NO. A16-0736

State of Minnesota

In Court of Appeals

Tony Webster,

Respondent,

vs.

Hennepin County and Hennepin County Sheriff's Office,

Appellants/Relators.

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA AND ELECTRONIC FRONTIER FOUNDATION

MICHAEL O. FREEMAN
Hennepin County Attorney

Daniel P. Rogan (#274458)
Senior Assistant County Attorney
A-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487
(612) 348-5529
daniel.rogan@hennepin.mn.us

Attorneys for Appellants/Relators

LEAGUE OF MINNESOTA CITIES
Susan L. Naughton (#259743)
145 University Avenue West
St. Paul, MN 55103
(651) 281-1232
snaughton@lmc.org

Attorney for Amici Curiae League of Minnesota Cities & Association of Minnesota Counties

BRIGGS AND MORGAN, P.A.
Scott M. Flaherty (#388354)
Cyrus C. Malek (#395223)
Samuel Aintablian II (#398075)
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 977-8400
sflaherty@briggs.com
cmalek@briggs.com
saintablian@briggs.com

Attorneys for Respondent Tony Webster

SUBBARAMAN PLLC
Mahesha P. Subbaraman (#392486)
222 South Ninth Street, Suite 1600
Minneapolis, MN 55402
(612) 315-9210 mps@subblaw.com

Attorney for Amici Curiae Public Record Media & The Minnesota Coalition on Government Information

(Additional Counsel for Amici Listed on Following Page)

STINSON LEONARD STREET LLP
Timothy P. Griffin (#0285717)
Nicole L. Faulkner (#0397456)
Thomas C. Burman (#0396406)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
(612) 335-1500
timothy.griffin@stinson.com
nicole.faulkner@stinson.com
thomas.burman@stinson.com

AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA
Teresa Nelson (#0269736)
2300 Myrtle Avenue, Suite 180
Saint Paul, MN 55114
(651) 645-4097
tnelson@aclu-mn.org

ELECTRONIC FRONTIER FOUNDATION
Jennifer Lynch (admitted *pro hac vice*)
815 Eddy Street
San Francisco, CA 94109
(415) 436-9333
jlynch@eff.org

Attorneys for Amici Curiae American Civil Liberties Union of Minnesota and Electronic Frontier Foundation

FAEGRE BAKER DANIELS LLP
John P. Borger (#9878)
Leita Walker (#387095)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 766-7000
john.borger@faegrebd.com
leita.walker@faegrebd.com

Attorneys for Amici Curiae American Public Media Group, Business Journal, MinnPost, and Star Tribune Media Company LLC

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Introduction

Amici Electronic Frontier Foundation (EFF) and the American Civil Liberties Union of Minnesota (ACLU-MN) support Respondent Tony Webster in his request for affirmance of the judgment below.[1]

Transparency is a key pillar supporting our democracy.[2] In order to make informed decisions, we need to know what the government does with the power and money entrusted to it. Government transparency creates (1) a basis for accountability, (2) a check against mismanagement and corruption, (3) public confidence, and (4) informed participation by the public. The Minnesota Government Data Practices Act (MGDPA) attempts to balance our right to know, the government's need for confidentiality in limited circumstances, and the individual's right to privacy.

Appellants and supporting *amici* suggest the judiciary should engraft a burden analysis on to the mandates of the MGDPA, because, in part, the proliferation of electronic data has increased the quantity of information that must be searched in

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[1] EFF and ACLU-MN certify that no counsel for any other party authored this brief, in whole or in part. No one other than amici, their members, or its counsel made a monetary contribution to the preparation or submission of this brief.

[2] Transparency may be defined as citizens' access to information to facilitate their understanding of decision-making processes. Examples of transparency in government include freedom of information acts, administrative procedures acts, televised debates, published government audit reports, and advertisement of government positions. An example of how technology may be used to increase transparency is found in the Digital Accountability and Transparency Act of 2014 (DATA Act), Pub. L. No. 113-01, 128 Stat. 1145. "Once implemented, the DATA Act will make Federal spending data more accessible, searchable, and reliable." *Data Act*, USASpending.gov, https://www.usaspending.gov/Pages/data-act.aspx (last visited Oct. 10, 2016).

response to requests for public information. Appellants' arguments overlook the fact information retrieval technologies and best practices have progressed in tandem with, if not overcome, these challenges. Research now suggests the efficacy of manual review is questionable when compared to the appropriate use of technology to retrieve electronic information.

Huge sums of capital investment by both private industry and our government allow us to search for, retrieve, and communicate information at speeds measured in minutes rather than the hours or days it takes to visit a library, or draft, send, and receive a letter. For example, decisions from our courts are located in seconds with powerful search engines on the Internet, in subscription databases like Westlaw, and directly from the governmental source, such the Minnesota Appellate Courts Case Management System. The same information retrieval technology is part of Appellants' existing email platform, which includes Multi-Mailbox Search using keyword and Boolean terms.[3] And the technology continues to evolve at a rapid pace.[4]

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[3] "Complying with legal discovery requests for messaging records is one of the most important tasks for organizations involved in lawsuits. Without a dedicated tool, searching messaging records within several mailboxes that may reside in different mailbox databases can be a time-consuming and resource-intensive task. Using Multi-Mailbox Search, you can search a large volume of e-mail messages stored in mailboxes across one or more Exchange 2010 servers, and possibly in different locations." *Understanding Multi-Mailbox Search*, Microsoft, https://technet.microsoft.com/en-us/library/dd335072 (last modified Dec. 8, 2014).

[4] "In-Place eDiscovery is a powerful feature that allows a user with the correct permissions to potentially gain access to all messaging records stored throughout the Exchange 2016 organization. It's important to control and monitor discovery activities, including addition of members to the Discovery Management role group, assignment of the Mailbox Search management role, and assignment of mailbox access permission to

Law enforcement agencies are developing and deploying the same information retrieval technologies in connection with their collection, storage, and sharing of biometric data.[5] For example, the federal government is reportedly "in the process of building the world's largest cache of face recognition data, with the goal of identifying every person on the country."[6] Local law enforcement authorities are being provided access to the FBI's Next Generation Identification program, which seeks to build the world's largest biometric database.[7] And as Appellants' limited response to Mr. Webster's MGDPA requests make plain, they too are developing capabilities to collect and search biometric data.[8] These data sets are massive, and the government is developing the ability to search them *in real time* to identify each of us in public.[9] To what end is not yet clear, and the legal boundaries for the collection, storage, sharing, and use of biometric data have not been set.

This case is not about whether or how the government may develop and domestically deploy technology as a potential sword against us. That is just one debate

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discovery mailboxes." *In Place eDiscovery in Exchange 2016*, Microsoft, https://technet.microsoft.com/en-us/library/dd298021 (last modified March 28, 2016).

[5] Kyle Chayka, *Biometric Surveillance Means Someone is Always Watching*, Newsweek (Apr. 17, 2014), http://www.newsweek.com/2014/04/25/biometric-surveillance-means-someone-always-watching-248161.html.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

we must have, but critical to it and all public debates is that it be informed by available public information—information Mr. Webster requested long ago, information that may be retrieved using available technology, information that still has not been provided more than a year after it was first requested.

Identification of Amici Curiae

The ACLU-MN is a not-for-profit, non-partisan, membership-supported organization dedicated to the protection of civil rights and liberties. It is the statewide affiliate of the American Civil Liberties Union and has more than 8,500 members in the state of Minnesota. Its purpose is to protect the rights and liberties guaranteed to all Minnesotans by the state and federal constitutions and laws, including the right to access government information.

EFF is a donor-supported, nonprofit civil liberties organization working to protect and promote fundamental liberties in the digital world. Through direct advocacy, impact litigation, and technological innovation, EFF's team of attorneys, activists, and technologists encourage and challenge industry, government, and courts to support free expression, privacy, and transparency in the information society. EFF files amicus briefs at all levels of the judicial system on issues related to technology's impact on civil liberties, and frequently serves as counsel or amicus in key cases addressing the scope and application of state and federal freedom of information laws. As part of EFF's Transparency Project, its activists and lawyers file and litigate public records requests related to government use of technology, at both the state and federal level.

Argument

I. Timely Production Of Email In Response To MGDPA Requests Is Essential To The Public's Understanding Of What The Government Is Up To

Knowing "what the[] government is up to"[10] is often the first step in ensuring that the government respects our civil liberties. Transparency is essential to an informed discussion of appropriate use of new technologies for law enforcement and national security purposes. Because there is no central list showing which police agencies have access to biometric devices or a uniform set of policies for how they must be used, the only way to learn about these biometric tools is to ask each individual agency directly.

In August 2015, EFF asked for its members' help in filing public records requests with the law enforcement agencies in their communities to learn more about mobile biometric technologies and how the police are using them. EFF drew on its experience and expertise in filing public records requests by generating a sample request and providing access to a tracking system, and EFF encouraged people to share and publicize records they received in response.

Mr. Webster's request to Appellants was spurred by the EFF's call to action. Mr. Webster's request sought information about law enforcement use of biometric technologies like fingerprint scanners, iris scanners, and facial recognition. Law enforcement officers in many jurisdictions around the country now carry mobile devices capable of capturing and scanning all kinds of biometric information—from fingerprints

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[10] *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989) (citations omitted).

to face recognition to DNA—from members of the public. This information is often, in turn, uploaded to databases that can be accessed later by a wide range of other government agencies, often for purposes beyond simple identification.

Relying on state public records laws, several hundred people filed requests in direct response to EFF's call to action, including Mr. Webster. This has resulted in substantive responses from dozens of agencies so far. Using the documents released in response to these requests, EFF has been able to report on nine agencies using biometric technology in California.[11] The documents revealed that most of the agencies are using digital fingerprinting devices, and many are also using iris, palm, and facial recognition technology, or plan to use them in the future. One of EFF's partner organizations used these same records to map the ties between the biometric contractors mentioned in the documents and firms in the defense and security industries that are deeply embedded in the national security apparatus.[12] EFF is continuing to review records released by other agencies.

Critical to this matter, much of this important and revealing information has been contained in emails. Mr. Webster has already discussed the information revealed by emails released in response to his request suggesting the Hennepin County Sheriff's

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[11] Dave Maass, *California Cops Are Using These Biometric Gadgets in the Field*, EFF (Nov. 4, 2015), https://www.eff.org/deeplinks/2015/11/how-california-cops-use-mobile-biometric-tech-field.

[12] Aaron Cantu, *Explore the Defense Industry's Ties to Police Biosurveillance in California*, MuckRock (Dec. 10, 2015) https://www.muckrock.com/news/archives/2015/dec/10/how-defense-and-security-industry-tied-police-bios/.

Office is considering use of facial recognition technology in connection with still images in individual investigations and use of real-time facial recognition against live surveillance camera streams, possibly including those of privately-owned security cameras, within the next two years.[13]

Emails released to other requesters have been equally revealing. For example, emails released by Miami-Dade County, Florida showed how MorphoTrak, a large biometrics vendor serving forty-two states' DMVs and many federal agencies, underpriced the devices in its invoices but increased the price later. Emails between the Phoenix, Arizona Police Department and its vendor revealed information about the sole-source procurement process. And emails released by the Polk County, Florida Sheriff's Office describe the timeline for installing biometrics devices in squad cars and outline the training process for using the devices.

Increased use of public funds to purchase technology to surreptitiously collect, store, and use biometric data from citizens is an emerging public debate at all levels of government across the country. For example, on September 21, 2016, officials in eleven municipalities around the country announced plans to "push for local legislation that would require city council approval and public hearings before local police could acquire or use surveillance technologies."[14] This legislation complements the driving force

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[13] Webster Decl. in Opp'n to Resp'ts Mot. for a Stay of Court's April 22, 2016 Order (¶15).

[14] Paul Merrion, *ACLU Leads National Effort for Local Control of Police Spy Gear*, CQ Roll Call, Sept. 23, 2016, 2016 WL 5334796.

behind the EFF's Transparency Project: ensuring the people and their elected representatives have access to public information and the opportunity to say no.[15] The public interest in having access to the particular data at issue in this matter is wide reaching—from concerns over how police use of biometric data might increase racial profiling to concerns about data breaches once this type of information is collected. "If a Social Security Number is stolen in a breach, one can apply for a new number . . .; individuals cannot change their facial features, fingerprints, or other biometric traits [and] [t]heir security and safety could be compromised for the rest of their lives."[16]

Like EFF and other organizations dedicated to ensuring that the government acts within the bounds of its constitutional and legal authority, the ACLU-MN relies heavily on the MGDPA to ensure that the government is acting properly and to bring to light instances of unconstitutional conduct.[17] Its advocacy and litigation to correct

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[15] *See* Eric M. Johnson, *Technology News: U.S. Cities Push for Local Laws to Oversee Police Surveillance*, REUTERS (Sept. 21, 2016), http://www.reuters.com/article/us-usa-police-surveillance-idUSKCN11R304.

[16] Paul Merrion, *FBI's Facial Recognition Database Draws Broad Opposition*, CQ Roll Call, July 11, 2016, 2016 WL 3661565.

[17] The ACLU-MN has requested and used public data in a variety of important constitutional contexts such as gathering information regarding police-involved shootings, analyzing racial disparity in arrest data, and unearthing expansive technological advancements in how the government is using automatic license plate readers. *See, e.g.*, *Automatic License Plate Readers: Are You Being Followed*, ACLU, https://www.aclu.org/map/automatic-license-plate-readers-are-you-being-followed?redirect=maps/automated-license-plate-readers-are-you-being-followed (last visited Oct. 10, 2016); Jana Kooren, *ACLU of Minnesota Sues to Release Squad Video of Castile Shooting*, ACLU of Minn. (Sept. 1, 2016), https://www.aclu-mn.org/news/2016/09/01/aclu-minnesota-sues-release-squad-video-castile-shooting;

unconstitutional conduct often depends on its ability to identify that conduct through MGDPA requests of relevant documents.

Without access to government emails—and a requirement that agencies maintain data in an arrangement and condition as to make them easily accessible and searchable—Minnesota residents would be seriously limited in their ability to learn "what their government is up to."[18]

II. The Claimed Burden Of Appellants (And *Amici*) Is Contrary To Existing Information Retrieval Best Practices

The meteoric growth in the volume of electronically stored information ("ESI") is undeniable.[19] Studies reflect that the typical corporate employee sends and receives about 105 emails per day.[20] The increased use of instant and text messaging as well as the ability to attach audio and video files further increases the amount of electronic data

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Picking Up the Pieces: A Minneapolis Case Study, ACLU, https://www.aclu.org/feature/picking-pieces?redirect=minneapolis (last visited Oct. 10, 2016).

[18] *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773 (1989) (citations omitted).

[19] *See, e.g.*, George L. Paul & Jason R. Baron, *Information Inflation: Can the Legal System Adapt?*, 13 Rich. J.L. & Tech. 10, 1 n.2 (2007) ("Organizations now have thousands if not tens of thousands of times as much information within their boundaries as they did 20 years ago.") (citations omitted).

[20] *See* The Radicati Group, Inc., *E-mail Statistics Report, 2011-2015* at 3 (Sara Radicati ed., May 2011), *available at* http://www.radicati.com/wp/wp-content/uploads/2011/05/Email-Statistics-Report-2011-2015-Executive-Summary.pdf.

organizations create and store. Government organizations will most certainly experience similar growth as they, too, seek to leverage technology.[21]

Traditionally, organizations have used manual review by humans to retrieve information. Even assuming organizations have the time and resources to conduct manual reviews of massive sets of electronic data, the efficacy of manual review versus utilizing automated methods of review is questionable.[22] Research now suggests that humans "are far less accurate and complete than they believe themselves to be when searching and retrieving information from a heterogeneous set of documents . . . , using ad hoc, simple keywords as the sole means to identify potentially relevant documents."[23] In light of the rapid increase in ESI, "the continued use of manual search and review methods may be infeasible or even indefensible" as a means of searching for responsive data.[24] Any information retrieval protocol must necessarily maintain the fluidity to adapt

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[21] *See, e.g.*, Procedures & Guidance; Implementation of the Government Paperwork Elimination Act, 65 Fed. Reg. 25508-02 (May 2, 2000).

[22] See Maura R. Grossman & Gordon Cormack, *Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review*, 17 Rich. J. L. & Tech. 11 (2011); Herbert L. Roitblat, et al., *Document Categorization in Legal Electronic Discovery: Computer Classification vs. Manual Review*, 61 J. Am. Soc'y for Infor. Sci & Tech. 70 (2010); *see generally* Nicoholas M. Pace & Laura Zakaras, Where the Money Goes: Understanding Litigant Expenditures for Producing Electronic Discovery 59–69 (RAND Corporation 2012) (summarizing results from these and other studies).

[23] The Sedona Conference Working Group on Electronic Document Retention & Production, *The Sedona Conference Best Practices Commentary on the Use of Search & Information Retrieval Methods in E-Discovery*, 15 Sedona Conf. J. 217, 230 (2014) [hereinafter *2014 Best Practices Commentary*].

[24] *Id.*

to the evolving science related to ESI. Here, (a) Appellants' protocols and processes are not defensible, in other words, their claims of burden lack merit and violate the MGDPA, and (b) any process that *is* defensible will necessarily include principles of technology-assisted review. Each concept is discussed in turn below.

A. Information Retrieval Best Practices *Require* Defensible Processes

The MGDPA does not require government entities to utilize a specific process to retrieve and produce information when responding to requests for public data. Nonetheless, the Appellants must be able to defend the process they do employ, ensuring that "requests for government data are received and complied with in an appropriate and prompt manner."[25] Although there is little commentary on what constitutes a defensible process when responding to requests for government data, this issue has been discussed at length in the context of civil discovery. According to one court, "much of the logic behind the increasingly well-developed case law on e-discovery searches is instructive in the FOIA search context because it educates litigants and courts about the types of searches that are or are not likely to uncover all responsive documents."[26]

For over a decade, lawyers and judges have looked to the *Sedona Principles*, issued by the Sedona Conference Working Group on Electronic Document Retention and Production, as the benchmark for best practices governing the retrieval of electronically

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[25] Minn. Stat. § 13.03, subd. 2(a); *see also* Op. Minn. Dept. Admin. No. 00-067 (Dec. 5, 2000) ("Agencies need to act proactively to prepare their computer systems so that they are easily able to respond to requests for data . . . .").

[26] *Nat'l Day Laborer Organizing Network*, 877 F. Supp. 2d at 108 n.110.

stored information.[27] In September of this year, the Working Group issued a "Commentary on Defense of Process," highlighting the need to "defend the efficacy" of "discovery efforts, especially when, as is increasingly common, large volumes of [ESI] are involved."[28] Courts have also required parties in recent years to defend the processes they use to search for and produce electronically stored information.[29] As stated by one court, "the party selecting the methodology must be prepared to explain the rationale for the method chosen to the court, demonstrate that it is appropriate for the task, and show that it was properly implemented."[30]

Here, the ALJ found the Appellants' chosen methodology flawed, inappropriate, and its implementation was riddled with errors. Appellants had the ability to search for responsive documents, located on nineteen "state-of-the-art servers," using Microsoft's

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[27] *See* The Sedona Conference Working Group on Electronic Document Retention & Production, *Best Practices Recommendations & Principles for Addressing Electronic Document Production* 1 (The Sedona Conference 2d ed. 2007), *available at* https://thesedonaconference.org/download-pub/81 [hereinafter *Sedona Principles*].

[28] *See* The Sedona Conference Working Group on Electronic Document Retention & Production, *Commentary on the Defense of Process: Principles and Guidelines for Developing and Implementing a Sound E-Discovery Process* 1 (The Sedona Conference 2016), *available at* https://thesedonaconference.org/download-pub/4815.

[29] *See, e.g., L-3 Commc'ns Corp. v. Sparton Corp.*, 313 F.R.D. 661, 667 (M.D. Fla. 2015) (stating lawyers must "understand the functioning and capabilities of any software used to implement keyword searching" and "must be able to explain the methods and tools they use to the court, opposing parties, and their clients"); *William A. Gross Constr. Assocs. v. Am. Mfrs. Mut. Ins. Co.*, 256 F.R.D. 134, 134 (S.D.N.Y. 2009) (issuing a "wake-up call" to the bar about the "need for careful thought, quality control, testing, and cooperation with opposing counsel" in designing search techniques).

[30] *Victor Stanley v. Creative Pipe*, 250 F.R.D. 251, 262 (D. Md. 2008).

Exchange Control Panel.[31] Instead of utilizing the technology that was readily available to it, the Appellants assigned a computer forensics investigator to manually retrieve and copy data from only some e-mail accounts, transfer that data onto his own computer, and then run a keyword search on the data using third-party software.[32] According to the Appellants, utilizing this process to respond to Mr. Webster's request "would tie up Hennepin County's servers 24 hours a day for more than 15 months."[33] Thus, the Appellants failed to explain how its chosen process could "[e]nsure requests for government data are received and complied with in an appropriate and prompt manner."[34]

In sum, Appellant's claimed burden of responding to Mr. Webster's requests is inconsistent with the fact that Appellants delayed in selecting and implementing a methodology to locate responsive records, overlooked readily available search alternatives, and chose a methodology that was flawed in both rationale and implementation. Thus, "the failure to conduct more than a day's work searching for and retrieving requested data from email correspondence and attachments . . . does not justify the nearly 19[-]week span of time between the request for data and the initial inspection of only a small part of the requested data."[35]

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[31] (Tr. at 16-18; Appellant's Add. 7.). Consistent with Mr. Webster's Brief, "Tr." refers to the March 25, 2016 trial transcript.

[32] (Tr. at 16-28.)

[33] (Appellant's Add. 5.)

[34] Minn. Stat. § 13.03, subd. 2(a).

[35] (Apellant's Add. 14-15.)

B. Information Retrieval Best Practices *Require* Use of Technology-Assisted Review

The procedure utilized by Appellants in responding to Mr. Webster's data request also failed to meet widely-recognized best practices governing the retrieval of electronically stored information. In 2007, the Sedona Working Group recognized that, due to the "enormous volume of information involved" in e-discovery, "it is often advisable, if not necessary, to use technology tools to help search for, retrieve, and produce relevant information."[36] At the time, the Working Group encouraged the "selective use of keyword" and "concept" searches to facilitate the review of large amounts of electronic data.[37] Today, the Working Group recommends using, in addition to keyword searches, "various forms of computer- or technology-assisted review, machine learning, relevance ranking, and text mining tools which employ mathematical probabilities, as well as other techniques incorporating supervised and unsupervised document and content classifiers."[38]

Not only is the use of technology-assisted review recognized as a best practice, it has been required by courts for two reasons: empirical studies establish that technology-assisted review "equals or exceeds human manual review in search and production

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[36] *Sedona Principles*, *supra* note 27, at 57.

[37] *Id.*

[38] *2014 Best Practices Commentary*, *supra* note 23, at 224; *see also* Jason R. Brown, *Law in the Age of Exabytes: Some Further Thoughts on "Information Inflation" and Current Issues in E-Discovery Search*, 17 Rich. J.L. & Tech. 9, 31 (2011) ("[T]he simple use of selected keywords, without lawyers considering the use of additional automated technologies . . . should be considered a thing of the past.").

reliability[,]" and such review "reduces the expense of document production, especially in cases involving many gigabytes and/or terabytes of electronically stored information."[39] As noted by the first court to endorse the use of technology-assisted review in a published decision, "computerized searches are at least as accurate, if not more so, than manual review."[40] The court also noted that technology-assisted review results in "significant cost savings" because it "require[s], on average, human review of only 1.9% of the documents, a fifty-fold savings over exhaustive manual review."[41] Courts have also specifically endorsed the use of technology-assisted review when responding to requests for government data, noting that "beyond the use of keyword search, parties can (and frequently should) rely on latent semantic indexing, statistical probability models, and machine learning tools to find responsive documents."[42]

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[39] Paul Burns & Mindy Morton, *Technology-Assisted Review: The Judicial Pioneers*, 15 Sedona Conf. J. 35, 51 (2014) (citing *Nat'l Day Laborer Org. Network v. U.S. Immigration and Customs Enforcement Agency*, 877 F. Supp. 2d 87 (S.D.N.Y. 2012), *Fed. Hous. Fin. Agency v. HSBC N. Am. Holdings, Inc.*, No. 11 Civ. 6189, 2014 WL 5484300 (S.D.N.Y. Feb. 14, 2014), *Chevron Corp. v. Donziger*, No. 11 Civ. 0691, 2013 WL 1087236 (S.D.N.Y. Mar. 15, 2013), *Gabriel Techs. Corp. v. Qualcomm Inc.*, No. 08cv1992, 2013 WL 410103 (S.D. Cal. Feb. 1, 2013)).

[40] *Da Silva Moore v. Publicus Groupe*, 287 F.R.D. 182, 190 (S.D.N.Y. 2012) (citing Herbert Roitblatt et al., *Document Categorization in Legal Electronic Discovery: Computer Classification v. Manual Review*, 61 J. Am. Soc'y for Info. Sci. & Tech. 70, 79 (2010)).

[41] *Id.* (quoting Maura R. Grossman & Gordon V. Cormack, *Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review*, 17 Rich. J.L. & Tech. 11, 52 (2011)).

[42] *Nat'l Day Laborer Organizing Network*, 877 F. Supp. 2d at 109.

In responding to Mr. Webster's data request, Appellants struggled to implement simple keyword searching. However, as a frequent litigator in state and federal court, they are required to be familiar with keyword searches and other methods of technology-assisted review that might be utilized to respond to requests in a timely and complete manner. According to a review of federal and state court dockets, the County and its various departments have been involved as a party in at least 568 civil litigated matters since 2003.[43] As members of the bar, the lawyers in the County Attorney's Office are expected to "increase their awareness of search and retrieval sciences generally, and of the sciences' appropriate application to discovery."[44] Thus, any claimed burden in responding to requests for email and other electronic data is inconsistent with, and could have easily been ameliorated by, utilizing any number of technology-assisted review methods the County is required to employ in litigation as a matter of course.

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[43] The undersigned searched three different databases to determine how often Hennepin County appears as a party in litigated matters. A search for "Hennepin County" as plaintiff or defendant on the Courthouse News Service database resulted in 568 matters since 2003, not counting criminal or family law matters in which the County regularly appears. A search for "Hennepin County" as a party on Westlaw returned 264 opinions on matters involving the County since January 1, 2013. A search for "Hennepin County" as a party on PACER returned 74 matters in which the County appeared in the United States District Court for the District of Minnesota since 2007.

[44] *2014 Best Practices Commentary*, *supra* note 23, at 229; *see also* Minn. R. Prof'l Conduct R. 1.1 cmt. 8 ("To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology . . . .").

Conclusion

Without transparency, informed participation in our democracy would be impossible, and the public would not have the means to ensure that our government is properly using the authority with which it is entrusted. Compliance with the MGDPA – the primary tool in this state to promote an informed public – is necessary to ensure that the public can stay properly apprised of what its "government is up to." Rather than utilize readily-available technologies for retrieving electronically stored information, Hennepin County responded to Mr. Webster's request for government data by utilizing a search process that is neither consistent with best practices nor sufficient under the MGDPA. Accordingly, to ensure the continued viability of the MGDPA as a means of holding our government accountable and maintaining an informed public, amici EFF and ACLU-MN respectfully request that the Court affirm the ALJ's decision below.

Respectfully submitted,

Dated: October 13, 2016

Timothy P. Griffin (#0285717)
Nicole L. Faulkner (#0397456)
Thomas C. Burman (#0396406)
STINSON LEONARD STREET LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Telephone: (612) 335-1500
timothy.griffin@stinson.com
nicole.faulkner@stinson.com
thomas.burman@stinson.com

and

Teresa Nelson (#0269736)
AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA
2300 Myrtle Ave., Suite 180
Saint Paul, MN 55114
Telephone: (651) 645-4097

and

Jennifer Lynch (admitted *pro hac vice*)
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109
Telephone: (415) 436-9333
jlynch@eff.org

Attorneys for Amici Curiae
American Civil Liberties Union of Minnesota and
Electronic Frontier Foundation