

**OFFICE OF THE HENNEPIN COUNTY ATTORNEY****MICHAEL O. FREEMAN** COUNTY ATTORNEY

May 16, 2019

*VIA E-FILING*

The Honorable Kathryn L. Quaintance  
Fourth Judicial District Court  
Hennepin County Government Center

Re: Data Practices Request regarding Trial Exhibits  
*State of Minnesota v. Mohamed Noor*  
27-CR-18-6859

Dear Judge Quaintance:

We write to inform the Court that on May 14, 2019, Star Tribune Media and Minnesota Public Radio, through their attorney, Leita Walker, demanded that the Hennepin County Attorney's Office provide copies of certain exhibits admitted in the *Noor* trial. Ms. Walker's May 14 letter and the County Attorney's Office's response are attached.

Sincerely,

Handwritten signature of Amy E. Sweasy in cursive.

Amy E. Sweasy  
Assistant County Attorney  
Hennepin County Attorney's Office

Handwritten signature of Patrick R. Lofton in cursive.

Patrick R. Lofton  
Assistant County Attorney  
Hennepin County Attorney's Office

cc: Thomas Plunkett (via e-service)  
Peter Wold (via e-service)

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Leita Walker  
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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

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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)).

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 the HCAO’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).

The language of the Data Practices Act is plain and the bottom line is this: if the HCAO has copies of data presented as evidence at trial—and it almost certainly does, given its role as prosecutor—then it must produce that data. Indeed, other government entities have pointed Star Tribune and MPR to the HCAO as the best agency to respond to their requests. For example, see the enclosed email, in which the Department of Public Safety told MPR reporter Jon Collins that “Release of items presented in court by the Hennepin County Attorney’s Office during the trial would be through their office or the courts.”<sup>1</sup>

In a word, the failure of the HCAO to meaningfully and timely respond to media requests for data that Minnesota law indisputably classifies as public 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

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<sup>1</sup> Star Tribune and MPR are pursuing access through the judicial system, as well, but the fact that Judge Quaintance has granted the press access to view the exhibits at the courthouse does not excuse the HCAO from its separate and independent obligations under the Data Practices Act. This is especially true given that the Star Tribune and MPR wish to copy certain trial exhibits yet Judge Quaintance’s May 13 order only permits viewing (not copying) of exhibits accessed through the court.

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of Criminal Apprehension agents did not adequately investigate the circumstances of her death. And yet, the HCAO 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 the HCAO disclose electronic copies of data responsive to their requests no later than Friday.

Sincerely,



Leita Walker

LW/rtw

**Walker, Leita (Minn)**

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**From:** Oliveira, Jill (DPS) <jill.oliveira@state.mn.us>  
**Sent:** Wednesday, May 08, 2019 5:28 PM  
**To:** Collins, Jon <jon.collins@mpr.org>  
**Subject:** RE: Noor case files

Hi Jon,  
Release of items presented in court by the Hennepin County Attorney's Office during the trial would be through their office or the courts.

Jill

**From:** Collins, Jon <jon.collins@mpr.org>  
**Sent:** Wednesday, May 8, 2019 4:44 PM  
**To:** Oliveira, Jill (DPS) <jill.oliveira@state.mn.us>  
**Subject:** Noor case files

Jill,  
Looking through the MN Data Practice Act, I noticed this statute: 13.82, Subd. 7 (c). It's about when investigative data becomes public: "Any investigative data presented as evidence in court shall be public."

While evidence NOT presented in court would potentially still not be public until after appeals process etc... It seems like that sentence would clearly state that evidence presented in the Noor trial was considered public as soon as it was introduced in public court.

I know we've requested all investigative files. But wondering if you can cite the reasons why evidence presented in public court is NOT public, considering this wording in the statute.

Thank you,  
Jon

Jon Collins  
Reporter

Minnesota Public Radio News

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[jon.collins@mpr.org](mailto:jon.collins@mpr.org)

**OFFICE OF THE HENNEPIN COUNTY ATTORNEY****MICHAEL O. FREEMAN** COUNTY ATTORNEY

May 16, 2019

*VIA EMAIL ONLY*

Leita Walker, Esq.

Ballard Spahr LLP

[walkerl@ballardspahr.com](mailto:walkerl@ballardspahr.com)

Re: Data Practices Request regarding Trial Exhibits  
*State of Minnesota v. Mohamed Noor*  
27-CR-18-6859

Dear Ms. Walker:

I write in response to your letter dated May 14, 2019, relating to the earlier data requests of your clients, Star Tribune Media Company LLC and Minnesota Public Radio, in connection with *State of Minnesota v. Mohamed Noor*, Minn. 4<sup>th</sup> Jud. Dist., Case No. 27-CR-18-6859. I am the Responsible Authority Designee for the Hennepin County Attorney.

Your clients seek access to video and photos that were admitted as trial exhibits in the *Noor* case. The Hennepin County Attorney's Office acknowledges that the *Noor* case is a matter of significant public interest to our community, and the Office has endeavored to be transparent with the public about the case – but it must do so in a manner that is consistent with the prosecutors' obligations under the governing statutes and rules, and consistent with safeguarding the process, the victim's rights, and the defendant's rights. Although the Court has made the trial exhibits available for public inspection, the Court has issued an order that explicitly restricts access to copies of such exhibits, and any copies that exist in the prosecutor's file are not available through a data request under Chapter 13.

Your letter mistakenly suggests that “[d]ata in the possession of [the Hennepin County Attorney's Office] is not governed by court rules[.]” To the contrary, the Minnesota Government Data Practices Act unequivocally recognizes that the “use, collection, storage, and dissemination of data by an attorney acting in a professional capacity for a government entity shall be governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility....” Minn. Stat. § 13.393. In other words, data created, used, and collected by attorneys acting for the State in a criminal prosecution are exempted from the requirements of the Data Practices Act. *See Scheffler v. City of Anoka*, 890 N.W.2d 437, 450–51 (Minn. Ct. App. 2017), *review*

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*denied* (Minn. Apr. 26, 2017); *McDeid v. Minn. Dep't of Human Servs.*, No. A06-1446, 2007 WL 4303102 at \*2 (Minn. App., Dec. 11, 2007). Instead, data in the Hennepin County Attorney's Office files are governed by the applicable statutes and rules governing criminal discovery.

In this case, the video and photos that you seek were admitted into evidence during the trial. These exhibits – including copies of such exhibits – are under the custody and control of the trial court. *See* Rule 706, Minnesota Rules of General Practice; *see also* *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978). Exhibits in a public proceeding often become available for public inspection, subject to conditions imposed by the court administrator. *See* Rule 8, subd. 5, Minnesota Rules of Record Access. However, public access may be restricted by court order, *id.*, as has occurred in the *Noor* case. *See First Order Regarding Copy Access to Trial Exhibits*, Minn. 4<sup>th</sup> Jud. Dist., Case No. 27-CR-18-685 (May 13, 2019).

In the May 13 Order, the Court first cited to the Court Exhibit Policy, which sets certain conditions for public inspection of court exhibits, including a requirement that “[a]rrangements to view or obtain copies of exhibits must be scheduled through District Court” and that “[a] judicial order must be provided for any requests to video tape exhibits, take pictures of exhibits, or obtain copies of a recording (including video, DVD, and audio recordings).” *First Order*, pp. 1-2 (emphasis added). The Court then explicitly ordered that “[r]equests 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.” *First Order*, p. 3. This Order controls the public release of the court exhibits.

Your letter recognizes that the Court has already ruled on how the *Noor* exhibits are publicly available, yet erroneously claims that the Hennepin County Attorney's Office has a “separate and independent obligation under the Data Practices Act” to provide copies of exhibits upon request. That assertion, however, is directly contradicted by Minn. Stat. § 13.393 and is unsupported by any of the legal authorities cited in your letter.

Contrary to the analysis presented in your letter, copies of trial exhibits in the possession of the Hennepin County Attorney's Office are not classified under Minn. Stat. § 13.82. *See id.*, subd. 1 (listing agencies “which carry on a law enforcement function” and not including county attorneys); *cf.* Minn. Stat. § 13.393 (applicable provision of the Data Practices Act with respect to data held by government attorneys). As a result, Minn. Stat. § 13.82 does not and cannot make any data in the County Attorney file public. Moreover, even if Minn. Stat. § 13.82 applied to any data in the possession of the Hennepin County Attorney's Office, or to a request for data from any law enforcement agency involved in this case, the Court's May 13 Order currently sets limits for the public access to the trial exhibits you seek. *First Order*, pp. 1-2; *see also* Minn. Stat. § 13.03, subd. 6 (providing process for court review when a government entity opposes “release of data pursuant to a court order”). In addition, all other investigative data (not presented as evidence) governed by Minn. Stat. § 13.82 is currently classified as confidential or protected nonpublic, given that the defendant's rights of appeal are not yet exhausted or expired. *See* Minn. Stat. § 13.82, subd. 7(c). The language you cite from Minn. Stat. § 13.82, subd. 7 (“Any investigative data presented as evidence in court shall be public”) simply confirms that the

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data presented as evidence in court must ultimately be treated as public data by law enforcement agencies, despite other provisions of Minn. Stat. § 13.82, like the provision that treats data that is clearly offensive to common sensibilities as not public. *See id.*, subd. 7.

Based on the foregoing, the Hennepin County Attorney's Office must decline your request. The data maintained by the prosecutors in this case is not subject to the provisions of the Data Practices Act, and even if an obligation existed for the Hennepin County Attorney or any responsible authority to produce public copies of trial exhibits, any such disclosure is currently prohibited by the Court's order.

Sincerely,

*Daniel Rogan*

Daniel Rogan  
Civil Division Manager  
Hennepin County Attorney's Office  
daniel.rogan@hennepin.us

cc: Chuck Laszewski  
Amy Sweasy  
Patrick Lofton