STATE OF MINNESOTA

COUNTY OF HENNEPIN

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HENNEPIN CO. DISTRICT
COURT ADMINISTRATION

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

In Re the Matter of
Data Request – Hearing
Officer Guidelines

ORDER GRANTING ACCESS TO
HEARING OFFICER GUIDELINES

Dist Ct. File No: 27-CR/CV-103

INTRODUCTION

The Hennepin County District Court ("Court") opened this administrative file to resolve a dispute under the Rules of Public Access to Records of the Judicial Branch ("Rules") regarding the public accessibility of a document from the Hearings and Fines Management Office. The document, titled City Attorney Authority Guidelines ("Guidelines document"), is used by Court hearing officers to resolve certain types of traffic related offenses. The Guidelines document describes individual prosecuting jurisdictions' agreements to allow a defendant charged with specified traffic offenses to resolve the charge by agreeing to the terms set forth by the prosecuting authority. A hearing officer uses the Guidelines document as a reference in communicating to individual defendants the options available in the defendant's case.

The requesting parties seek the Guidelines document as public information. Some of the prosecuting jurisdictions within Hennepin County asserted the Guidelines document should be classified as not accessible to the public under the Rules. Most of the prosecuting jurisdictions did not directly assert a position on this issue.

This administrative file was opened to provide a forum and judge to resolve this dispute. The court provided each of the municipal prosecuting jurisdictions within the County and the requesting parties with notice of the administrative case. The court accepted written submissions

and held a hearing on Monday, November 22, 2010, at 9:30 a.m. at the Hennepin County Government Center, 300 South Sixth Street, Minneapolis, MN 55487, at which the following individuals appeared:

Theresa Graham, a private individual.

Lieta Walker, Esq., Faegre & Benson, L.L.P, representing the Star Tribune.

Anna Krause Krabb, Assistant Prosecuting Attorney, City of Minnetonka.

Mary Ellen Heng, Assistant City Attorney, City of Minneapolis.

Francis J. Rondoni, of Chestnut Cambronne, P.A., appeared on behalf of the City of Golden Valley and the Suburban Hennepin County Prosecutors' Association.

The court received and reviewed the following:

1. Email relating to request for data from Theresa Graham dated May 4, 2010.

2. Email relating to request for data from Pam Louwagie, Star Tribune Staff Writer, dated September 30, 2010.

3. Correspondence from Mark Wernick, Criminal Presiding Judge, Fourth Judicial District to Hennepin County Prosecutors dated September 22, 2010.

4. Correspondence from Rolf Sponheim, Assistant City Attorney, City of Minnetonka dated October 12, 2010 objecting to release.

5. Correspondence from Francis J. Rondoni, Prosecuting Attorney for the City of Golden Valley dated October 12, 2010 objecting to release.

6. Correspondence from Martha Holten Dimick, Deputy City Attorney, Minneapolis City Attorney's Office dated October 8, 2010 objecting to release.

7. Correspondence from Steven M. Tallen, Prosecuting Attorney for the Cities of Maple Grove, Deephaven, Woodland, Medina, Loretto, and the Lake Minnetonka Conservation District, and Assistant Prosecuting Attorney for the cities of Robbinsdale and Rockford (Hennepin County portion) dated September 27, 2010 agreeing with release and requesting a copy of the Guidelines document.

8. Correspondence from Leita Walker, Faegre & Benson, L.L.P., on behalf of the Star Tribune dated November 17, 2010 in support of release.

9. Background information from the Fourth Judicial District titled Administrative Hearing Office Basis in Law and a History, compiled by Douglas Anderson,

Administrative Hearing Office Supervisor dated April, 2010.

10. Additional email and correspondence received by the court from Teresa Graham at the November 22, 2010 hearing.

11. The Court conducted an *in camera* review of a version of the Guidelines document dated September 21, 2010 and the correspondence from prosecuting jurisdictions setting forth the parameters and terms for resolution of a case through a continuance for dismissal.

Based upon the records, arguments and proceedings in this matter, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Ms. Graham and the Start Tribune independently requested access to the City Attorney Authority Guidelines ("Guidelines document") pursuant to the Minnesota Supreme Court Rules of Public Access to Records of the Judicial Branch ("Rules"). Ms. Graham's request for access was made in April, 2010. The Star Tribune requested the data in September, 2010.

2. The Violations Bureau Administrative Hearing Office ("Hearing Office") was created in 1972 by the Fourth Judicial District Court pursuant to Minn. Stat. § 484.91 and Minn. R. Crim. Proc. 23.03. The Hearing Office, and its hearing officers, operates through a grant of authority from the Fourth Judicial District Court.

3. The Hearing Office is an office within the administration of the Court. The Hearing Office is funded by the court and its employees are employees of the Court and supervised by the Court.

4. Originally designed to "divert petty misdemeanor parking cases from the overburdened traffic calendar," the duties of the hearing officers have expanded over time to include communicating and executing offers from the prosecuting authorities to resolve certain types of cases by means of a continuance for dismissal ("CFD"). Admin. Hearing Off. Basis in Law and a Hist., pg. 3.

5. Within the boundaries of Hennepin County are numerous municipalities and other jurisdictions with the authority to charge and prosecute traffic related offenses. These prosecuting jurisdictions individually determine their own criteria for a qualifying traffic offense eligible for a CFD offer, the requirements which must be met by the defendant in order to be offered a CFD and the terms for a CFD. This information from prosecuting jurisdictions is received and maintained by the court as correspondence from the various prosecuting jurisdictions.

6. In 2002, an employee of the court consolidated the information contained in the correspondence from prosecuting jurisdictions and created the Guidelines document which puts the information in an outline form. Admin. Hearing Off. Basis in Law and a Hist., pg. 4. The Guidelines document is revised and updated periodically as the Hearing Office receives written changes from the prosecuting jurisdictions. *Id.*

7. The Guidelines document contains information related to categories of charged offenses. The Guidelines document does not contain any information specific to a particular defendant or a particular case file.

8. The Guidelines document reflects the written "standing agreements" from the prosecuting jurisdiction to resolve certain categories of traffic offenses by a CFD. The Guidelines document reflects the decision of the prosecuting jurisdiction as to what types of charges may be offered a CFD, criteria a particular defendant must meet to qualify for a CFD and the terms for a CFD.

9. The Hearing Office and hearing officers do not have any authority to resolve a case outside the parameters established by the prosecutorial authority through the Guidelines document and the underlying correspondence from that prosecuting jurisdiction. Deviation requires express authority from the prosecuting jurisdiction.

10. The prosecuting jurisdictions have given the Hearing Office, through the hearing officer, the authority to communicate to a defendant in a qualifying case the option of resolving the case by a CFD within the parameters set by the prosecuting jurisdiction.

11. The prosecutors have not "delegated" their prosecutorial discretion to the hearing officers. The correspondence from the prosecuting jurisdictions reflects the prosecutor's completed exercise of prosecutorial discretion.

12. The function "delegated" by prosecuting jurisdictions to the hearing officers is to communicate the prosecutor's agreed upon "standing offer" to defendants who meet the parameters established by the prosecuting jurisdiction. If the defendant accepts the prosecuting jurisdiction's offer, the hearing officer enters the agreed upon resolution into the court records and provides the defendant with information to comply with the terms of the agreement.

13. Prosecuting jurisdictions can change or withdraw their standing agreements regarding these routine traffic cases at any time.

14. The procedures used by the Hearing Office are similar to the practice in misdemeanor cases of a prosecutor who is not present at a hearing communicating an offer to resolve a matter by putting a written offer on the "blues," which are the electronic court record of the case. In that situation, the prosecutor's written offer to resolve the case on the terms set forth by the prosecutor would be communicated to the defendant and are part of the publicly accessible court records.

15. The Court could require prosecutors to be present at the proceedings in the Hearing Office to communicate offers to defendants in person. Efficient use of resources is

served through allowing hearing officers to communicate the standing offers to qualifying defendants in qualifying cases.

CONCLUSIONS OF LAW

Court Rules, Not the Data Practices Act Control Accessibility

1. The Minnesota Government Data Practices Act governs access to data for government entities, as defined by the Act. *See* Minn. Stat. §§ 13.01 and 13.02. The government entities governed by the Data Practices Act are limited to executive branch agencies and do not include the judiciary or its records. Minn. Stat. § 13.02, subds. 7a, 11, 17 and 18.

2. The Data Practices Act expressly excludes the judiciary, which is defined to include "any office, officer, department, division, board, commission, committee or agency of the courts of this state." Minn. Stat. § 13.90. Access to data of the judiciary is governed by Minnesota Supreme Court's Rules of Public Access to Records of the Judicial Branch ("Rules"). *Id., see also, State v. C.P.H.*, 707 N.W.2d 699, 705 (Minn. Ct. App. 2006).

3. The Rules "govern access to the records of all courts and court administrators of the judicial branch of the State of Minnesota." *See* Rule 1.

4. Court records are presumed to be open to the public for inspection or copying unless the records fall within one of the exceptions set forth in Rules 4, 5, 6 or 8. *See* Rule 2.

The Guidelines Document is an Administrative Record under the Rules

5. "Records" are defined broadly as "any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless or physical form or method or storage." Rule 3, subd. 5.

6. The Guidelines document is classified as a "record" within the scope of the Rules. The Guidelines document is a compilation of recorded information, created by court employees from recorded information ***received by*** the court from the prosecuting jurisdictions. As such, the Guidelines document, as well as the underlying correspondence documents from which the Guidelines document was created, is a "record" within the scope of the Rules.

7. The Rules define types of "records" including "case records" and "administrative records." "'Case Records' are all records of a particular case or controversy; 'Administrative Records' are all records pertaining to the administration of the courts or court system[.]" *See* Rule 3, subd. 5.

8. The Guidelines document is an "Administrative Record" governed by Rule 5 because it pertains to the administration of the Hearing Office, which is an office within the court.

9. The Guidelines document is not a "Case Record." The Guidelines document is not a record from a particular case or controversy. Use of the Guidelines document by the

Hearing Office to resolve a particular case against a defendant may result in the creation of a case record related to a particular defendant and the resolution of a particular case. However, the Guidelines document itself and the data contained therein do not become a part of the defendant's individualized case record.

Hearing Officers are Not "Agents" of the Prosecutors

10. Some of the prosecuting jurisdictions assert that in resolving cases pursuant to the Guidelines document the hearing officers are acting as "agents" of the prosecutor. This agency argument is used to assert that the Guidelines document is, therefore, an "internal document" of the various prosecutors' offices governed by the Data Practices Act[1] and not a "record" under the Rules and also as part of the arguments related to the work product doctrine. The prosecuting jurisdictions do not support the agency assertions with any specific factual record or citation to legal authority regarding agency relationships.

11. The Hearing Office and hearing officers are not agents of the prosecutors. The courts, not the prosecutors supervise the employment and performance of the hearing officers.

12. Although Minn. Stat. § 609.132 provides that "[t]he decision to offer or agree to a continuance of a criminal prosecution is an exercise of prosecutorial discretion resting solely with the prosecuting attorney," this statute does not implicate an agency relationship between the prosecutors making the offer and hearing officers communicating the offer to the defendant.

13. The correspondence from the prosecuting jurisdictions regarding the criteria for offering CFDs for certain traffic offenses, and the terms of any CFD, reflects the completed exercise of prosecutorial discretion, not a delegation of prosecutorial discretion to court employees.

14. That one of the Court's hearing officers communicates to an individual defendant the prosecutor's standing offer and agreement to a CFD upon specified terms and conditions does not make the hearing officer an "agent" of the prosecutor. The hearing officers do not have authority to deviate outside of the parameters set by the prosecutors and are not "negotiating" CFDs with the defendant. The hearing officers merely communicate to qualifying defendants the option of a CFD upon the terms and conditions determined by the prosecutor.

The Guidelines Document Does Not Fall Within Exceptions to Rule 5

15. "All administrative records are accessible to the public except" as provided by the exceptions set forth in Rule 5.

16. The prosecuting jurisdictions argue the Guidelines are not publicly accessible because the underlying documents from which the Guidelines were created are "attorney work product" exempted from the general rule of accessibility by the work product exclusion in Rule 5, subd. 12 or the more general "Other" exception set forth in Rule 5, subd. 14.

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[1] Because the court concludes the Guidelines document and underlying correspondence from prosecutors are administrative records governed by the Rules, the court does not address application of the Data Practices Act in determining the classification the data within the prosecuting jurisdictions.

17. The attorney work product exception in Rule 5, subd. 12 applies to: "[t]he work product of ***any attorney or law clerk employed by or representing the judicial branch*** that is produced in the regular course of business or representation of the judicial branch." Rule 5, subd. 12.

18. The Guidelines document was not prepared from data created by attorneys or law clerks employed by or representing the judicial branch. The data contained in the Guidelines document originates from communications from prosecuting attorneys who represent the municipalities as part of the executive branch of government, not the judicial branch. The work product exception in Rule 5, subd. 12 does not apply.

19. The "Other" exception in Rule 5 applies to: "Matters that are made inaccessible to the public under . . . rule or order of the Supreme Court." Rule 5, subd. 14. The prosecuting jurisdictions argue the Guidelines document falls within the "Other" exception because the information in the Guidelines is the prosecuting attorneys' work product and is designated as inaccessible by Supreme Court Rule of Criminal Procedure 9.01, subd. 3(1).

20. The following information is not discoverable by the defendant in a criminal case pursuant to Criminal Rule 9.01, subd. 3(1):

(1) Work product.

(a) Opinions, Theories, or Conclusions. Unless otherwise provided by these rules, legal research, records, correspondence, reports or memoranda to the extent they contain the opinions, theories, or conclusions of the prosecutor, the prosecutor's staff or officials, or official agencies participating in the prosecution.

(b) Reports. Except as provided in Rule 9.01, subd. 1(1) to (7), reports memoranda, or internal documents made by the prosecutor or members of the prosecutors staff or by prosecution agents in connection with the investigation or prosecution of the case against the defendant.

21. The work product exception in Criminal Rule 9.01 is a limitation on what a criminal defendant may obtain in discovery in a specific criminal prosecution. By its express terms, Criminal Rule 9.01 limits a criminal defendant's access to information regarding the prosecution of the case against him.

22. The Guidelines document reflects the standing written agreement of the prosecuting jurisdiction to resolve certain qualifying offenses utilizing terms which are established by the prosecuting authority. The purpose and intended use of the information in the Guidelines document is for the hearing officer to communicate the terms of the prosecutor's agreement for a CFD to a qualifying defendant. Applying Criminal Rule 9.01 to classify the data as inaccessible to the public, while the recognized purpose is for the data to be communicated to individual defendants, contradicts the express purpose of Criminal Rule 9.01.

23. Even assuming the work product discovery limitation of Criminal Rule 9.01 was applicable to the public accessibility of the Guidelines document, the work product limitation would not preclude public access. The correspondence from the prosecuting jurisdictions regarding agreements to resolve categories of traffic cases through a CFD and setting the terms for a CFD do not reflect any specific theories, opinions, mental impressions or conclusions in relation to any particular defendant or any specific case being prosecuted. The prosecuting jurisdictions did not cite any cases applying the work product limitation in Criminal Rule 9.01 as broadly as they seek to apply it in this case.

24. Finally, the court has not been presented with any legal authority that would suggest that standardized prosecutorial policy decisions regarding plea negotiation policies are classified as not accessible to the public. State law suggests the contrary.

25. Under current law, county attorneys must develop "written guidelines governing the county attorney's charging and plea negotiation policies and practices" including "(1) the circumstances under which plea negotiation agreements are permissible; (2) the factors that are considered in making charging decisions and formulating agreements; and (3) the extent to which input from other persons concerned with a prosecution such as victims and law enforcement officers is considered in formulating plea agreements." Minn. Stat. § 388.051, subd. 3. These settlement guidelines are classified as public data. *Id.*

ORDER

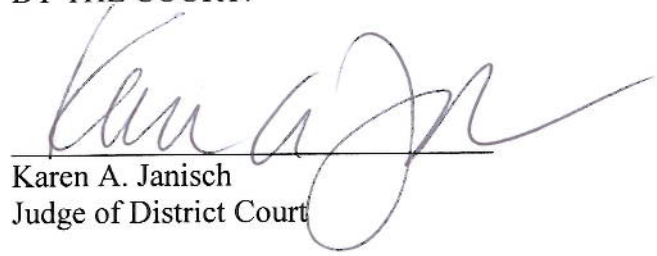
1. The Guidelines document created by court employees from correspondence received from prosecuting jurisdictions within Hennepin County are administrative records of the court and accessible to the public pursuant to Rule 5 of the Minnesota Rules of Public Access to Records of the Judicial Branch.

2. The Guidelines will be made publicly accessible to the requesting parties within 14 days of the filing of this Order.

3. The attached memorandum of law is incorporated as part of this Order.

IT IS SO ORDERED.

BY THE COURT:



DATED: 1/11/11

Karen A. Janisch
Judge of District Court

MEMORANDUM OF LAW

The Minnesota Supreme Court's Rules of Public Access to Records of the Judicial Branch ("Rules") reflects the judicial branch's commitment to public proceedings, openness and accountability. The Hennepin County District Court ("Court") is also strongly committed to the ensuring the effective management of criminal cases within the County. The immense volume of routine traffic offenses, however, challenges the resources of the Court as well as local jurisdictions. Fortunately, the Court has enjoyed good relationships with the prosecuting jurisdictions within the county which has allowed the implementation of practical solutions to address these challenges. The current practices within the Hearing Office reflect this cooperation and focus limited resources to efficiently manage routine traffic cases to the benefit of the courts, the prosecuting jurisdictions and the public. Individuals are able to hear their options at an initial proceeding with a hearing officer and are provided opportunity to resolve cases early in the process, thereby reducing additional court appearances.

The Hearing Office and the individual hearing officers act under the authority and direction of the Court. They are employees of the Court and exercise judicial branch authority. They are not prosecutors or agents of the prosecutors. Having hearing officers communicate the prosecuting jurisdiction's standardized agreement to resolve qualifying offenses upon the terms set by the prosecutor reflects an efficiency developed by the Court with the consent of the individual prosecuting jurisdictions. The prosecuting jurisdictions could, of course, make different policy decisions regarding their participation in these practices. For example, a prosecuting jurisdiction could withdraw their standing agreements and elect to address offers on an individual basis in each case. Alternatively, the Court could require prosecutors to appear before the hearing officer in each case and empower the hearing officers to dismiss any

prosecution in which the prosecutor fails to appear to prosecute the citation. These types of changes, however, would dramatically impact the resources of the Court and prosecuting jurisdictions and would likely result in delays of months or years in bringing these routine cases to resolution.

Public access to the Guidelines document will not actually reveal any information about resolution of traffic cases that was not publicly available through other sources. Review of publicly accessible case records from the traffic cases occurring within the varying jurisdictions would show dispositions in traffic offenses, including continuances for dismissals and the terms of a continuance for dismissal. The Guidelines document at issue in this case merely provides a more convenient format for examining the information.

As raised during the hearing, public disclosure of the Guidelines document may reflect a lack of uniformity between prosecuting jurisdictions in regard to resolving routine traffic cases through use of a continuance for dismissal. There certainly may be appropriate arguments to support greater uniformity across jurisdictions. State law, however, places these policy decisions within the prosecuting jurisdictions to determine, not the courts. Each prosecuting jurisdiction retains the ultimate authority to determine the appropriate policies and practices for addressing traffic offenses within its community.

Finally, the parties raised a number of public policy arguments in this cases regarding whether the Guidelines document should or should not be accessible to the public. Although this court believes in broad public accessibility to court records, the court's ruling is based upon the Rules of Public Access as promulgated by the Minnesota Supreme Court. This court is not charged with weighing the merits of disclosure or non-disclosure and has no authority to change or modify the Rules to suit its view of what should or should not be made accessible to the

public. When it comes to court records, those policy decisions rest solely with the Minnesota Supreme Court.

KAJ