WRITTEN TESTIMONY OF MATT EHLING
BOARD MEMBER
MINNESOTA COALITION ON GOVERNMENT INFORMATION

HEARING ON H.F. 2120
MARCH 14, 2014

Chairman Lesch and members of the House Civil Law Committee,

MNCOGI submits the following comments in support of H.F. 2120, a bill that would create a legislative commission to evaluate data policy, including policies on data privacy and government transparency.

Background
Given the explosive (and ongoing) growth of information technology, both the public and private sectors are creating, collecting, and maintaining massive amounts of data - more so than at any time in the past. This trend ensures that questions around data access and use will proliferate for the foreseeable future. Such questions confront public policy makers today, and they will only increase in their urgency and complexity.

MNCOGI's institutional interest in this area lies in the realm of government data policy – specifically access to government information for the purpose of institutional oversight. Given this focus, our comments on this bill center largely on matters of government transparency.

Government data in Minnesota
Government data policy in Minnesota is governed in large part by Chapter 13 of the Minnesota Statutes - the Minnesota Government Data Practices Act (MGDPA). That body of law serves two major purposes:

> 1. To ensure public access to data held by Minnesota's government entities;

> 2. To regulate access to data on individuals held by government entities.

The first element of the MGDPA is its "public access" purpose. The second is its "individual privacy" purpose. Under the MGDPA, all data held by the

government is presumed to be public, unless otherwise classified. This was done at the law's inception to ensure that the public had access to government information in the service of oversight and accountability. The law's privacy provisions were added to ensure that certain data on individuals held by government entities – such as medical record information - was protected from disclosure. The Legislature has, on a rolling basis, updated and modified such privacy provisions.

As Chapter 13 contains both an access and a privacy purpose, policy makers must build a knowledge base that encompasses the dual elements of this body of statutory language. Lawmakers must also have a passing familiarity with other provisions of Minnesota law that impact data policy, as well as aspects of federal law that do the same. All of these provisions interact in complex – and sometimes unexpected - ways.

In order to ensure continuity in data policy - as well as positive policy outcomes for the public - the legislature should encourage specialized institutional knowledge about data issues, and a process that engages in thorough research before data legislation is proposed and voted on.

Commission would build expertise
Currently, most matters involving data policy are heard by a small number of committees – largely Civil Law in the House, and Judiciary in the Senate. The amount of time that those bodies can commit to data policy is limited, due to the vast array of other issues that confront committee members.

At the moment, only the House Civil Law Committee has a Data Practices subcommittee that focuses specifically on data policy matters. During short legislative sessions (such as the current one) that body might not be called to order. On the Senate side, there is no comparable subcommittee at the present time.

Within the existing House and Senate committees, there are certainly individuals with a deep knowledge of data matters. However, there is no regular process for creating new experts to ensure that the Legislature has historical continuity, and takes a "long view" of complex data-related matters. The legislative commission proposed by H.F. 2120 would create such a process, by providing a venue in which it could occur.

The legislative commission would include up to ten members - five from the

House, and five from the Senate. The standing nature of the commission would allow the development of expertise within both bodies, and would ensure that a venue existed where such expertise could be cultivated as current specialists leave.

Commission would allow more time to evaluate "big picture" outcomes
The legislative commission model seeks to extend the process surrounding the creation of data policy beyond the short time frame of the regular legislative session. This would encourage thorough research by commission members before bills were acted upon, and would help ensure that data policy takes "big picture" issues into account.

The following is a current example of such an issue: This session has seen the introduction of two bills that seek to regulate the dissemination of booking photographs - data that has long been public under Minnesota law. One of the bills seeks to limit the electronic dissemination of the photographs as a way to impede bulk access by "mug shot" aggregation web sites, some of which erroneously suggest that listed individuals have been convicted of crimes, when in fact they have not.

Under current Minnesota law, copies of any public government data can be disseminated by agencies in an electronic format quite freely. In fact, government agencies nationwide are increasingly hosting electronic copies of government data on their own web sites – a trend that has been undertaken by municipalities across the country.

Given this trend, actions to limit the electronic dissemination of public data raise questions about data dissemination that stretch beyond the limited issue of booking photos. For instance, should there be a more comprehensive body of policy surrounding the electronic production and dissemination of public government data? What would the aims of such policy be? And would the creation of such policy have unintended consequences for public access and oversight?

In the tight timeframes afforded by the legislative session, answers to such overarching questions are difficult to reach. The legislative commission proposed by H.F. 2120 would be a step toward answering such "big picture" policy questions more cleanly and comprehensively.

Commission process would help secure transparency
Given the speed with which the legislature must often act, complex matters regarding data policy are frequently parsed into small components that do not afford a long-term view of the underlying issues. Without a comprehensive view of this area of policy, it can be difficult for lawmakers to make rapid determinations about when, for example, a bill that is touted as protecting privacy interests may, in fact, have unintended, negative impacts on public oversight and accountability. These sorts of debates fall upon the fulcrum of the public access/privacy purposes set out in the MGDPA, and deserve thorough examination so that the critical government transparency function of the MGDPA is not undermined.

The MGDPA is structured in such a way that any exceptions to its general rule of public access must be approved by the legislature. Such exceptions have been added in a piecemeal fashion over time - either to protect individual privacy, or to allow confidentiality for certain government functions. If the legislature does not allow itself the institutional capacity to evaluate whether proposed closures of public data have a sound basis in policy - or whether they should be rejected - the robust transparency structure of the MGDPA will become slowly compromised. The legislative commission model would permit the legislature the time to engage in such careful deliberation, and to protect the promise of government transparency that was secured in law over four decades ago.

Conclusion
For the foregoing reasons, MNCOGI strongly supports H.F. 2120, and the legislative commission on data practices that it would create.