



**Office of Administrative Hearings
Expedited Hearing Process
Required by the Minnesota Government
Data Practices Act**

**Fiscal Year 2017
Report to the Legislature**

**As Required By
2010 Minnesota Laws, Chapter 297, Section 3**

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| <p>CHIEF ADMINISTRATIVE LAW JUDGE:</p> <p>Tammy L. Pust</p> | <p>Report on the Office of Administrative Hearings Expedited Hearing Process Under the Minnesota Government Data Practices Act</p> <p>September 1, 2017</p> <p>FY 2017 Report to the Legislature</p> <p>As required by 2010 Minnesota Laws, Chapter 297, Section 3</p> |
| <p>FOR MORE INFORMATION CONTACT:</p> <p>Tammy L. Pust Chief Administrative Law Judge Office of Administrative Hearings 651-361-7830 tammy.pust@state.mn.us</p> | |
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Cost of Report Preparation

The total cost for the Minnesota Office of Administrative Hearings to prepare this report was approximately \$100. These costs involved staff time in compiling and analyzing data, and preparing the written report.

Estimated costs are provided in accordance with Minnesota Statutes section 3.197 (2016), which mandates that the cost of preparing a required report must be provided at the beginning of all reports to the legislature.

Program Background

In 2010, the Minnesota Legislature authorized the Office of Administrative Hearings to provide an expedited hearing to any complainant seeking an order to compel a government agency to comply with the Minnesota Government Data Practices Act (MGDPA or Data Practices Act). Minn. Stat. § 13.085 (2016) allows persons seeking an order compelling a state or local government agency to comply with the Minnesota Government Data Practices Act to request an expedited hearing before an Administrative Law Judge at the Office of Administrative Hearings. Strict and short statutory timeframes apply to these claims: hearings are held within 30 days of the filing of the complaint and response; decisions are due within 10 days following the close of the hearing record. In these cases, Administrative Law Judge determinations are final agency decisions appealable to the Minnesota Court of Appeals.

The Office of Administrative Hearings has developed a detailed set of procedures and templates for use in these hearings, all of which are available electronically via the Office of Administrative Hearings website at <http://mn.gov/oah/administrative-law/filing/data/index.jsp>. The agency absorbed all of the costs associated with the development of these resources in Fiscal Year 2013.

Complexity of Cases

When enacting Minn. Stat. § 13.085, legislators assumed that the disputes that would be presented to the Office of Administrative Hearings would, most often, involve clear-cut cases of intransigence by government officials refusing to provide to the public legally producible data. Directly contrary to this expectation, the filings have instead involved complex and fact-intensive questions of first impression. The law relevant to these issues is complex. As such, the resolution of these issues involved significant factual disputes and required extensive legal research and analysis.

The chart below details the Office of Administrative Hearings' cost experience for the expedited hearing process in fiscal years 2011 through 2017.

| Matter | Docket Number | Filing Fees (Total Revenue to OAH) | OAH Hours Required to Resolve | Total Cost to OAH |
|-------------------------|---------------|------------------------------------|-------------------------------|--------------------|
| In Re: Schmid | 0305-21608 | \$1,000.00 | 52.0 | \$5,752.00 |
| In Re: KSTP-TV | 0305-21754 | \$1,000.00 | 76.75 | \$9,248.00 |
| In Re: Stengrim | 0305-21900 | \$1,000.00 | 26.45 | \$2,792.00 |
| In Re: Four Crown, Inc. | 0305-21960 | \$1,000.00 | 48.80 | \$5,944.00 |
| FY 11 Totals | | \$4,000.00 | 204.00 | \$23,736.00 |
| In Re: Four Crown, Inc. | 0305-21960 | Paid in FY11 | 34.60 | \$5,692.58 |
| In Re: Sherburne | 0305-22121 | \$1,000.00 | 13.45 | \$2,159.75 |
| In Re: Helmberger | 0305-22159 | \$1,000.00 | 72.20 | \$9,798.00 |
| In Re: Citizens Info. | 0305-22638 | \$1,000.00 | 19.00 | \$2,004.50 |
| FY12 Totals | | \$3,000.00 | 139.25 | \$19,654.83 |
| In Re: Prall | 0305-30225 | \$217.50 | 2.4 | \$217.50 |
| In Re: Utes | 0305-30394 | \$1,000.00 | 7.3 | \$1,119.50 |
| In Re: Beedle | 0305-30450 | \$1,000.00 | 14.9 | \$1,812.50 |
| In Re: Gibson | 0305-30695 | \$1,000.00 | 1.8 | \$297.00 |
| FY13 Totals | | \$3,217.50 | 26.4 | \$3,446.50 |
| In Re: Beedle | 0305-30450 | Paid in FY13 | .8 | \$64.00 |
| In Re: Gibson | 0305-30695 | Paid in FY13 | 9.90 | \$1,633.50 |
| In Re: MAPE | 0305-30914 | \$195.50 | 1.70 | \$195.50 |
| In Re: ND Pipeline | 0305-31410 | \$1,000.00 | 32.10 | \$5,261.50 |
| In Re: Hurlbert | 0305-31500 | \$305.00 | 1.70 | \$305.00 |
| FY14 Totals | | \$1,505.00 | 46.20 | \$7,459.50 |
| In Re: KSTP TV | 0305-31782 | \$1000.00 | 19.0 | \$3,109.50 |
| In Re: Rockville | 0305-31990 | \$1000.00 | 22.20 | \$2,476.50 |
| FY15 Totals | | \$2000.00 | 41.20 | \$5,586.00 |
| In Re: Sigma Alpha | 0305-32755 | \$90.50* ¹ | 1.10 | \$90.50 |
| In Re: Webster | 0305-33135 | \$50.00* | 84.45 | \$9,904.00 |
| In Re: Harper | 0305-33466 | \$1,000.00 | 48.4 | \$5,780.00 |
| FY16 Totals | | \$1,140.50 | 133.95 | \$15,774.50 |
| In Re: KSTP | 0305-31782 | Paid in FY15 | 8.25 | \$3,244.00 |
| In Re: Harper | 0305-33466 | Paid in FY16 | 3.1 | \$527.00 |
| In Re: Halva | 0305-33827 | \$50.00* | 43.75 | \$8,621.00 |
| In Re: Johnson | 0305-34354 | \$1,000.00 | 56.25 | \$6,697.50 |
| FY 17 Totals | | \$1,050.00 | 111.35 | \$19,089.50 |

¹ The complainants in the cases marked with an asterisk (*) paid the statutorily required \$1000 filing fee, but the vast majority of the fee was refunded as required by Minn. Stat. § 13.085, subd. 6(c) (2016).

Program Funding: A History

With regard to most of its work, the Administrative Law Division of the Office of Administrative Hearings operates as an enterprise fund within state government. The cost of hearing services are billed to the client agencies that use our services. The receipts from such charges are then deposited into an Enterprise (Revolving Fund) Account and appropriated back to the Office of Administrative Hearings for payment of employee salaries, benefits and enterprise-related expenses.²

The MGDPA's expedited hearing program is an exception to this general procedure. The Office of Administrative Hearings has no ability to charge any client agency to recover its costs attributable to the program. Instead, the 2010 Legislature intended that the special³ \$1,000 filing fee would be sufficient to cover the costs of resolving any dispute in the expedited data practices process. As the chart below reflects, the Office of Administrative Hearings' actual cost experience has been much different than was anticipated.

As a result of the chronic shortfall which resulted from consideration of the \$1000 filing fee as the sole funding source, the 2013 Legislature appropriated \$36,000 to the Office of Administrative Hearings on a one-time basis in order to cure deficiencies in the program account. More recently, the 2015 Legislature enacted a \$12,000 biennial general fund appropriation in support of the program. This appropriation proved insufficient; the program was in deficit by the end of Fiscal Year 2016. As a result, the 2017 Legislature approved a deficiency appropriation which totaled \$20,673.50, and also increased the biennial appropriation from \$12,000 to \$44,000.

While the amount of the program's deficiency is not objectively significant in a state budget of the size of Minnesota's, it is legally critical. Minn. Stat. § 14.53 (2016) requires the agency to "assess agencies the cost of services rendered to them." The Office of the Legislative Auditor has interpreted the statute as a strict prohibition on cross-subsidization. To comply with this statutory restriction, the Office of Administrative Hearings cannot charge its client agencies higher billable rates so that it can underwrite the services that it provides to MGDPA complainants. Accordingly, as few or none of the MGDPA cases presented to the Office of Administrative Hearings can be resolved for the \$1,000 filing fee, the program may continue to experience funding shortfalls that cannot be "covered" with any other resources available to the agency. .

The following chart documents the program's receipts and expenditures for Fiscal Years 2011 through 2017.

² See Minn. Stat. §§ 14.53, 14.54 (2016).

³ The Office of Administrative Hearings' general filing fee is \$50 for all other matters.

Receipts and Expenditures for FYs 2011 – 2017

| Fiscal Year | Fees/Income | Billed Hours | Total Cost | Shortfall |
|--------------------------------------|--------------------|---------------------|--------------------|------------------|
| FY 2011 Totals: | \$4,000.00 | 204.00 | \$23,736.00,673.50 | -\$19,736.00 |
| Shortfall as of FY2011 | | | | -\$19,736.00 |
| FY 2012 Totals: | \$3,000.00 | 139.25 | \$19,654.83 | -\$16,654.83 |
| Shortfall as of FY2012 close | | | | -\$36,390.83 |
| FY 2013 Deficiency Appropriation | | | | +\$36,000.00 |
| Shortfall after Appropriation | | | | -\$390.83 |
| FY 2013 Totals: | \$3,217.50 | 26.4 | \$3,446.50 | -\$ 229.00 |
| Shortfall as of FY2013 close | | | | -\$619.83 |
| FY2014 Totals: | \$1,505.00 | 46.2 | \$7,459.50 | -\$5,954.50 |
| Shortfall as of FY 2014 close | | | | -\$6,574.33 |
| FY2015 Totals: | \$2,000.00 | 41.20 | \$5,586.00 | -\$3,586.00 |
| Shortfall as of FY 2015 close | | | | -\$10,160.33 |
| FY 2015 Appropriation | | | | +\$12,000.00 |
| Returned to General Fund | | | | \$1,839.67 |
| FY2016 Totals: | \$1,140.50 | 133.95 | \$15,774.50 | -\$14,634.00 |
| FY 2016 Appropriation | | | | +\$6,000.00 |
| Shortfall as of FY 2016 close | | | | -\$8,634.00 |
| FY 2017 Totals: | \$1,050.00 | 111.35 | \$19,089.50 | -\$18,039.50 |
| Shortfall as of FY 2017 close | | | | -\$26,673.50 |
| FY 2017 Appropriation | | | | \$6,000 |
| FY 2017 Deficiency Appropriation | | | | \$20,673.50 |
| Shortfall after Appropriation | | | | \$0 |

Conclusion

The Office of Administrative Hearings appreciates the opportunity to submit this report in an effort to provide the legislature with objective data necessary to inform its continuing policy and funding discussions related to this important program. If any further information would be helpful, please do not hesitate to contact Chief Judge Tammy L. Pust at tammy.pust@state.mn.us or (651) 361-7831.