

STATE OF MINNESOTA

DISTRICT COURT

HENNEPIN COUNTY

FOURTH JUDICIAL DISTRICT

State of Minnesota,

File No. 27-CR-18-6859

The Honorable Kathryn L. Quaintance

Plaintiff,

vs.

**DECLARATION OF
LEITA WALKER**

Mohamed Noor,

Defendant.

I, Leita Walker, hereby declare as follows:

1. I am over 18 years old and a partner at Ballard Spahr LLP (“Ballard”). I represent a coalition of media organizations in the coalition’s response to the State’s Position Regarding Copying of Trial Exhibits in the above-referenced matter, which the State filed on May 10, 2019. I make this Declaration based on my personal knowledge. If called to testify, I could and would testify competently regarding the facts recited herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of an email exchange between Daren Sukhram, a journalist employed by Hubbard Broadcasting Inc., and Spenser Bickett, Communications Specialist at Hennepin County District Court.

3. Attached hereto as Exhibit 2 is a true and correct copy of a letter that I sent on behalf of Star Tribune Media Company and Minnesota Public Radio to the Minneapolis Police Department on May 14, 2019, demanding release of certain data made public by the Minnesota Government Data Practices Act.

4. Attached hereto as Exhibit 3 is a true and correct copy of a letter that I sent on behalf of Star Tribune Media Company and Minnesota Public Radio to the Minnesota

Department of Public Safety on May 14, 2019, demanding release of certain data made public by the Minnesota Government Data Practices Act.

5. Attached hereto as Exhibit 4 is a true and correct copy of a letter that I sent on behalf of Star Tribune Media Company and Minnesota Public Radio to the Hennepin County Attorney's Office on May 14, 2019, demanding release of certain data made public by the Minnesota Government Data Practices Act.

I declare under penalty of perjury under the laws of the United States of America that everything I have stated in this declaration is true and correct.

Dated this 16th day of May, 2019, in Minneapolis, Minnesota.



Leita Walker

Exhibit 1

From: Sukhram, Daren <dsukhram@kstp.com>
Sent: Wednesday, May 15, 2019 10:32 AM
To: Bickett, Spenser <Spenser.Bickett@courts.state.mn.us>; Christopherson, Kyle <Kyle.Christopherson@courts.state.mn.us>; Finne, Lissa <Lissa.Finne@courts.state.mn.us>; Siems Roberson, Alyssa <Alyssa.SiemsRoberson@courts.state.mn.us>
Cc: NR Investigative <Investigations@kstp.com>; Sabo, Bob <BSabo@kstp.com>; Vetscher, Tim <tvetscher@kstp.com>
Subject: RE: [EXTERNAL] Noor Exhibit Questions

Hello Again,

It's been another full day with no response even as to when or how we can view the exhibits. This is getting ridiculous to not even being acknowledged. I understand if the judge has put you guys in a difficult position, but at the least we deserve is communication.

So, please let me know we can look at the exhibits.

Thanks,

Daren Sukhram | Assignment Manager | 5 EYEWITNESS NEWS
3415 University Ave, St. Paul, MN 55114 | DIRECT: 651.642.4443 | Newsroom: 651.642.4412



From: Sukhram, Daren
Sent: Tuesday, May 14, 2019 11:45 AM
To: 'Bickett, Spenser' <Spenser.Bickett@courts.state.mn.us>; Christopherson, Kyle <Kyle.Christopherson@courts.state.mn.us>; Finne, Lissa <Lissa.Finne@courts.state.mn.us>; Siems Roberson, Alyssa <Alyssa.SiemsRoberson@courts.state.mn.us>
Cc: NR Investigative <Investigations@kstp.com>; Sabo, Bob <BSabo@kstp.com>; Vetscher, Tim <tvetscher@kstp.com>
Subject: RE: [EXTERNAL] Noor Exhibit Questions

Hi Spenser,

It's now been 24 hours since the order allowing us to view the materials without an update.
When can we come down?

Thanks,
Daren

From: Bickett, Spenser <Spenser.Bickett@courts.state.mn.us>
Sent: Monday, May 13, 2019 12:36 PM
To: Sukhram, Daren <dsukhram@kstp.com>; Christopherson, Kyle <Kyle.Christopherson@courts.state.mn.us>; Finne, Lissa <Lissa.Finne@courts.state.mn.us>; Siems Roberson, Alyssa <Alyssa.SiemsRoberson@courts.state.mn.us>
Cc: NR Investigative <Investigations@kstp.com>; Sabo, Bob <BSabo@kstp.com>; Vetscher, Tim <tvetscher@kstp.com>
Subject: RE: [EXTERNAL] Noor Exhibit Questions

Daren,

We're scheduling a time/date for members of the media to come all at once and view the exhibits, instead of trying to accommodate each individual request. Once we have something scheduled, we'll share the details on the case webpage.

From: Sukhram, Daren [mailto:dsukhram@kstp.com]
Sent: Monday, May 13, 2019 11:59 AM
To: Bickett, Spenser <Spenser.Bickett@courts.state.mn.us>; Christopherson, Kyle <Kyle.Christopherson@courts.state.mn.us>; Finne, Lissa <Lissa.Finne@courts.state.mn.us>; Siems Roberson, Alyssa <Alyssa.SiemsRoberson@courts.state.mn.us>
Cc: NR Investigative <Investigations@kstp.com>; Sabo, Bob <BSabo@kstp.com>; Vetscher, Tim <tvetscher@kstp.com>
Subject: RE: [EXTERNAL] Noor Exhibit Questions

Great, can we head over right now to review the exhibits?

Thanks Spenser,
Daren

From: Bickett, Spenser <Spenser.Bickett@courts.state.mn.us>
Sent: Monday, May 13, 2019 11:58 AM
To: Sukhram, Daren <dsukhram@kstp.com>; Christopherson, Kyle <Kyle.Christopherson@courts.state.mn.us>; Finne, Lissa <Lissa.Finne@courts.state.mn.us>; Siems Roberson, Alyssa <Alyssa.SiemsRoberson@courts.state.mn.us>
Cc: NR Investigative <Investigations@kstp.com>; Sabo, Bob <BSabo@kstp.com>; Vetscher, Tim <tvetscher@kstp.com>
Subject: RE: [EXTERNAL] Noor Exhibit Questions

Daren,

Yes, as noted in the order, trial exhibits will be made available for viewing, and requests to obtain copies of exhibits or record/photograph exhibits will be put on hold until another order is issued. See below (emphasis added):

1. The Hennepin County District Court Public Affairs Communications Specialist, working in conjunction with the Court's criminal administrative staff who presently have custody of the trial exhibits, **shall allow media representatives access to and the opportunity to view the trial exhibits** in this case in accordance with the Court Exhibit Policy.
2. The State has objected to third-party copying of the exhibits in this case. **Requests to copy the trial exhibits in this case will be put on hold** until the Court has issued an order with respect to copy access.

Let me know if you have any other questions.

From: Sukhram, Daren [<mailto:dsukhram@kstp.com>]
Sent: Monday, May 13, 2019 11:11 AM
To: Christopherson, Kyle <Kyle.Christopherson@courts.state.mn.us>; Finne, Lissa <Lissa.Finne@courts.state.mn.us>; Siems Roberson, Alyssa <Alyssa.SiemsRoberson@courts.state.mn.us>; Bickett, Spenser <Spenser.Bickett@courts.state.mn.us>
Cc: NR Investigative <Investigations@kstp.com>; Sabo, Bob <BSabo@kstp.com>; Vetscher, Tim <tvetscher@kstp.com>
Subject: [EXTERNAL] Noor Exhibit Questions

Hi All,

Reaching out to see who's in the office and has a minute to talk about the Noor order. Just want to be crystal clear that this basically means nothing to us, that we're only allowed again to view the evidence we saw at trial, but we are PROHIBITED from recording the exhibits with a camera (pending another order).

Some clarity would be great.

Thanks,

Daren Sukhram | Assignment Manager | 5 EYEWITNESS NEWS
 3415 University Ave, St. Paul, MN 55114 | DIRECT: [651.642.4443](tel:651.642.4443) | Newsroom: [651.642.4412](tel:651.642.4412)



Exhibit 2



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Leita Walker
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Fax: 612.371.3207
walkerl@ballardspahr.com

May 14, 2019

Via E-mail (mary.zenzen@minneapolismn.gov)

Mary Zenzen
Manager, Police Record Services
City of Minneapolis - Police Department
350 S. Fifth St.
Minneapolis, MN 55415

Re: Media Requests for Data Presented as Evidence at Mohamed Noor Trial

Ms. Zenzen:

Our firm represents Star Tribune Media Company LLC and Minnesota Public Radio. As you know, more than a month ago, Star Tribune requested copies of “All dash cam, body cam and autopsy photos presented as evidence in State of Minnesota vs Noor” and “All 911 audio submitted as evidence in State of Minnesota vs Noor.” Likewise, on April 9, MPR sought access to “any and all MPD body-camera videos and photos pertaining to the shooting of Justine (Damond) Ruszczyk that is introduced as evidence in the trial of Mohamed Noor.”

You responded to Star Tribune on April 10 and to MPR on April 15. In these responses, the Minneapolis Police Department acknowledged that it has dash cam and body cam footage related to Mr. Noor’s criminal prosecution but took the position that the data was not subject to public disclosure because (1) it was part of an active criminal investigation, (2) “[v]ideo footage is not static,” and (3) the judge overseeing Mr. Noor’s trial had issued an order stating that exhibits entered into evidence in the case would not be released by the court until after the conclusion of the trial.

MPD’s view of its obligations under the Minnesota Government Data Practices Act was wrong in April, and it is certainly wrong now, given Mr. Noor’s conviction and other changed circumstances, including Judge Quaintance’s issuance of an order on May 13 granting access to trial exhibits.

First, the Data Practices Act is very clear that “Any investigative data presented as evidence in court shall be public.” Minn. Stat. §13.82 subd. 7. This is true whether the investigation is active or inactive and it is true whether or not the data is “clearly offensive to

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common sensibilities.”¹ The media’s requests implicitly acknowledged the change in classification that occurs when data is “presented as evidence” by explicitly asking *only* for video, photos, and audio “presented” or “introduced” as evidence and (in Star Tribune’s case) by asking for production of responsive documents “at the end of the business day in which it has been presented.” MPD’s position that data responsive to the media’s requests—i.e., data presented as evidence—can be withheld as active criminal investigative data or under statutory language governing 911 calls² ignores the plain language of the Data Practices Act. *See also Ruszczuk v. Noor*, 349 F. Supp. 3d 754, 762–63 (D. Minn. 2018) (“Such data becomes public, inter alia, once it is presented as evidence in court, a defendant’s appeal rights are exhausted or expired, or disclosure is authorized or ordered.” (emphasis added)).³

Second, MPD claims in its letter to Star Tribune that “[v]ideo footage is not static.” Star Tribune and MPR do not understand this statement. Either MPD has copies of the video footage, audio recordings, and photographs presented at Mr. Noor’s trial or it doesn’t. We understand that only excerpts of lengthy recordings may have been entered into evidence. But the evidence presented at Mr. Noor’s trial is now available for viewing and in fact is quite “static”—it is in the court’s file, the trial is over, and the record for appeal is set. If MPD has copies of this evidence—even if such data is maintained as part of a larger recording or compilation—then under the plain language of the Data Practices Act MPD has an obligation to produce it. To the

¹ Even if this exception to the public status of inactive investigative data applied—it does not, because the Data Practices Act is clear that “[a]ny investigative data presented as evidence in court shall be public,” Minn Stat. § 13.82 subd. 7 (emphasis added)—it would not justify a blanket prohibition on the data’s release. At most, the data would be subject to redaction, such as pixilation of graphic portions of otherwise responsive video and photographs.

² Your April 10 response states that “911 audio tapes are not public under Minn Stat. § 13.82 subd. 17,” but that subdivision only addresses disclosures of data that reveals the identity of a person who placed a 911 call when “the agency determines that revealing the identity may threaten the personal safety or property of any person” or when “the object of the call is to receive help in a mental health emergency.” Obviously neither circumstance is at issue here. To the extent 911 audio recordings were presented as evidence, they are subject to disclosure under subdivision 7. In addition, transcripts of those recordings are subject to disclosure under subdivision 4.

³ Likewise, MPD’s position that body-cam videos are not subject to disclosure under Minn Stat. § 13.825 ignores the plain language of that provision. MPD claims that the body-cam videos are part of an active criminal investigation. If that is the case, then Minn Stat. § 13.825 subd. 2(3) makes clear that § 13.82 subd. 7 controls, and that subdivision, as discussed above, makes public “investigative data presented as evidence in court.” As for body-cam videos *not* presented as evidence in court, to the extent they document Mr. Noor’s discharge of his firearm, they are public under § 13.825 subd. 2(1).

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extent MPD is concerned about producing data not entered into evidence, this concern is easily addressed: pursuant to Judge Quaintance's order, the trial exhibits are now available for viewing so that someone from MPD can determine, down to the second, which videos and audio recordings were entered into evidence. *See* Minn. Stat. § 13.03 subd. 1 (“The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records.”); *id.* subd. 2 (“The responsible authority in every government entity shall establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner.”).

Third, your response to the media's requests cited the Rules of Public Access to Records of the Judicial Branch and an April 9, 2019, order by Judge Quaintance stating that “no exhibits entered into evidence in this case will be released until after the conclusion of the trial.” More recently—in fact, just today—Katherine Knudsen at your office told MPR reporter Jon Collins in an email that

The judge issued an order that outlined the process by which the media can request the trial exhibits directly from the court, so you will want to start there to access the exhibits introduced at trial. Minneapolis police has posted the public data that will be released on the website, and we will not be releasing additional data until the appeal window has closed.

Your April 9 analysis and this more recent response from Ms. Knudsen completely ignore the reality that data in the hands MPD—which is a “government entity,” *see*, Minn. Stat. § 13.02 subd. 7a, *not* a court of law—is governed by the Data Practices Act. It is *not* governed by the Rules of Public Access to Records of the Judicial Branch.

Moreover, whatever discretionary power Judge Quaintance has and chooses to exercise over her own court's files is completely separate and independent from what is public under the Data Practices Act and MPD's obligation to comply with the Act, as the Supreme Court held in *In re Access*, 517 N.W.2d 895 Minn. 1994) (holding that district court erred in ordering the expungement and sealing of law enforcement records relating to an investigation into an alleged sexual assault; stating that because the records involved were not “judicial records,” there was “no judicial interest in the expunging or sealing of the records in question”); *cf.* *KSTP-TV v. Metro. Council*, 884 N.W.2d 342, 346–48 (Minn. 2016) (data maintained for multiple purposes, including a purpose under which that data is public under the MGDPA, is public data).

In a word, MPD's refusal to respond in any meaningful way to Star Tribune's and MPR's data requests is appalling. Indeed, in similar situations—most notably the case involving Police Officer Jeronimo Yanez, who shot and killed Philando Castile—the Bureau of Criminal Apprehension released the entire case file from its investigation. *See* Matt DeLong, “See evidence from the BCA investigation of the Philando Castile shooting,” *StarTribune.com* (June

Mary Zenzen
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22, 2017), <http://www.startribune.com/see-evidence-from-bca-investigation-of-castile-shooting/429662023/>.

Here, Mr. Noor stands convicted of manslaughter and third-degree murder for the on-duty killing of an unarmed woman, the City of Minneapolis has agreed to pay the woman's family \$20 million, and the Hennepin County Attorney has publicly complained that Bureau of Criminal Apprehension agents did not adequately investigate the circumstances of her death. And yet, MPD refuses to release clearly public data so that a concerned public is able to scrutinize the conduct of law enforcement and other government officials. With the jury's verdict now two weeks old, and the trial exhibits open for inspection, Star Tribune and MPR demand that MPD disclose electronic copies of data responsive to their requests no later than Friday.

Sincerely yours,

BALLARD SPAHR, LLP,



Leita Walker

Exhibit 3

Ballard Spahr
LLP

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Minneapolis, MN 55402-2119
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FAX 612.371.3207
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Leita Walker
Tel: 612.371.6222
Fax: 612.371.3207
walkerl@ballardspahr.com

May 14, 2019

Via E-mail

Commissioner John Harrington
Minnesota Department of Public Safety
445 Minnesota Street
Saint Paul MN 55101-5155

Re: Media Requests for Data Presented as Evidence at Mohamed Noor Trial

Dear Commissioner Harrington:

Our firm represents Star Tribune Media Company LLC and Minnesota Public Radio.

As you know, on April 5, Star Tribune sent an email to you, in your capacity as responsible authority for the Department of Public Safety, requesting copies of "All dash cam, body cam and autopsy photos presented as evidence in State of Minnesota vs Noor." Star Tribune's reporter also forwarded that email to Joe Newton in your office to ensure a prompt response. Mr. Newton responded on April 5, stating "I am acknowledging receipt of your request below and your voice mail. We are looking into the matter in order to respond." You likewise responded on April 8, stating that "Bruce Gordon has received this request and will respond for DPS." More than a month has now passed, and Star Tribune has heard nothing more from DPS, which has not produced a single record responsive to the April 5 request.

Likewise, on April 9, MPR reporter Laura Yuen sent an email to Jill Oliveira at DPS requesting "access to any and all MPD body-camera videos and photos pertaining to the shooting of Justine (Damond) Rusczyk that is introduced as evidence in the trial of Mohamed Noor." Over a month later, neither Ms. Oliveira nor anyone else at DPS ever responded to Ms. Yuen's request. MPR reporter Jon Collins did exchange emails with Ms. Oliveira earlier this month, pointing out to her that even where an investigation remains active, Minn. Stat. §13.82 subd. 7 makes public "Any investigative data presented as evidence in court." Ms. Oliveira's only response to this explanation was by email on May 8 in which she stated, "Release of items presented in court by the Hennepin County Attorney's Office during the trial would be through their office or the courts."

DPS's responses to Star Tribune's and MPR's requests under the Minnesota Data Practices Act are woefully inadequate. Either DPS has copies of the investigative data

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Page 2

presented as evidence in court or it does not. If it does not, it should say so. If it does, then it has an obligation to disclose that data under the Data Practices Act regardless whether other agencies also have copies of the data and regardless whether the data is or is not accessible through the court.

The Data Practices Act is very clear that “Any investigative data presented as evidence in court shall be public.” Minn. Stat. §13.82 subd. 7. This is true whether the investigation is active or inactive. *See Ruszczyk v. Noor*, 349 F. Supp. 3d 754, 762–63 (D. Minn. 2018) (“Such data becomes public, inter alia, once it is presented as evidence in court, a defendant’s appeal rights are exhausted or expired, or disclosure is authorized or ordered.” (emphasis added)).

We understand that only excerpts of lengthy video and audio recordings may have been presented as evidence at Mr. Noor’s trial. But if DPS has copies of this data—even if such data is maintained by DPS as part of a larger recording or compilation—then under the plain language of the Data Practices Act DPS has an obligation to produce it. To the extent DPS is concerned about producing data not entered into evidence, this concern is easily addressed. By order dated May 13, Judge Quaintance has made the trial exhibits open for inspection. Thus someone from DPS can determine, down to the second, which videos and audio recordings were entered into evidence. *See* Minn. Stat. § 13.03 subd. 1 (“The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records.”); *id.* subd. 2 (“The responsible authority in every government entity shall establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner.”).

Finally, in the interest of efficiency and to avoid additional letter writing, we note that other government entities have responded to similar requests by citing to the Rules of Public Access to Records of the Judicial Branch and an April 9, 2019, order by Judge Quaintance stating that “no exhibits entered into evidence in this case will be released until after the conclusion of the trial.” DPS would be wrong to rely upon similar logic. First, data in the hands DPS—which is a “government entity,” *see* Minn. Stat. § 13.02 subd. 7a—is governed by the Data Practices Act. It is *not* governed by the Rules of Public Access to Records of the Judicial Branch. Second, whatever discretionary power Judge Quaintance has and chooses to exercise over her own court’s files is completely separate and independent from what is public under the Data Practices Act and DPS’s obligation to comply with the Act, as the Supreme Court held in *In re Access*, 517 N.W.2d 895 Minn. 1994) (holding that district court erred in ordering the expungement and sealing of law enforcement records relating to an investigation into an alleged sexual assault; stating that because the records involved were not “judicial records,” there was “no judicial interest in the expunging or sealing of the records in question”); *cf. KSTP-TV v. Metro. Council*, 884 N.W.2d 342, 346–

Commissioner John Harrington
May 14, 2019
Page 3

48 (Minn. 2016) (data maintained for multiple purposes, including a purpose under which that data is public under the MGDPA, is public data). Third, Judge Quaintance has now lifted restrictions on viewing evidence in the court file, making her April 9 order irrelevant in any event.

In a word, DPS's refusal to respond in any meaningful way to Star Tribune's and MPR's data requests is appalling. In similar situations—most notably the case involving Police Officer Jeronimo Yanez, who shot and killed Philando Castile—DPS released the entire case file from its investigation. *See* Matt DeLong, “See evidence from the BCA investigation of the Philando Castile shooting,” StarTribune.com (June 22, 2017), <http://www.startribune.com/see-evidence-from-bca-investigation-of-castile-shooting/429662023/>.

Here, Mr. Noor stands convicted of manslaughter and third-degree murder for the on-duty killing of an unarmed woman, the City of Minneapolis has agreed to pay the woman's family \$20 million, and the Hennepin County Attorney has publicly complained that Bureau of Criminal Apprehension agents did not adequately investigate the circumstances of her death. And yet, DPS refuses to release clearly public data so that a concerned public is able to scrutinize the conduct of law enforcement and other government officials. With the jury's verdict now two weeks old, and the trial exhibits open for inspection, Star Tribune and MPR demand that DPS disclose electronic copies of data responsive to their requests no later than Friday.

Sincerely yours,

BALLARD SPAHR, LLP,



Leita Walker

Exhibit 4

Ballard Spahr
LLP

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80 South 8th Street
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Tel: 612.371.6222
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May 14, 2019

Via E-mail (daniel.rogan@hennepin.us)

Dan Rogan
Civil Division Manager
Hennepin County Attorney's Office
300 South 6th St.
Minneapolis, MN 55487

Re: Media Requests for Data Presented as Evidence at Mohamed Noor Trial

Dear Mr. Rogan:

Our firm represents Star Tribune Media Company LLC and Minnesota Public Radio.

As you know, on April 5, 2019, Star Tribune sent an email to Chuck Laszewski requesting "All dash cam, body cam and autopsy photos presented as evidence in State of Minnesota vs Noor."

Likewise, on April 9, MPR sent an email to Mr. Laszewski requesting "any and all body-camera videos and photos pertaining to the shooting of Justine (Damond) Ruszczyk that is introduced as evidence in the trial of Mohamed Noor."

On April 9, 2019, you responded on behalf of the Hennepin County Attorney's Office to both Star Tribune and MPR in substantively identical letters.

In refusing to produce data responsive to Star Tribune's and MPR's requests, the HCAO took the position that the requests were governed by General Rules of Practice of the Minnesota Supreme Court, the Rules of Public Access to Records of the Judicial Branch, and an April 9, 2019, order issued by Judge Quaintance.

The HCAO's analysis of controlling law was wrong on April 9 and it is certainly wrong today, given Mr. Noor's conviction and other changed circumstances, including Judge Quaintance's issuance of an order on May 13 opening up access to trial exhibits.

Data in the possession of HCAO is not governed by court rules—it is governed by the Minnesota Government Data Practices Act, which is very clear that "[a]ny investigative data presented as evidence in court shall be public." Minn. Stat. §13.82 subd. 7. This is true

Case No. 18-00000
Date Filed: 5/16/19
Page 1

The undersigned, a member of the Bar of the State of Minnesota, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the undersigned.

Witness my hand and the seal of the Court at St. Paul, Minnesota, this 16th day of May, 2019.

Judge

hr

The undersigned, a member of the Bar of the State of Minnesota, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the undersigned.

Judge

The undersigned, a member of the Bar of the State of Minnesota, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the undersigned.

