STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF BLUE EARTH

FIFTH JUDICIAL DISTRICT

Todd Hoffner, Melodee Hoffner, K.E.H., B.C.H., and M.A.H.,

File No: 07-CV-12-4668

Plaintiffs,

vs.

ORDER FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

State of Minnesota and Blue Earth County,

Defendants.

The above-entitled matter came on before the undersigned Judge of the above-named Court on February 28, 2013, for hearing upon Plaintiffs' motion for injunction under Minn. Stat. § 13.08, subd. 2 and Potential Intervenor *The Free Press*' motion for limited purpose intervention. Plaintiffs Todd Hoffner, et. al., were represented by Christopher W. Madel and Jennifer M. Robbins, Robins, Kaplan, Miller & Ciresi L.L.P., Minneapolis, Minnesota. Defendants State of Minnesota, et. al., were represented by Michael A. Hanson, Assistant Blue Earth County Attorney, Mankato, Minnesota. Potential Intervenor *The Free Press* was represented by Mark R. Anfinson, Attorney at Law, Minneapolis, Minnesota. The Court received final submissions on March 15, 2013, and took the matter under advisement at that time.

Upon the files, pleadings, and record herein, together with the arguments of counsel, and the Court being otherwise advised:

IT IS HEREBY ORDERED that Plaintiffs' motion for declaratory judgment and permanent injunction be, and the same is, GRANTED. All investigative data collected or created by law enforcement under Minn. Stat. § 13.82, subd. 7 in the matter of *State of Minnesota v. Todd Christian Hoffner* [07-CR-12-3126], and not presented as evidence in the criminal proceeding, is classified as "private data" under the Minnesota Government Data Practices Act. Minn. Stat. §§ 13.82, subd. 9 and 13.02, subd. 12.

FILED 5-3-13
NO. CV-12-4668
Court Administrator
Blue Earth County, Minnesota

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IT IS FURTHER ORDERED that Potential Intervenor *The Free Press'* motion to intervene as a matter of right in the within proceeding be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that the Blue Earth County Court Administrator shall forward a certified copy of this ORDER and MEMORANDUM to the Commissioner of Administration, as required by Minn. Stat. § 13.08, subd. 4 (a).

LET JUDGMENT BE ENTERED ACCORDINGLY.

IT IS SO ORDERED.

The attached MEMORANDUM is made a part hereof.

DATED: May 2, 2013.

BY THE COURT:

Krista J. Jass
Judge of District Court

(COURT SEAL)

I hereby certify that the foregoing Order constitutes the Judgment of the Court.

DATED: 5-3-13

Deb Hanson, Deputy
Court Administrator
Blue Earth County

cc: Mr. Anfinson
Mr. Fleming
Mr. Hanson
Mr. Madel; Ms. Robbins

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MEMORANDUM

Todd Hoffner, et. al., v. State of Minnesota, et. al.
Court File No.: 07-CV-12-4668

FACTS

Plaintiff Todd Hoffner is the former head football coach at Minnesota State University – Mankato ("MSU"). On August 16, 2012, the human resources department at MSU contacted police to report that a university employee had discovered three videos of suspected child pornography on Plaintiff's work-issued cellular phone. The Mankato Police Department and Blue Earth County Sheriff's Office commenced a criminal investigation into the matter. That investigation revealed that Plaintiff recorded the three videos in his home and that the children in the videos were Plaintiff's minor children. Based on this information, police arrested Plaintiff for suspected production and possession of child pornography. They also applied for and obtained a search warrant to search Plaintiff's residence for additional evidence of child pornography. The subsequent execution of that search warrant resulted in the discovery of no additional child pornography evidence. On August 21, 2012, the state charged Plaintiff with one count of use of a minor to engage in a sexual performance in violation of Minn. Stat. § 617.246, subd. 2 and one count of possession of a pornographic work involving minors in violation of Minn. Stat. § 617.247, subd. 4 (a).

At an October 31, 2012, omnibus hearing, Plaintiff moved to dismiss all charges for lack of probable cause pursuant to Minn. R. Crim. P. 11.04. The state presented the

three alleged pornographic videos as evidence, as well as police reports, transcripts of child protective interviews with Plaintiff's children, and search warrant applications to establish probable cause for the charges. On November 30, 2012, the Court issued an Order dismissing all charges.[1] The Court found that there was insufficient evidence to establish probable cause to believe that the videos constituted "pornographic works" or a "sexual performance" under Minnesota law. The Court additionally concluded that the videos constituted protected expression as a matter of law, and that the prosecution of Plaintiff violated his rights to free speech and privacy under the First and Fourteenth Amendments to the United States Constitution. The state elected not to appeal the dismissal within the time prescribed by law. *See* Minn. R. Crim. P. 28.04, subds. 1 (1) and 2 (8) (establishing a five-day period in which the state may file an appeal "in any case, from any pretrial order, including probable cause dismissal orders based on questions of law.").

Following dismissal of the charges, Plaintiff demanded return of the investigative file under Minn. Stat. § 299C.11 from the Blue Earth County Attorney's Office and the Blue Earth County Sheriff's Office. Fleming Aff. at ¶ 12 (December 12, 2012). It is not clear whether or not either office has returned any identification or arrest information to Plaintiff pursuant to that demand. On December 01, 2012, Minneapolis/St. Paul KMSP-TV Fox 9 News ("*Fox 9 News*") made a request under the federal Freedom of Information Act ("FOIA") demanding access to Plaintiff's investigative file from Blue

[1] The findings and conclusions in the Court's November 30, 2012, Order and Memorandum issued in Court File No. 07-CR-12-3126 are incorporated herein by reference.

Earth County. Id. at ¶ 14. The County informed Plaintiff's attorney of the FOIA request and explained that *Fox 9 News* would not be granted access to the three cell phone videos because the videos were sealed by the Court in the criminal proceeding, but that the news organization would be given access to the reports received as evidence and made public in the criminal proceeding. Id. at ¶ 16. The County indicated that it was uncertain as to the classification of the remaining documents and evidence contained in the law enforcement investigative file and informed Plaintiff's attorney that it "preferred a Court Order instructing [it] what to do with respect to release of the data in that file." Id. at 17.

On December 13, 2012, Plaintiff commenced the within action to compel the County to comply with the Minnesota Government Data Practices Act ("MGDPA") under Minn. Stat. § 13.08. Specifically, Plaintiff seeks a declaratory judgment determining that the data contained in the law enforcement investigative file is "private data" under the MGDPA and injunctive relief prohibiting the County from releasing the data to the public. On December 20, 2012, Plaintiff and the County entered into a stipulated order for temporary injunction, sealing the entire investigative file from public view until such time as the Court determines the classification of the data under the MGDPA following an *in camera* review of the data. The Court entered a stipulated order memorializing the parties' agreement the same day. On January 14, 2013, *The Free Press* filed a motion for limited purpose intervention as a matter of right into the within proceeding. The Court held a hearing on Plaintiff's motion to compel compliance and *The Free Press*' motion to intervene on February 28, 2013. Plaintiff and *The Free Press* presented oral and written arguments in support of their respective positions on both the

data classification and limited purpose intervention issues. The County submitted the investigative file for review by the Court *in camera* but otherwise offered no position on either issue. The Court will consider each issue in turn.

LAW / ANALYSIS

I.

Data Classification

The first question presented is whether investigative data, collected or created by a law enforcement agency in the course of preparing a case against a parent suspected of using his minor children to engage in a sexual performance in violation of Minn. Stat. § 617.246, subd. 2, is public data under the MGDPA when the investigation becomes inactive by operation of law. This issue presents a question of statutory interpretation. The object of all statutory interpretation is to ascertain and effectuate the intent of the legislature. Minn. Stat. § 645.16 (2010). The Court's starting point in all matters of statutory interpretation is the language of the statute. Middle–Snake–Tamarac Rivers Watershed Dist. v. Stengrim, 784 N.W.2d 834, 840 (Minn. 2010). If the statute is facially unambiguous, the Court looks no further than the plain language to determine the statute's meaning. Hutchinson Tech., Inc. v. Comm'r of Revenue, 698 N.W.2d 1, 8 (Minn. 2005) ("We have repeatedly held that we must give effect to the plain meaning of statutory text when it is clear and unambiguous."). If the language is susceptible to more than one reasonable interpretation and ambiguous, the Court applies canons of construction to ascertain and effectuate the legislative intent. *See* In re Welfare of J.B., 782 N.W.2d 535, 539–40 (Minn. 2010); *see* Minn. Stat. § 645.16.

The relevant portion of the MGDPA, Minn. Stat. § 13.82, subds. 7 and 9, states in part:

> **Subd. 7. Criminal investigative data.** Except for the data defined in subdivisions 2, 3, and 6, 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 or other offense for which the agency has primary investigative responsibility are confidential or protected nonpublic while the investigation is active. Inactive investigative data are public unless the release of the data would jeopardize another ongoing investigation or would reveal the identity of individuals protected under subdivision 17. ... An investigation becomes inactive upon the occurrence of any of the following events:
>
> (a) a decision by the agency or appropriate prosecutorial authority not to pursue the case;
> (b) expiration of the time to bring a charge or file a complaint under the applicable statute of limitations, or 30 years after the commission of the offense, whichever comes earliest; or
> (c) exhaustion of or expiration of all rights of appeal by a person convicted on the basis of the investigative data.
>
> Any investigative data presented as evidence in court shall be public. Data determined to be inactive under clause (a) may become active if the agency or appropriate prosecutorial authority decides to renew the investigation.
>
> ***
>
> **Subd. 9. Inactive child abuse data.** Investigative data that become inactive under subdivision 7, clause (a) or (b), and that relate to the alleged abuse or neglect of a child by a person responsible for the child's care, as defined in section 626.556, subdivision 2, are private data.

Minn. Stat. § 13.82, subds. 7 and 9 (2012). The parties and Potential Intervenor *The Free Press* seem to agree that the investigation in the matter of *State of Minnesota v. Todd Christian Hoffner* [07-CR-12-3126] became "inactive" under Minn. Stat. § 13.82, subd. 7 (a) when the state elected not to pursue an appeal of the Court's November 30, 2012, Order dismissing all charges for lack of probable cause. Accordingly, the Court

presumes without deciding that the investigation is "inactive" under Minn. Stat. § 13.82, subd. 7 (a). In light of this presumption, the investigative data collected or created by law enforcement in the criminal case is "public" unless a recognized exception applies. *See* Id. at subd. 7 (stating that "[i]nactive investigative data are public[.]"). Plaintiff contends that the "inactive child abuse data" exception under Minn. Stat. § 13.82, subd. 9 unambiguously classifies the entire investigative file as "private data" under the Act. *The Free Press* counters that section 13.82, subd. 9 is ambiguous and "should not be construed in a way that prevents access to the entire investigative file, but only to those portions that *directly* relate to the allegations of abuse and neglect" (emphasis added).

A.

The MGDPA "regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities." Minn. Stat. § 13.01, subd. 3. The purpose of the MGDPA is "to reconcile the rights of data subjects to protect personal information from indiscriminate disclosure with the right of the public to know what the government is doing. The Act also attempts to balance these competing rights within a context of effective government operation." Montgomery Ward & Co. v. Cnty. of Hennepin, 450 N.W.2d 299, 307 (Minn. 1990). The Act presumes that government data is public and accessible by the public for inspection and copying "unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public." Minn. Stat. § 13.01, subd. 3. Government data is "not public" under the MGDPA if the data falls within one of several classifications established by the Act. KSTP-TV v. Ramsey County, 806 N.W.2d 785, 789 (Minn.

2011). "Public data" is government data that is accessible to the general public. Minn. Stat. § 13.02, subds. 14, 15. It is distinct from "not public data," which is all other government data, Minn. Stat. § 13.02, subd. 8a ("'[n]ot public data' are any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic"), and the MGDPA does not permit public access to not public data, *see* Minn. Stat. § 13.03, subd. 1. "Private data on individuals" and "nonpublic data" are two types of not public data; both are accessible only to the individual subject of the data, if any. Minn. Stat. § 13.02, subds. 9, 12.

The statute at issue in the instant case, Minn. Stat. § 13.82, subd. 9, classifies certain government data as "private." This access level falls within the definition of "not public data" under Minn. Stat. § 13.02, subd. 8a; accordingly, the government data classified by section 13.82, subd. 9 is not public data and not accessible by individuals who are not the subject of the data. *See* Minn. Stat. § 13.01, subd. 3; Minn. Stat. § 13.02, subd. 8a. The statute provides:

> Investigative data that become inactive under subdivision 7, clause (a) or (b), and that relate to the alleged abuse or neglect of a child by a person responsible for the child's care, as defined in section 626.556, subdivision 2, are private data.

Minn. Stat. § 13.82, subd. 9. The parties dispute the meaning of the term, "relate," as used in the statute. *The Free Press* contends that the term should be interpreted narrowly, so only that data which "*directly* relates" to the alleged abuse or neglect of a child by a person responsible for the child's care are classified as private. Plaintiff, on the other hand, argues that the term covers all data collected or created by law enforcement in their

investigation of alleged abuse or neglect of a child by a person responsible for the child's care.

To determine whether the phrase, "that relate to the alleged abuse or neglect of a child by a person responsible for the child's care," is reasonably susceptible to more than one interpretation, the Court must look to the statutory definitions and common uses of its component terms. *See* Minn. Stat. § 645.08; American Family Ins. Group v. Schroedl, 616 N.W.2d 273, 277 (Minn. 2000). The descriptive term "person responsible for the child's care" is expressly defined by statute: A "person responsible for the child's care" is "an individual functioning within the family unit and having responsibilities for the care of the child such as a *parent*, guardian, or other person having similar care responsibilities[.]" Minn. Stat. § 626.556, subd. 2 (e) (emphasis added). Plaintiff Todd Hoffner meets this definition with respect to his children. No party maintains that he does not. The legislature did not give special or technical meaning to the term, "relate," so guidance is appropriately sought from a dictionary. *See* Minn. Stat. § 645.08 (1) (stating that "words and phrases are construed according to rules of grammar and according to their common and approved usage"). The term is unambiguous in light of common usage. "Relate" means "to bring into logical or natural association" or "to have connection, relation, or reference." *Webster's New College Dictionary* 957 (3rd ed. 2005).

Therefore, all inactive investigative data that has "connection, relation, or reference" to an allegation of abuse or neglect of a child by parent, is classified as "private" under Minn. Stat. § 13.82, subd. 9. Here, the entire police investigation for

which the government data under consideration was collected or created had "connection, relation, or reference" to an allegation that Plaintiff used his children to engage in a sexual performance in violation of Minn. Stat. § 617.246, subd. 2. Under section 626.556, "[s]exual *abuse* ... includes any act which involves a minor which constitutes a violation of ... [section] 617.246." Minn. Stat. § 626.556, subd. 2 (d) (emphasis added). Consequently, the allegation that Plaintiff used his children to engage in a sexual performance is an allegation that Plaintiff sexually *abused* his children. Because all data collected or created by police in their investigation of Plaintiff has "connection, relation, or reference" to the allegation that Plaintiff sexually abused his children, all of the investigative data is classified as "private" under Minn. Stat. § 13.82, subd. 9.

The Legislature's reference in section 13.82, subd. 9 to Minnesota's mandatory-reporting statute (Minn. Stat. § 626.556) further supports this interpretation. Section 626.556 delegates primary investigative responsibility over "allegations of sexual abuse if the alleged offender is the parent, guardian, sibling, or an individual functioning within the family unity as a person responsible for the child's care" to the "local welfare agency." Minn. Stat. § 626.556, subd. 3e.[2] A police department or county sheriff that receives a report of sexual abuse of a child by a parent must immediately notify the local welfare agency of the report, so that the local welfare agency may commence the investigation required by law. Minn. Stat. § 626.556, subd. 3 ("The police department or

[2] The local law enforcement agency is responsible for conducting investigation of reports involving sexual abuse of a child "by a person who is *not* a parent, guardian, sibling, [or] person responsible for the child's care[.]" Minn. Stat. § 626.556, subd. 10a (a) (emphasis added).

the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing."). "[T]he local law enforcement agency and local welfare agency [must] coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews." Minn. Stat. § 626.556, subd. 10 (4). "[A]ll records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under [under section 626.556]" are classified as "private data on individuals" and not accessible to the public. Minn. Stat. § 626.556, subd. 11 (a). In classifying all records as private, the mandatory-reporter statute references section 13.82 and provides:

> Reports maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners. Section 13.82, subdivisions 8, 9, and 14, apply to law enforcement data other than the reports.

Id.

Legislative history reveals that the Minnesota Legislature simultaneously amended and placed mirroring references in section 13.82, subd. 9 and section 626.556, subd. 11 (a). *See* 1989 Minn. Laws. ch. 177, §§ 1, 2. The fact that the Legislature harmoniously amended and referenced each of the respective sections indicates its awareness of both sections and an intention that both sections be read together rather than as conflicting. *See* Matter of Petition For Establishment of County Ditch No. 11, 511 N.W.2d 54, 56 (Minn. App. 1994) (concluding that legislature intended that two statutes be read together where legislative history indicated statutes were amended at the same time); *see also* City

of St. Louis Park v. King, 75 N.W.2d 487, 430 (Minn. 1956) ("Ordinarily, no reliance can be placed in other statutes, *except by express reference*, to interpret a statute which is clear and free from ambiguity." (emphasis added)). When read together, section 13.82, subd. 9 and section 626.556, subd. 11 (a) manifest a clear legislative intent to classify all child abuse data involving a parent or person responsible for the child's care as "private data."

B.

The above interpretation of Minn. Stat. § 13.82, subd. 9 is consistent with an interpretation of identical language in an earlier version of the statute adopted by the Commissioner of the Department of Administration ("commissioner") in an opinion issued under Minn. Stat. § 13.072, subd. 1. *See* Op. Comm'r Admin. 94-048 (Nov. 3, 1994). Under that statute, the Court must defer to opinions issued by the commissioner regarding classification of data under the MGDPA. Minn. Stat. § 13.072, subd. 2 ("[A]n opinion described in subdivision 1, paragraph (a), must be given deference by a court or other tribunal in a proceeding involving the data.").

When a government entity receives a data request from a person who is not the subject of the data, the entity is required to respond in an appropriate and prompt manner and within a reasonable time. *See* Minn. Stat. § 13.03, subds. 2 and 3 (f); *see* Minn. R. § 1205.0800 (B). In this case, the County was uncertain how to respond to the data request of *Fox 9 News* and likewise did not assert a definitive position on the classification issue in the within action. The Legislature did not envision diffidence from a government

entity. It, and not the Court, is obligated to respond to all data requests in the first instance.

To promote proper compliance with all data requests, the MGDPA requires government entities to designate a "responsible authority"[3] whose job it is to "establish procedures ... to insure that requests for government data are received and complied with in an appropriate and prompt manner." Minn. Stat. § 13.03, subd. 2 (a). The responsible authority is also charged with the duty to "determine what types of data maintained by the entity are classified as private or confidential, according to the definitions of those terms pursuant to ... Minnesota Statutes, section 13.02." Minn. R. § 1205.0800 (B); *see* Minn. Stat. §13.07 ("The commissioner shall promulgate rules, in accordance with the rulemaking procedures in the Administrative Procedure Act which shall apply to government entities to implement the enforcement and administration of this chapter."). If the responsible authority is unsure how to respond to a particular request, the government entity may seek an advisory opinion from the commissioner. Minn. Stat. § 13.072, subd. 1 (a). Any action taken in conformity with that opinion releases the government entity from liability under the MGDPA.[4]

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[3] If a government entity fails to designate a responsible authority, the MGDPA provides that the responsible authority is, "for counties, the county coordinator or administrator [or] [i]f the county does not employ a coordinator or administrator, the responsible authority is the county auditor." Minn. Stat. § 13.02, subd. 16 (b) (1).

[4] *See* Minn. Stat. § 13.072, subd. 2 ("The commissioner shall arrange for public dissemination of opinions issued under this section, and shall indicate when the principles stated in an opinion are not intended to provide guidance to all similarly situated persons or government entities. ... *A government entity ... or person that acts in conformity with a written opinion of the commissioner issued to the government entity, members, or*

In the November 3, 1994, advisory opinion referenced above, the commissioner was asked to construe Minn. Stat. § 13.82, subd. 5b (1989), and determine whether the statute operated to classify an inactive criminal investigative file as private because the investigation concerned allegations of child abuse by the child's father. Op. Comm'r Admin. 94-048 (Nov. 3, 1994). The earlier statute provided:

> Investigative data that become inactive under subdivision 5, clause (a) or (b), and that relate to the alleged abuse or neglect of a child by a person responsible for the child's care, as defined in section 626.556, subd. 2, are private data."

Minn. Stat. § 13.82, subd. 5b (1989). The commissioner opined the following about the above statute and question presented:

> ...The County states that the investigation that produced this particular file was an investigation of a person responsible for the child's care that became inactive because the statute of limitations for the alleged offense has expired and therefore this inactive investigative data are classified as private by Section 13.82, Subdivision 5b, of the Act.
>
> Section 13.82, subdivision 5b, was added to the Act by the legislature in 1989. (*See* Minnesota Session Laws 1989, Chapter 177, Section 1.) The amendment reflected concern discussed by the legislature about certain realities of the child maltreatment reporting system. Minnesota Statutes Section 626.556 mandates that various professionals must report suspected maltreatment and should follow a "when in doubt, report" imperative. Although this imperative increases the probability that children in need of protection will get protection, it also, when coupled with the fact that Section 626.556 allows anyone to report alleged maltreatment and to receive almost total confidentiality protection, increases the possibility that

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person or to another party is not liable for compensatory or exemplary damages or awards of attorneys fees in actions for violations arising under section 13.08 or 13.085, or for a penalty under section 13.09 or for fines, awards of attorney fees, or any other penalty under chapter 13D." (emphasis added)).

> there will be more unsubstantiated and even false reports made about persons responsible for the care of children.
>
> The adoption of the amendment that became Section 13.82, subdivision 5b, represents a legislative judgment that if an individual is investigated for alleged criminal abuse or neglect of a child and the law enforcement investigating agency is not able to establish that there is sufficient evidence to charge the individual, then the individual's privacy and reputation will be protected by classifying the inactive investigative data about that individual as private. If, however, the individual investigated is charged and tried, the inactive investigative data concerning that individual become public. This amendment also reflects a legislative decision to make the law enforcement treatment of data concerning alleged perpetrators of maltreatment, in of [sic] inactive criminal investigative files, consistent with the treatment of similar data about those individuals in child protection agencies in county welfare departments. (See Minnesota Statutes Section 626.556, subdivision 11, that classifies all data concerning allegations and assessment of maltreatment of children in welfare agencies as private data.)
>
> The County states very clearly that this particular investigation was about allegations involving a person responsible for a child's care and that it became inactive because the statute of limitations expired for the underlying and alleged criminal offense. The County's determination that the data in this file are private is a correct determination.

Op. Comm'r Admin. 94-048 (Nov. 3, 1994). While this opinion provided by the commissioner involves data becoming inactive for a different reason than the current case, it is a distinction without a legal difference and provides clear interpretation and direction that the investigation data be properly classified as private.

C.

Ever mindful and sensitive to its solemn "obligation to guard, enforce, and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before [it]," Robb v. Connolly, 111 U.S. 624, 637 (1884), the Court concludes that the interests

of justice warrant consideration of the impact that public dissemination of the data contained in the inactive criminal investigative file would have Mr. Hoffner's fundamental rights to free speech and privacy.

As a general principle, government action which chills constitutionally protected speech or expression contravenes the First Amendment. Riley v. National Federation of the Blind of North Carolina, 487 U.S. 781, 794 (1988); *see* Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 67 (1963) (stating that the First Amendment prohibits government officials from using "informal sanctions – the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation – ... to achieve the suppression" of protected speech). On the issue of criminal prosecution of an individual for engaging in protected activity, the Supreme Court has recognized that "[t]he chilling effect upon the exercise of First Amendment rights may derive from the fact of [criminal] prosecution, unaffected by the prospects of its success or failure." Dombrowski v. Pfister, 380 U.S. 479, 487 (1965). With respect to government investigations of individuals for political expression, the Supreme Court has also warned:

> There is no doubt that ... investigations, whether on a federal or state level, are capable of encroaching upon the constitutional liberties of individuals. It is particularly important that the exercise of the power ... be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas[.]

Sweezy v. New Hampshire, 354 U.S. 234, 245 (1957). For this reason, the Court has said that before a state can compel an individual, through its investigatory powers, to disclose information which would trespass upon First Amendment freedoms, a "subordinating

interest of the State" must be proffered, and the interest must be "compelling." NAACP v. Alabama, 357 U.S. 449, 463 (1958).

In this case, the Court determined that there was insufficient evidence to demonstrate that Mr. Hoffner harmed his children. Consequently, the state lacked a compelling interest to interfere with his First Amendment rights. The investigation by law enforcement resulted in the collection of a large amount of personal information concerning Mr. Hoffner and his family. It is undisputed that all of the information collected or created by police in the course of their investigation descended from one source – the cell phone videos which constitute protected expression under the First Amendment. Notwithstanding this conclusion, *The Free Press* argues that it is entitled to access the investigative file because:

> Few proceedings in the recent history of Blue Earth County, and arguably even in the entire state, have raised more public concerns and questions about the "operations of our public institutions" than has the case of *State v. Hoffner*, especially given how the case ended. Many of these questions and concerns still linger, unanswered, and there are now few options available by which to obtain answers except for the records collected by government officials during the course of the investigation that occurred.

Proposed Intervenor's Memorandum at 6 (March 15, 2013). The Court is cognizant that any decision, addressing the important issue of public access to government data on private individuals, must be premised upon striking a delicate balance between competing constitutional values. Without public right of access to government data "important aspects of freedom of speech and 'of the press could be eviscerated.'" Richmond Newspapers v. Virginia, 448 U.S. 555, 580 (1980). But "the First Amendment does not guarantee the press a constitutional right of special access to information not available to

the public generally." Branzburg v. Hayes, 408 U.S. 665, 684-85 (1972). To be sure, the Supreme Court has recognized that the right of public access must at times give way to the private interests of individuals:

> The extraordinary protections afforded by the First Amendment carry with them something in the nature of a fiduciary duty to exercise the protected rights responsibly a duty widely acknowledged but not always observed by editors and publishers. It is not asking too much to suggest that those who exercise First Amendment rights in newspapers or broadcasting enterprises direct some effort to protect the rights of an accused[.]

Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 560 (1976).

This is such an occasion where the press must exercise restraint and "direct some effort to protect the rights of an accused" to free speech and privacy. "The 'deterrent effect' on First Amendment rights by government oversight marks an unconstitutional intrusion[.]" Laird v. Tatum, 408 U.S. 1, 16 (1972) (Douglas, J., dissenting) (citations omitted) (stating that "'inhibition as well as prohibition against the exercise of precious First Amendment rights is a power denied to government.'"). Where the only basis for police action against a parent is the misconception of that parent's speech or activity protected by the First Amendment, it is difficult to conceive of a more chilling effect on the full expression and utilization of that parent's First Amendment rights than the government's intrusion into the private realm of the family home, its rummaging through the family's personal effects, and its exposure of all that is discovered to the public eye. The Constitution does not permit such collateral burdens on protected expression. *See* Griswold v. Connecticut, 381 U.S. 479, 483 (1965) ("(T)he First Amendment has a penumbra where privacy is protected from governmental intrusion.

Public disclosure of the investigative data in this case would also adversely impact the Hoffner' family's right to privacy. The Supreme Court has recognized that the constitutional right to privacy, grounded in the Fourteenth Amendment's Due Process Clause, respects not only individual autonomy in intimate matters but also the individual's interest in avoiding divulgence of highly personal information. *See* Whalen v. Roe, 429 U.S. 589, 598–600 (1977); *see* Nixon v. Administrator of Gen. Servs., 433 U.S. 425, 457 (1977) (acknowledging that "[o]ne element of privacy has been characterized as 'the individual interest in avoiding disclosure of personal matters.'"). A parent and his children are not subject to state-assisted public scrutiny for doing that which they are constitutionally entitled to do. Where an investigation reveals no harm to any member of the family unit, what goes on within the privacy of the family home is not the public's constitutional business.

For all of these reasons, the Court concludes that the entire law enforcement investigative file in *State of Minnesota v. Todd Christian Hoffner* is protected from disclosure under the First and Fourteenth Amendments.[5]

D.

The Court realizes that this decision may not rest well with individuals who desire broad access to government data. *The Free Press* might be one of them; it desires access

[5] Because federal constitutional law prohibits disclosure, the data is classified as private under the MGDPA. *See* Minn. Stat. § 13.03, subd. 1 ("All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by ... federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential." (emphasis added)); see Minn. R. § 1205.0200, subp. 7 ("'Federal law' means ... federal case law, including decisions of any court in the federal judicial system.").

to information to help "better understand the facts and circumstances that led to the criminal charges filed against Todd Hoffner, as well as the decision to dismiss those charges." The only reassurance the Court can give is that the information *The Free Press* seeks is in plain sight. All of the investigative data presented at the omnibus hearing and filed in *State of Minnesota v. Todd Christian Hoffner* [07-CR-12-3126], aside from the cell phone videos themselves, are public. *See* Minn. Stat. § 13.82, subd. 7 ("Any investigative data presented as evidence in court shall be public."). The state had a full and fair opportunity to offer all relevant and reliable evidence in support of its criminal case at the omnibus hearing. Minn. R. Crim. P. 11.04, subd. 1 (b). In fact, the state had a duty to establish probable cause for the charges against Mr. Hoffner publicly in that proceeding. *See* Walker v. Georgia, 467 U.S. 39, 46 (1984) (observing that a public pretrial hearing helps to ensure "that judge and prosecutor carry out their duties responsibly"); *see* In re Oliver, 333 U.S. 257, 270 fn.25 (1948) ("'The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.'"). The Court painstakingly reviewed and considered all evidence presented at the omnibus hearing and issued a written order carefully explaining its findings of fact and conclusions of law. The state had an absolute right to have those factual findings reviewed for clear error and the legal determinations reviewed *de novo*, but it elected not to. Because the dismissal of all charges is now final, the court record of the criminal proceeding is the only public source for information that may shed light on the actions,

inactions, and decisions of all public officials involved in the case, including those of the undersigned. That record speaks for itself.

II.

Third-Party Intervention

The Court will next consider Potential Intervenor *The Free Press'* motion to intervene as a matter of right under Minn. R. Civ. P. 24.01. Intervention as of right is permitted under Minn. R. Civ. P. 24.01 when a potential intervenor meets the following four criteria:

> (1) [A] timely application for intervention; (2) an interest relating to the property or transaction which is the subject of the action; (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) a showing that the party is not adequately represented by the existing parties.

Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 207 (Minn. 1986) (citations omitted); see Minn. R. Civ. P. 24.01. Because *The Free Press* does not have a legal interest in the investigative file under the MGDPA, it necessarily lacks an interest relating to the property in this action and is not entitled to intervention as a matter of right. Star Tribune v. Minnesota Twins Partnership, 659 N.W.2d 287, 299 (Minn. App. 2003) (holding that because media companies lacked interest relating to sealed data produced in litigation between sports facilities commission and professional baseball team, media companies did not have a right to intervene and seek modification of protective order).

CONCLUSION

For all of the foregoing reasons, Plaintiffs' motion for a permanent injunction and declaratory judgment is GRANTED, and *The Free Press*' motion to intervene is correspondingly DENIED. This MEMORANDUM is made a part of the hereto attached ORDER.

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K.J.J.