheffler case, the Plaintiff served his complaint on the Anoka Police Department and the Contracted City Attorney. Id. Throughout the opinion, the Court, like the statute, uses the phrase “responsible authority or designee.” In making its final ruling, the Court continues this interchangeability in titles, “Because the APD records staff were not the city’s specified responsible authority or designees, the district court property granted summary judgment to the city...” Id. at 447.

Finally, in addition to the plain language of the statute that a “designee” carries obligations that are subject court enforcement, even the language of the **Rice County MGDPA Policy** clarifies that, “a government entity and employees may be sued for violating the Act.” **Benda Aff. 11.30.22** at _0087.

CONCLUSION

For the reasons set forth above, Plaintiffs respectively request an Order of the Court denying Defendant’s request for dismissal based upon a Judgment on the Pleadings. Defendant Anderson is a proper defendant in this action and must eventually be required to follow the requirements of the MGDPA.

PETERSON, KOLKER, HAEDT & BENDA, LTD.

Dated: November 30, 2022

By: /s/ Matthew L. Benda

Matthew L. Benda (#026376X)

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