STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF STEARNS **SEVENTH JUDICIAL DISTRICT**

Patty Wetterling and Jerry Wetterling,

Plaintiffs,

and

Unites States of America,

Plaintiff-Intervenor,

v.

Court File No.: 73-CV-17-4904

ORDER GRANTING MEDIA-INTERVENORS' SUMMARY JUDGMENT MOTION

Stearns County, Stearns County Sheriff's Office and Don Gudmundson, in his capacity as Stearns County Sheriff,

Defendants;

Minnesota Coalition on Government Information, Silha Center for the Study of Media Ethics and Law, Society of Professional Journalists-Minnesota Chapter, Minnesota Broadcasters Association, KSTP-TV, LLC, WDIO-TV, LLC, KAAL-TV, LLC, Minnesota Public Radio, and ST. Paul Pioneer Press,

Intervenors.

The above-captioned matter came on before the Honorable Ann L. Carrott, Judge of District Court, at the Douglas County Courthouse on February 2, 2018, pursuant to Media-Intervenors' Motion for Summary Judgment. By separate order and memorandum, the Court issued its ruling on Plaintiff-Intervenor United States of America's Motion for Summary Judgment.

Douglas A. Kelley and Steven E. Wolter, Kelley, Wolter & Scott, P.A., appeared with and on behalf of Plaintiffs Patty Wetterling and Jerry Wetterling.

Ana H. Voss, Assistant U.S. Attorney, appeared on behalf of Plaintiff-Intervenor, United States of America.

Janelle P. Kendall, Stearns County Attorney, appeared on behalf of Defendants, Stearns County, Stearns County Sheriff's Office and Don Gudmundson.

Mark R. Anfinson, Attorney at Law, appeared on behalf of Intervenors, Minnesota Coalition on Government Information, Silha Center for the Study of Media Ethics and Law, Society of Professional Journalists – Minnesota Chapter, Minnesota Newspaper Association, Minnesota Broadcasters Association, KSTP-TV, LLC, WDIO-TV, LLC, KAAL-TV, LLC, Minnesota Public Radio, and St. Paul Pioneer Press.

Based upon consideration of Media-Intervenors' Motion for Summary Judgment, arguments and briefs of counsel, and all the files, records, and proceedings herein, the Court makes the following:

ORDER

1. Intervenors' Motion for Summary Judgment is **GRANTED**.
2. Plaintiffs' claim for declaratory relief is **DISMISSED.**
3. The hearing on Plaintiff's request for injunctive relief is set for May 16, 2018 at 1:30 p.m. at the Stearns County Courthouse.
4. The attached Memorandum of Law is incorporated by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY

It is so **ORDERED** this 19th day of April, 2018.

Hon. Ann L. Carrott
Judge of District Court

Order
FILED in Stearns County
Court Administration
4-19-18

JUDGMENT

I certify that the Order for Judgment above constitutes the entry of Judgment of the Court.

Dated this 19 day of April, 2018.

George Lock
Stearns County Court Administrator

Judgment
FILED in Steams County
Court Administration
4-19-18

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF STEARNS **SEVENTH JUDICIAL DISTRICT**

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Defendants,

Minnesota Coalition on Government Information, Silha Center for the Study of Media Ethics and Law, Society of Professional Journalists-Minnesota Chapter, Minnesota Broadcasters Association, KSTP-TV, LLC, WDIO-TV, LLC, KAAL-TV, LLC, Minnesota Public Radio, and St. Paul Pioneer Press,

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MEMORANDUM OF LAW

Plaintiffs commenced an action against Stearns County, the Stearns County Sheriff's Office and Don Gudmundson in his capacity as the Stearns County Sheriff ("Defendants" or "Stearns County"). Plaintiffs allege they possess a fundamental right of privacy under the United States Constitution and the Minnesota Constitution in personal information contained in a limited subset of documents in a law enforcement investigative file. Defendants planned to publicly release the investigative file after it became inactive pursuant to the Minnesota Government Data

Practices Act ("MGDPA"). Plaintiffs seek declaratory and injunctive relief to prevent Stearns County from publicly releasing all or portions of the identified documents.

I. Statement of Facts

Plaintiffs Patty and Jerry Wetterling are the parents of Jacob Wetterling. Wetterling Aff. at ¶ 2. Jacob Wetterling was abducted on October 22, 1989, near the family home in St. Joseph, Minnesota. *Id.* at ¶ 3. The Stearns County Sheriff's Office and Federal Bureau of Investigation jointly investigated Jacob Wetterling's disappearance. The investigation continued for nearly three decades until September 2016, when Danny Heinrich confessed to Jacob Wetterling's kidnapping and murder. *Id.* at ¶ 6.

During the course of the investigation, Plaintiffs had significant contact with law enforcement personnel. *Id.* at ¶ 7. Investigation reports were generated and interviews were recorded and transcribed.

After the investigation was closed, Stearns County reviewed the investigative file for public disclosure in accordance with the MGDPA and redacted information that is not deemed public under the MGPDA. Amended Complaint ¶ 7. The inactive criminal investigation file includes approximately 10,399 individual documents consisting of 56,373 pages. *Id. at* ¶ 5. Plaintiffs reviewed the redacted investigative file prior to public dissemination in accordance with provisions of the MGDPA. *Id.* After reviewing the redacted investigative file, Plaintiffs requested that Stearns County redact additional information before making the investigative file public. *Id.* at ¶ 8. Stearns County informed Plaintiffs that the MGDPA required release of the investigative file without further redaction. *Id.*

a. Procedural History.

Plaintiffs filed suit on June 1, 2017 to enjoin the dissemination of all, or a portion of 22 documents from the inactive investigative file asserting a constitutional right of informational privacy. *See generally,* Complaint. Plaintiffs consider certain information in the subset of documents to be personal information regarding their marriage and family. By agreement of the parties, the Court issued a Temporary Restraining Order on June 2, 2017 enjoining and restraining Defendants from disseminating or disclosing the identified contested documents. By stipulation, on July 28, 2017, the parties submitted to the Court under seal the 22 documents (168 pages) that

comprise the contested documents for *in camera* review. On September 21, 2017, the Court issued a Temporary Injunction prohibiting dissemination of any of the 22 contested documents, which included Federal Bureau of Investigation ("FBI") documents.

On September 21, 2017, a consortium of journalistic, academic and public information organizations ("Media-Intervenors") intervened pursuant to Minn. R. Civ. P. 24.01. Media-Intervenors specifically stated that they did not need to be made privy to the disputed documents indicating that the contents thereof would not affect their legal position or analysis of the law.

On October 17, 2017, Plaintiffs filed an Amended Complaint. *See generally,* Amended Complaint. The Amended Complaint added Count III, Injunctive Relief Under Minn. Stat. § 13.08, subd. 2. Count III focused on documents in the Jacob Wetterling investigative file provided by the FBI.

On December 5, 2017, the United States filed a notice of intent to intervene as a Plaintiff. The United States asserted claims solely against Defendants for return of documents generated by federal law enforcement agents during the investigation. No objection was filed by any party. On January 16, 2018, this Court issued an order permitting the United States' intervention pursuant to Minn. R. Civ. P. 24.01.

Media-Intervenors moved for summary judgment asserting that the documents are public government data and Plaintiffs do not have a constitutional right of informational privacy in information contained within the contested documents. The United States moved for summary judgment asserting that the FBI documents were the property of the federal government and not subject to release by Stearns County.

A hearing was held on February 2, 2018, at which this Court heard the parties' arguments on both the summary judgment motion brought by Media-Intervenors and the summary judgment motion brought by the United States.[1] Stearns County did not file an Answer to Plaintiffs' Complaint or Amended Complaint and did not file any written response to either summary judgment motion.

The matter was taken under advisement by the Court on February 2, 2018.

This Memorandum of Law is limited to Media-Intervenor's summary judgment motion relative to non-federal documents identified in the Court's Temporary Injunction issued September

[1] The Order Granting United States of America's Motion for Summary Judgment and Memorandum of Law was filed on March 29, 2018.

21, 2017. By granting the United States of America's Motion for Summary Judgment the issue before the Court involves the remaining 6 contested documents (89 pages). Plaintiffs have identified 29 pages out of the 89 pages that they believe contain information that is constitutionally protected by the right of informational privacy. Six of the 29 pages contain information provided to law enforcement by the Wetterlings. The remaining 19 pages contain information about the Wetterlings provided to law enforcement by third-parties.

II. Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact and where the moving party is entitled to summary judgment as a matter of law. Minn. R. Civ. P. 56.03; *Blum v. Thompson*, 901 N.W.2d 203, 214 (Minn. Ct. App. 2017). Summary judgment may be granted where, as a matter of law, the material facts compel only one conclusion. *Illinois Farmers Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630 (Minn. 1978). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Group, Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). A material fact is one that will affect the result or outcome of the case, depending on its resolution. *Zappa v. Fahey*, 245 N.W.2d 258 (Minn. 1976). "[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). "When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Minn. R. Civ. P. 56.05.

III. Legal Analysis

Media-Intervenors submit that the MGDPA is determinative as to whether the subset of documents identified by Plaintiffs in the inactive criminal investigative file held by Stearns County are public. Media-Intervenors argue that any judicial determination that the Plaintiffs have a right of informational privacy to information in the investigative file would be an expansion of the constitutional right to privacy and override the record classification designations and purpose underlying the MGDPA. Media-Intervenors note that although some federal circuits have held that a constitutional right of privacy may prevent the government from disclosing some information, there is no consensus among the circuits as to the circumstances under which that right applies. *See Am. Fed'n of Gov't Emps. v. U.S. Dep't of Hous. & Urban Dev.,* 118 F.3d 786 (D.C. Cir. 1997); *J.P. v. DeSanti*, 653 F.2d 1080, 1090 (6th Cir. 1981) (holding that there is no right of informational privacy in data held by the government).

Plaintiffs oppose summary judgment arguing that their Amended Complaint states a legally cognizable claim to the right of informational privacy pursuant to the United States Constitution and the Minnesota Constitution. Specifically, Plaintiffs assert that the right of informational privacy prohibits the government from disclosing certain personal information pertaining to Plaintiffs. Plaintiffs argue that the right of informational privacy was recognized in Minnesota in *In re Agerter*, 353 N.W.2d 908 (Minn. 1984) as well as in a number of federal cases. *See Scheetz v. Salt Lake County*, 45 F.3d 1383 (10th Cir. 1995); *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981).

a. The inactive law enforcement investigative file documents challenged by Plaintiffs are public pursuant to the MDGPA.

The MGDPA[2] began as a six page statute in 1974. Over the next forty-four years, the MGDPA has evolved into a 152 page statute. *See* Minn. Stat. Chapter 13, *et seq.* The Minnesota Supreme Court recognized "*at the heart of the act* is the provision that all 'government data' shall be public unless otherwise classified...." *Demers v. City of Minneapolis*, 468 N.W.2d 71, 73 (Minn. 1991) (emphasis added). The purpose of the MGDPA is to balance the rights of subjects of data to protect personal information from indiscriminate disclosure with the right of the public to transparency in government. *Id.* (citing *Montgomery Ward v. County of Hennepin*, 450 N.W.2d

[2] Initially codified as Minn. Stat. §§ 15.162 – .43

299, 307 (Minn. 1990) (citing Gemberling & Weissman, *Data Privacy: Everything You Wanted to Know About the Minnesota Government Data Practices Act-From "A" to "Z"*, 8 Wm. Mitchell L.Rev. 573, 575 (1982)). Minn. Stat. § 13.01, subd. 3 codifies the presumption that "government data" are presumed public unless there is a "federal law, state statute, or temporary classification that provides that certain data are not public."

Minnesota courts have recognized that through the MGDPA, the Minnesota legislature intended to balance the privacy rights of the subjects of data with the public's right "to know what the government is doing * * * within a context of effective government operation." *Westrom v. Minnesota Dep't of Labor & Indus.*, 667 N.W.2d 148, 150 (Minn. Ct. App. 2003), *aff'd*, 686 N.W.2d 27 (Minn. 2004) (citing *Montgomery Ward & Co., Inc. v. County of Hennepin,* 450 N.W.2d 299, 307 (Minn.1990)) (quotation omitted). "The right to informational privacy is substantially constricted when the information at issue is public information." *Mpls. Fed. of Teachers, AFL-CIO, Local 59 v. Mpls. Public School, Spec. School Dist. No. 1*, 512 N.W.2d 107, 110 (Minn. Ct. App. 1994). Generally, an individual does not have a privacy right in public information. *See Minnesota Medical Ass'n v. State*, 274 N.W.2d 84, 93-94 (Minn. 1998).

The MGDPA places the burden on any public agency refusing to disclose governmental data to identify "...the specific statutory section, temporary classification, or specific provision of federal law on which the determination is made." Minn. Stat. § 13.03, subd. 3(f). In this case, Stearns County has determined that the subset of documents is public pursuant to the MGDPA. Affidavit of Steven E. Wolter, Exhibit 1. It is the Plaintiffs who oppose disclosure and must identify an exception that prohibits disclosure.

The MGDPA defines "government data" as "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." Minn. Stat. § 13.02, subd. 7. Over the years, the Minnesota legislature has codified an extensive list of data classifications. *See generally*, Minn. Stat. § 13.02. In Minn. Stat. § 13.82, subd. 7, the MGDPA specifically identifies "criminal investigative data" as:

> investigative data collected or created by a law enforcement agency in order to prepare a case against a person, whether known or unknown, for the commission of a crime . . . are confidential or protected nonpublic while the investigation is active. Inactive investigative data are public.

However, the MGDPA also codifies specific exceptions to the general rule that inactive investigative data collected or created by law enforcement are public. For instance, in Minn. Stat. § 13.82, subd. 7, certain defined data are "private or nonpublic:"

> Images and recordings, including photographs, video, and audio records, which are part of inactive investigative files and which are clearly offensive to common sensibilities are classified as private or nonpublic data, provided that the existence of the images and recordings shall be disclosed to any person requesting access to the inactive investigative file.

Other exceptions in Minn. Stat. § 13.82[3] make data contained in inactive law enforcement investigative files "not public data" as defined in Minn. Stat. § 13.82, subd. 8a.

As inactive criminal investigative data is presumptively public the issue is whether there is an applicable exception to Minn. Stat. § 13.01, subd. 3. In *Minnesota Medical Association v. State of Minnesota*, plaintiffs sought a temporary injunction against the State of Minnesota to prevent it from furnishing data related to abortions performed for medical assistance recipients. *Minnesota Medical Association,* 274 N.W.2d 84 (Minn. 1978). The Minnesota Supreme Court noted that plaintiffs could cite "no statute or federal law which makes the names of those receiving payments for abortion services provided to medical assistance patients or the amount of the payments received 'not public.'" *Id.* at 88. Similarly, in the present case, Plaintiffs cite no state or federal statute that makes the information they seek to keep confidential "not public." In *Minnesota Medical Association*, the Supreme Court recognized that through the data privacy act the "legislature has provided mechanisms by which the public may be denied access to information controlled by state agencies. It has further determined that public records are to be available to the public 'except as otherwise expressed by law.'" *Id.* at 89. In analyzing the MGDPA the court further held, "these provisions evidence a legislative intent to retain full control of public access to information . . . . No power to restrict access is granted to the courts." *Id.* at 84.

The inactive law enforcement investigative file documents in the possession of Stearns County and challenged by Plaintiffs are public. Plaintiffs have not identified a federal or state statute that creates an exception to the public classification of the challenged documents. *See* Minn.

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[3] *See* Minn. Stat. § 13.82, subd. 8 (child abuse identity data); Subd. 9 (inactive child abuse data); Subd. 10 (vulnerable adult identity data); Subd. 11 (inactive vulnerable adult maltreatment data); Subd. 12 (name change data), Subd. 13 (protection of identities of a victim or alleged victim of criminal sexual conduct or sex trafficking); Subd. 20 (property data); Subd. 30 (a person's financial account number or transaction numbers).

Stat. § 13.01, subd. 3. Based on the unambiguous language of the MGDPA and the stated purpose of the MGDPA as noted by the Minnesota Supreme Court, the challenged documents are public.

b. A constitutional right of informational privacy does not apply to prohibit the disclosure of government data classified as public by state statute.

Plaintiffs do not challenge the constitutionality of the MGDPA. Rather, Plaintiffs ~~invite~~ suggest that the phrase "federal law" in Minn. Stat. § 13.01, subd. 3, encompasses the United States Constitution and that the constitutional right to informational privacy must be applied regardless.

The Minnesota Supreme Court has indicated that the law recognizes two types of privacy, the right not to divulge private information to the government and the right to prevent the government from disclosing private information. *In re Agerter*, 353 N.W.2d at 913. In *Agerter*, the Minnesota Supreme Court considered the State's right to *compel* a judge to disclose information about his private life to a judicial ethics board. The Court held that to intrude on plaintiff's right of privacy, the Board must show an important public interest. *Id.* at 915. Although the Supreme Court recognized the right of informational privacy in *Agerter*, it considered only the limited circumstance in which a public official can be compelled to provide personal information to the government. It did not reach the issue of the right to prevent the government from disclosing private information.

Plaintiffs urge this Court to conduct a balancing test to weigh their privacy interests against the public interest in disclosure.[4] Plaintiffs argue that the second type of privacy interest recognized as existing in *In re Agerter*, but never applied by Minnesota appellate courts or the United States Supreme Court, should be applied to the inactive criminal investigative file at issue in this case. All parties agree that the case before the Court is a case of first impression in Minnesota. Plaintiffs contend this Court should only allow disclosure if Media-Intervenors demonstrate a legitimate

[4] In *Data Practices at the Cusp of the Millennium*, a law review article on the MGDPA, the authors noted that, "(o)ther jurisdictions employ a balancing test, which weighs a variety of policy reasons that justify for non-disclosure against the requestor's wish for access. "But Minnesota has opted for a less clumsy inquiry; just answer one question – is there a federal law, state statute, or temporary classification that authorizes non-disclosure? If there is not, then the government data are to be treated as public data. This approach is intended to leave no discretionary wiggle room for governmental officials to assert that information sought cannot be made available because the administrators deem it sensitive, embarrassing, or not appropriate for public disclosure. To preemptively preclude litigation about weighing competing interests, the Legislature made clear in the statute's fourth sentence that the law 'establishes a presumption that government data are public.'" Donald A. Gemberling & Gary A. Weissman, *Data Practices at the Cusp of the Millennium,* 22 Wm. Mitchell L. Rev. 767, 773 (1996).

public interest in disclosing the data that outweighs the Plaintiffs' individual privacy considerations. The balancing test that Plaintiffs argue is applicable to their claim is based on the right to privacy afforded under the United States Constitution and the Minnesota Constitution.

In *Mpls. Fed. of Teachers, AFL-CIO, Local 59*, teachers' unions sought a temporary injunction to prevent the release of employee disciplinary information to media outlets. 512 N.W.2d 107. Plaintiffs challenged the constitutionality of the MGDPA. The Minnesota Court of Appeals affirmed the district court's denial of a temporary injunction because plaintiffs failed to show a likelihood of success on the merits of their underlying constitutional challenge to the release of disciplinary information pursuant to the MGDPA. The Court of Appeals noted that "although personnel data is ordinarily private information, that data also becomes public data if classified as such by statute." *Mpls. Fed. of Teachers, AFL-CIO, Local 59,* 512 N.W.2d *at 111.* Significantly, the Court of Appeals noted the Minnesota legislature's balancing of the rights of individuals to protect personal information and the public's right to obtain information about government when it concluded that disciplinary material was classified as public data. *Id.* (citation omitted). "An example of the Legislature's balancing to accommodate policy concerns is evident in its decision to make only the 'status and existence' of a charge public data before a final disposition occurs." *Id.* (citation omitted).

A review of Minn. Stat. § 13.82, indicates that the Minnesota legislature has already conducted a balancing of the rights of individual subjects of government data against the public's right to obtain information from the government in crafting the statute. This balancing of interests is evident in the classification of the law enforcement investigative data as confidential or protected nonpublic during an active investigation but public when the investigation is completed or deemed inactive. Once the investigation is inactive, the Minnesota legislature has additionally carved out exceptions to the presumption that all the data are public in deference to crime victims, which demonstrates the balancing of competing interests. *See* Minn. Stat. § 13.82.

Unlike Minnesota, some states do require governmental agencies to conduct a balancing test in individual instances to determine whether personal information held by the government should be made public. The balancing tests, however, are based on either the language of the state's data privacy statute (Colorado and Maryland) or their respective state constitution (Alaska and Pennsylvania).

In Colorado's data privacy statute government data is generally presumed public, however, it provides for a "substantial injury to the public exception":

> "[i]f, in the opinion of the official custodian of any public record, disclosure of the ... record would do substantial injury to the public interest ... the official custodian may apply to the district court ... for an order permitting him or her to restrict such disclosure...."

Colo. Rev. Stat. Ann. § 24-72-100.1 et seq.; Colo. Rev. Stat. Ann. § 24–72–204(6)(a); *see* also, *Todd v. Hause*, 371 P.3d 705, 710 (Colo. App. 2015). Colorado courts have construed the "substantial injury to the public interest exception" to include the protection of information collected by the government, the disclosure of which would violate an individual's right to privacy. *Id.* at 711.

Similarly, Maryland's Public Information Act provides an exception to the release of information otherwise deemed public under the act in cases "[w]henever this title authorizes inspection of a public record but if the official custodian believes that inspection would cause substantial injury to the public interest, the official custodian *may* deny inspection temporarily." (emphasis added). *Glenn v. Maryland Dep't of Health & Mental Hygiene*, 446 Md. 378, 386, 132 A.3d 245, 250 (2016). If "after [a] hearing, [a] court finds that inspection of the public record would cause substantial injury to the public interest, the court may issue an appropriate order authorizing the continued denial of inspection." *Id.*

In Alaska, Article 1, section 22 of the Alaska Constitution states, "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." The Supreme Court of Alaska has held that "under appropriate circumstances, a statute requiring the disclosure of a person's identity must yield to the constitutional right to privacy." *Int'l Ass'n of Fire Fighters, Local 1264 v. Municipality of Anchorage*, 973 P.2d 1132, 1134 (Alaska 1999) (citation omitted). The Alaskan Constitution gives broader protection to its citizens than the United States Constitution. However, the Minnesota Constitution contains no such language which broadens its citizen's right to privacy beyond that afforded by the United States Constitution.

While there are numerous cases in state and federal jurisdictions that acknowledge a general constitutional right of informational privacy,[5] the United States Supreme Court has never

[5] *See In re Agerter*, 353 N.W.2d 908; *Minn. Fed. Of Teacher*; 512 N.W.2d 107; *Minnesota Medical Ass'n v. State*, 274 N.W.2d 84 (Minn. 1978); *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425 (1977); *NASA v. Nelson*, 562 U.S. 134 (2011).

extended the constitutional right of privacy to include the right to prevent the disclosure of personal information. *Keezer v. Spickard*, 493 N.W.2d 614, 619 (Minn. Ct. App. 1992) (citing *Whalen v. Roe,* 429 U.S. 589, 605-06, 97 S.Ct. 869, 879, 51 L.Ed.2d 64 (1977) (Supreme Court declined to decide whether right to prevent release of information collected by government was part of constitutional right of privacy)). In *Am. Fed'n of Gov't Emps. v. U.S. Dep't of Hous. & Urban Dev.*, the D.C. Circuit Court of Appeals stated it had "grave doubts as to the existence of a constitutional right of privacy in the nondisclosure of personal information" noting that "the Supreme Court has addressed the issue in recurring dicta without resolving the issue." *Am. Fed'n of Gov't Emps.*, 118 F.3d 786 (D.C. Cir. 1997).

The Plaintiffs rely on two federal cases to support their argument that they have a constitutional right of informational privacy that prohibits disclosure of certain information: *Sheets v. Salt Lake County*, 45 F.3d 1383 (10th Cir. 1995) and *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981). In both cases, federal circuit appeals courts recognized an informational right to privacy in information contained in criminal investigative files. However, neither case required the court to consider an underlying state data privacy act, similar to the MGDPA, which made the information public.

While some federal circuit courts have addressed the issue of the right of informational privacy and whether disclosure of personal information by the government violates this right, there is no clear consensus among the circuits. *Scheetz v. The Morning Call, Inc.*, 946 F.2d 202 (3d Cir. 1991) *cert. denied* 502 U.S. 1095 (1992). In *Scheetz*, police reports were released to a local paper regarding a police officer's wife's report of domestic abuse. The officer and his wife filed a suit claiming their constitutionally recognized right to privacy was violated by the release of police records. In *Scheetz*, the 3rd Circuit Court of Appeals held that there is no constitutionally protected privacy interest in the information divulged in a police report. *Id.* at 206-07.

Likewise, there are no Eighth Circuit decisions that support the conclusion that an individual can claim a right of informational privacy to prevent the government from disclosing information classified as public by state statute. The Eighth Circuit has acknowledged that a constitutional right of privacy exists in the initial nondisclosure of personal information to a government agency, but it has never held that this right not to give personal information to the government bars the disclosure of information once it was obtained. *See Eagle v. Morgan*, 88 F.3d

620 (8th Cir. 1996); *Alexander v. Peffer*, 993 F.2d 1348 (8th Cir. 1993). Minnesota has tended to follow, rather than question, the federal informational privacy cases. *Minneapolis Fed. Of Teachers*, 512 N.W.2d at 111.

Although the Eighth Circuit and U.S. Supreme Court have recognized that a right to informational privacy exists, neither has held that the right applies to prohibit the disclosure of information held by the government. The federal circuit decisions do not provide guidance due to the lack of a consensus on the issue of the right of informational privacy and when it applies. The fact that some federal circuit courts use a balancing test is not persuasive because Minnesota appellate courts have recognized that the Minnesota legislature performed a balancing test weighing an individual's right to privacy versus the public's right to access government information in crafting provisions of the MGDPA. *See Mpls. Fed. of Teachers*, 512 N.W.2d at 111.

IV. Conclusion

Media-Intervenors are entitled to summary judgment as a matter of law and there are no genuine issues of material fact that would affect the result or outcome of the case. Minn. Stat. § 13.01, subd. 3 and Minn. Stat. § 13.82, subd. 7 classify the inactive criminal investigative file in the possession of Stearns County as public. The Minnesota Supreme Court has recognized that the Minnesota legislature has reconciled an individual's right of privacy with the public's right to be fully informed about government operations in enacting the provisions of the MGDPA. *Demers*, 468 N.W.2d at 73. Additionally, the Minnesota Court of Appeals has likewise held that the Minnesota legislature has already balanced the rights of individuals to protect personal information and the public's right to obtain information in the MGDPA. *Mpls. Fed. of Teachers, AFL-CIO, Local 59*, 512 N.W.2d at 111.

The applicable Minnesota statutes and case law on the issue before the Court are dispositive and lead the Court to conclude that the Plaintiffs do not have a legally cognizable claim of informational privacy in the identified contested documents in the Stearns County investigative file. The Minnesota legislature took that into consideration when weighing the privacy rights of individuals and the public's right to access. Although courts in other state and federal jurisdictions have engaged in a balancing test as proposed by the Plaintiffs, Minnesota's data privacy act and

Minnesota appellate court decisions do not support a determination by this Court that it is appropriate to engage in a second balancing test to determine whether government information deemed public by the MGDPA should be deemed private or confidential by a court.

The Plaintiffs' family tragedy had a profound effect on the people of Minnesota. In many ways, Jacob Wetterling's kidnapping on a dirt road in a small rural town in Minnesota made us all feel less safe. While the Court has great personal empathy for the Wetterlings, the Court must impartially apply the law, unswayed by emotion. To do otherwise would result in an unfair application of the law.

Based on the foregoing, Media-Intervenors' motion for summary judgment is granted.

ALC

ALC
4-19-18