STATE OF MINNESOTA

IN SUPREME COURT

A20-1344

Court of Appeals | Chutich, J.
Concurring in part, dissenting in part,
Thissen, J., Gildea, C.J., Anderson, J.

Energy Policy Advocates,

Respondent,

vs.

Filed: September 28, 2022
Office of Appellate Courts

Keith Ellison, in his official capacity as
Attorney General, Office of the Attorney General,

Appellants.

____

Douglas P. Seaton, James V.F. Dickey, Upper Midwest Law Center, Golden Valley, Minnesota; and

Matthew D. Hardin, Hardin Law Office, Washington, D.C., for respondent.

Keith Ellison, Attorney General, Liz Kramer, Solicitor General, Oliver Larson, Adam Welle, Jennifer Kitchak, Assistant Attorneys General, Saint Paul, Minnesota, for appellants.

Eric J. Magnuson, Rebecca Zadaka, Robins Kaplan LLP, Minneapolis, Minnesota, for amicus curiae The Chamber of Commerce of the United States.

Katherine M. Swenson, Amran A. Farah, Greene Espel PLLP, Minneapolis, Minnesota; and

Karl A. Racine, Attorney General for the District of Columbia, Loren L. Alikhan, Solicitor General, Caroline S. Van Zile, Principal Deputy Solicitor General, Ashwin P. Phatak, Deputy Solicitor General, Harrison M. Stark, Samson J. Schatz, Assistant Attorneys General, Washington, D.C., for amicus curiae the District of Columbia and on behalf of 38 states.

Patricia Y. Beety, Susan L. Naughton, Saint Paul, Minnesota, for amici curiae League of Minnesota Cities, Association of Minnesota Counties, and Minnesota County Attorneys Association.

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Jeffrey P. Justman, Thomas K. Pryor, Faegre Drinker Biddle & Reath LLP, Minneapolis, Minnesota; and

Patrick Hedren, Manufacturers' Center for Legal Action, Washington, D.C., for amicus curiae National Association of Manufacturers.

Mahesha P. Subbaraman, Subbaraman PLLC, Minneapolis, Minnesota, for amici curiae Public Record Media and Minnesota Coalition on Government Information.

Jacob Campion, Cicely R. Miltich, Assistant Attorneys General, Saint Paul, Minnesota, for amicus curiae Governor Tim Walz and 23 Cabinet Agencies.

S Y L L A B U S

1. Minnesota recognizes the common-interest doctrine, which applies to prevent the waiver of the attorney-client privilege and the work-product doctrine.

2. The attorney-client privilege may apply to internal communications among attorneys in public law agencies.

3. As classified by the Legislature, "data created, collected and maintained by the Office of the Attorney General" under Minnesota Statutes section 13.65, subdivision 1 (2020), "are private data on individuals," even if the data do not pertain to natural persons.

Reversed and remanded to the district court.

O P I N I O N

CHUTICH, Justice.

This case concerns the obligation of appellant, the Office of the Attorney General, to produce documents under the Minnesota Government Data Practices Act (Data Practices Act), Minnesota Statutes sections 13.01 through 13.90 (2020). Respondent Energy Policy Advocates submitted document requests related to climate-change litigation to the Office of the Attorney General. After the Office determined that the request yielded no responsive, nonprivileged public data, Energy Policy brought a civil action against Keith Ellison in his official capacity as Attorney General, and the Office of the Attorney General (collectively, Attorney General), seeking production of the documents under the Data Practices Act. The district court denied Energy Policy's motion to compel and dismissed the complaint. The court of appeals affirmed in part, reversed in part, and remanded. *Energy Pol'y Advocs. v. Ellison*, 963 N.W.2d 485, 502 (Minn. App. 2021).

The primary issues on appeal concern the existence and scope of the common-interest doctrine, the applicability of the attorney-client privilege to internal communication among attorneys in public law agencies, and the contours of the section of the Data Practices Act governing Attorney General data. We now formally recognize the common-interest doctrine in Minnesota. We also conclude that the attorney-client privilege may apply to protect the confidentiality of internal communications among attorneys in public law agencies. Finally, we uphold the Legislature's classification of Attorney General data under Minnesota Statutes section 13.65, subdivision 1, as "private data on individuals," even when the data do not pertain to "individuals." Consequently, we reverse the decision of the court of appeals on these issues and remand to the district court for further proceedings consistent with this opinion.

FACTS

Respondent Energy Policy, a nonprofit advocacy organization based in Spokane, Washington, submitted document requests to the Office of the Attorney General under the Minnesota Government Data Practices Act. Energy Policy sought documents related to the Attorney General's retention of special assistant attorneys general to advance multistate climate-change litigation. Specifically, Energy Policy asked for correspondence to and from a particular person in the Attorney General's Office that contained any of 11 search terms, including terms referring to (1) the Democratic Attorneys General Association, (2) an external law firm coordinating climate-change litigation, (3) other state attorneys general, (4) private advocacy organizations, (5) websites, and (6) software applications.

The Attorney General responded that its search produced "no public data that is responsive" to the request. In contending that it did not need to release any data, the Attorney General relied on Minnesota Statutes section 13.393—a provision of the Data Practices Act that addresses the use of data by attorneys "acting in a professional capacity for a government entity." The Attorney General later claimed that Minnesota Statutes section 13.65, subdivision 1, which provides that certain categories of data maintained by the Office of the Attorney General are "private data on individuals," provided further exemption from disclosure.

After the Attorney General's initial refusal to produce documents, Energy Policy brought an action in Ramsey County District Court against the Attorney General. Energy Policy alleged that the Attorney General had "erroneously relied on conclusory claims" of privilege. Energy Policy also argued that the Attorney General had improperly classified certain Attorney General data as private data on individuals under section 13.65, subdivision 1, when the data were not actually on individuals.

The parties agreed to resolve the dispute through motion practice. They agreed that the Attorney General would (1) submit an affidavit describing documents that the Attorney General claimed were nonprivileged responsive documents, (2) submit a privilege log detailing documents the Attorney General claimed were privileged, and (3) submit certain documents to the district court for in camera review. The Attorney General sorted the contested documents into 18 categories, identifying the general contents of each category as well as the justification for declining to release them. It also tendered documents from 7 of the categories to the district court for in camera review. The Attorney General then

moved for dismissal of the action. Energy Policy responded by moving to compel production of the documents. The district court granted the Attorney General's motion and dismissed the case.

The court of appeals affirmed in part, reversed in part, and remanded. *Energy Pol'y*, 963 N.W.2d at 502. Of relevance here, the court of appeals concluded that the district court erred by applying the common-interest doctrine because the doctrine has not been recognized in Minnesota. *Id.* at 501–02. The court of appeals also concluded that the district court erred by ruling that documents are protected by the attorney-client privilege without further proof that the documents included communications between an attorney and a client. *Id.* at 500 (citing *Kobluk v. Univ. of Minn.*, 574 N.W.2d 436, 440 (Minn. 1998)). Finally, the court of appeals concluded that the district court erred by ruling that documents may be classified as "private data on individuals" under section 13.65, subdivision 1, without regard for whether the documents contain "data on individuals" as defined by section 13.02, subdivision 5. 574 N.W.2d at 494–95.

The Attorney General petitioned for further review. The Attorney General sought review of three issues: (1) whether Minnesota recognizes the common-interest doctrine; (2) whether the attorney-client privilege may protect internal communications among attorneys in public law agencies; and (3) whether section 13.65, subdivision 1, of the Data Practices Act exempts from disclosure only Attorney General data about natural persons. We granted the petition for review.

ANALYSIS

I.

We first address whether Minnesota recognizes the common-interest doctrine, which prevents privilege waiver in certain situations. *See, e.g.*, *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 922 (8th Cir. 1997) (discussing the contours of the common-interest doctrine). This appeal concerns the application of the common-interest doctrine to the attorney-client privilege and the work-product doctrine, which we review de novo. *See In re Polaris, Inc.*, 967 N.W.2d 397, 406 (Minn. 2021).

We have previously endorsed the following articulation of the attorney-client privilege:

> (1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

Kobluk v. Univ. of Minn., 574 N.W.2d 436, 440 (Minn. 1998) (quoting 8 John Henry Wigmore, *Evidence* § 2292, at 554 (1961)). The work-product doctrine, for its part, protects from disclosure an attorney's opinions, conclusions, mental impressions, trial strategy, and legal theories in materials prepared in anticipation of litigation. *See Dennie v. Metro. Med. Ctr.*, 387 N.W.2d 401, 406 (Minn. 1986); Minn. R. Civ. P. 26.02(d). Ordinarily, parties waive the protection of the attorney-client privilege and the work-product doctrine when they disclose protected information to third parties. *State v. Rhodes*, 627 N.W.2d 74, 85 (Minn. 2001). The common-interest doctrine, however, permits parties with the same legal interests to share documents without losing the

protection of the attorney-client privilege or work-product doctrine. *See Subpoena Duces Tecum*, 112 F.3d at 922; *see also Shukh v. Seagate Tech., LLC*, 872 F. Supp. 2d 851, 855 (D. Minn. 2012); Restatement (Third) of the Law Governing Lawyers §§ 76, 91 (Am. L. Inst. 2000).

The Attorney General invoked the common-interest doctrine to withhold documents under section 13.393 of the Data Practices Act. This section provides that the disclosure of government data by an attorney acting on behalf of a government entity is generally "governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility." Minn. Stat. § 13.393.

The court of appeals rejected the Attorney General's reliance on the common-interest doctrine because it concluded that Minnesota has not recognized the doctrine. *Energy Pol'y*, 963 N.W.2d at 501. The court declined to recognize the doctrine, reasoning that "the task of extending existing law falls to the supreme court or the legislature." *Id.* The court therefore concluded that "the common-interest doctrine is not an exception to the disclosure requirements" of the Data Practices Act. *Id.* at 501. In addition, the court opined that even if Minnesota did recognize the common-interest doctrine, it would not extend to attorney work product. *Id.* at 502.

Here, neither party seriously disputes that Minnesota should recognize the common-interest doctrine.[1] We agree and formally recognize the common-interest

[1] In addition, dozens of amici curiae (including 38 states and territories) submitted six briefs urging this court to adopt the common-interest doctrine. One brief was submitted

doctrine here. We note that numerous other states have adopted the common-interest doctrine. Many states codify the doctrine in their statutory codes or rules of evidence. *See*, *e.g.*, Ala. R. Evid. 502(b)(3); Del. R. Evid. 502(b)(3). Other states have adopted the common-interest doctrine in their common law. *See*, *e.g.*, *In re Fortieth Statewide Investigating Grand Jury*, 191 A.3d 750, 763 (Pa. 2018); *Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 27 N.Y.3d 616, 626–27 (N.Y. 2016). Further, nearly every federal circuit court of appeals recognizes the common-interest doctrine. *See, e.g.*, *Cavallaro v. United States*, 284 F.3d 236, 249–51 (1st Cir. 2002); *Schaeffler v. United States*, 806 F.3d 34, 40–43 (2d Cir. 2015); *In re Teleglobe Commc'ns Corp.*, 493 F.3d 345, 364–66 (3d Cir. 2007); *Hunton & Williams v. U.S. Dep't of Justice*, 590 F.3d 272, 277 (4th Cir. 2010). Among the federal courts applying the common-interest doctrine is the Eighth Circuit, which has appellate jurisdiction over federal district courts in Minnesota. *Subpoena Duces Tecum*, 112 F.3d at 922; *see also Shukh*, 872 F. Supp. 2d at 855.

Although most every court to have considered the issue has adopted the common-interest doctrine, the precise contours of the doctrine vary by jurisdiction. We hold that, in Minnesota, the common-interest doctrine applies when (1) two or more parties, (2) represented by separate lawyers, (3) have a common legal interest (4) in a litigated or non-litigated matter, (5) the parties agree to exchange information concerning the matter, and (6) they make an otherwise privileged communication in furtherance of

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jointly by the Minnesota Association for Justice and the Minnesota Defense Lawyers Association—associations with attorney constituents that often represent opposing parties in litigation.

formulating a joint legal strategy. This formulation is generally consistent with the common-interest doctrine's requirements in the federal courts for Minnesota, as well as the Restatement. *See Subpoena Duces Tecum*, 112 F.3d at 922; *see also Shukh*, 872 F. Supp. 2d at 855; Restatement (Third) of the Law Governing Lawyers § 76. And consistent with our general rules for discovery, the party asserting the protection of the common-interest doctrine has the burden of proving its application. *Cf. In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007) ("The party objecting to the production of information has the burden of establishing that the sought-after information is immune from discovery.").

The parties raise other issues regarding the appropriate scope of the doctrine. Specifically, Energy Policy contends that the doctrine should only apply to common *legal* interests. We agree. As reflected by our formulation of the doctrine above, the common-interest doctrine applies when two or more parties, represented by separate lawyers, have a common *legal* interest. This requirement does not limit the doctrine to litigation; as stated above, the common legal interest can be in a litigated or non-litigated matter. But a purely commercial, political, or policy interest is insufficient for the common-interest doctrine to apply.

Moreover, in recognizing the common-interest doctrine, we also conclude that the doctrine should extend to encompass attorney work product. Federal courts in numerous circuits apply the common-interest doctrine to attorney work product. *See, e.g.*, *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1299 (D.C. Cir. 1980); *Bryan Corp. v. Chemwerth, Inc.*, 296 F.R.D. 31, 38–39 (D. Mass. 2013); *Maplewood Partners, L.P. v.*

Indian Harbor Ins. Co., 295 F.R.D. 550, 622–23 (S.D. Fla. 2013). Similarly, many other states hold that the common-interest doctrine applies to attorney work product. *See, e.g.*, *Cotter v. Eighth Jud. Dist. Ct.*, 416 P.3d 228, 232–33 (Nev. 2018); *Kittitas County v. Allphin*, 416 P.3d 1232, 1243–44 (Wash. 2018). In addition, the Restatement provides that "[w]ork product . . . may generally be disclosed to . . . persons similarly aligned on a matter of common interest." Restatement (Third) of the Law Governing Lawyers § 91 cmt. b (citing the Restatement's articulation of the common-interest doctrine in section 76).

As a final matter, Energy Policy asks that we limit the application of the common-interest doctrine in the context of section 13.393 of the Data Practices Act to situations in which the balancing of privilege and open-government interests requires the need for absolute confidentiality. In requesting such a limitation, Energy Policy cites our decision in *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002). In *Prior Lake*, we held that the attorney-client privilege shields information from disclosure under Minnesota's Open Meeting Law, Minnesota Statutes chapter 13D (2020), only "when the balancing of the purposes served by the attorney-client privilege against those served by the Open Meeting Law dictates the need for absolute confidentiality." 642 N.W.2d at 737.

We decline to impose the *Prior Lake* balancing test here because the Legislature has *already* demonstrated its ability to write a balancing test into the Data Practices Act if it so desires. Section 13.03 permits the disclosure of "not public" data if a judicial officer decides that "the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data." Minn. Stat. § 13.03, subd. 6. The Data Practices Act, however, does not impose that balancing test on section 13.393,

which is specific to government attorneys. *See* Minn. Stat. § 13.393. Moreover, the Data Practices Act only permits a court to apply the section 13.03 balancing test "if the data *are discoverable* . . . pursuant to the rules of evidence and of criminal, civil, or administrative procedure." Minn. Stat. § 13.03, subd. 6. (emphasis added). In fact, we recognized that privileged materials are exempt from the section 13.03 balancing test in *Kobluk*, in which we noted that a district court should apply the balancing test only after determining that a document "was not within [a] privilege." 574 N.W.2d at 440 n.5. Simply put, the Legislature knows how to impose balancing tests, did not impose one on the protections of section 13.393, which concerns government attorneys, and made other balancing tests in the Data Practices Act subject to the protection of discovery privileges.

In addition, the type of decision at issue in *Prior Lake* differs fundamentally from the kind of decisions the Attorney General makes, and consequently raises specific concerns that are not present here. The *Prior Lake* court based its decision in part on a court's duty to review public body actions for arbitrary and capricious decision-making. 642 N.W.2d at 742. Because secrecy impedes a court's ability to discern whether a body makes decisions according to legislatively mandated criteria, the *Prior Lake* court concluded that narrowly applying the attorney-client privilege also facilitated judicial review. *Id.*

By contrast, the Attorney General's discretionary powers are not subject to the same level of judicial review. *See, e.g.*, *Slezak v. Ousdigian*, 110 N.W.2d 1, 5 (Minn. 1961) (holding that "the courts will not control the discretionary power of the attorney general in conducting litigation for the state"); *State ex rel. Peterson v. City of Fraser*, 254 N.W. 776,

778–79 (Minn. 1934) (stating that "the discretion of the Attorney General is plenary" and "beyond the control of any other officer or department"). Because litigation decisions of the Attorney General (unlike the administrative law decisions of city councils) are not subject to judicial review, courts need not preserve a decision-making record, and the logic of *Prior Lake* applies with less force.

Accordingly, we formally recognize the common-interest doctrine. We hold that the common-interest doctrine applies to attorney work product and the attorney-client privilege. And we decline to impose the *Prior Lake* balancing test on parties' invocation of the common-interest doctrine under Minnesota Statutes section 13.393. Consequently, we remand to the district court with instructions to review Energy Policy's data request in light of our decision.[2]

II.

We next consider whether the attorney-client privilege may apply to internal communications among attorneys in public law agencies. Energy Policy challenged the Attorney General's invocation of the attorney-client privilege for documents the Attorney General described as containing "internal communications." The court of appeals held that "[a] communication between or among two or more attorneys in a law office, by itself, cannot satisfy the requirements" of the attorney-client privilege "in the absence of a communication between one of the attorneys and a client." *Energy Pol'y*, 963 N.W.2d at

[2] The Attorney General does not protest (and consequently, we pass no judgment on) the decision of the court of appeals to remand to the district court to consider a privilege log and review the data in camera.

500. The Attorney General argues that the decision of the court of appeals improperly constricts the attorney-client privilege for public law agencies. This issue concerns the scope of the attorney-client privilege, which we review de novo. *See Polaris*, 967 N.W.2d at 406.

The attorney-client privilege indisputably extends to public law offices. *See* Restatement (Third) of the Law Governing Lawyers § 74 (Am. L. Inst. 2000); *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 169–70 (2011); *Kobluk*, 574 N.W.2d at 436. The Data Practices Act does not erode the protection of the attorney-client privilege as applied to government law offices. *See* Minn. Stat. § 13.393. We acknowledge that, *generally*, the attorney-client privilege applies to communications between an attorney and an identifiable client. *See Polaris*, 967 N.W.2d at 406 (holding that "[t]he threshold inquiry in a privilege analysis is determining whether the contested document embodies a communication in which legal advice is sought or rendered" (citation omitted) (internal quotation marks omitted)).

Although we apply the attorney-client privilege narrowly, *see id.* at 411, we nevertheless reject the categorical rule that the attorney-client privilege may *never* apply to internal communications within the Office of the Attorney General "in the absence of a communication between one of the attorneys and a client," as the court of appeals held, *Energy Pol'y*, 963 N.W.2d at 500. Courts in numerous circuits have concluded that, under certain circumstances, inter-attorney communications *may* fall under the attorney-client privilege. *See, e.g.*, *SmithKline Beecham Corp. v. Apotex Corp.*, 232 F.R.D. 467, 481 (E.D. Pa. 2005) ("There is no bar to extending attorney-client privilege to inter-attorney

communications."); *Natta v. Zletz*, 418 F.2d 633, 637 n.3 (7th Cir. 1969) (asserting that the attorney-client privilege can extend to "inter-attorney communications"). Other courts, for example, have found that the attorney-client privilege can apply to confidential communications between an attorney and co-counsel for the purposes of requesting, securing, or providing legal advice or services, *see, e.g.*, *SmithKline* 232 F.R.D. at 481, or correspondence between in-house and outside counsel, *see, e.g.*, *Natta*, 418 F.2d at 637 & n.3. In fact, the practical duties of the office mean that the Attorney General often conducts litigation in which no discrete "client" is readily ascertainable. *See, e.g.*, Minn. Stat. § 8.31, subd. 1 (2020) (empowering the Attorney General to investigate violations of laws concerning "unfair, discriminatory, and other unlawful practices in business, commerce, or trade" and to enforce these laws); *see also* Restatement (Third) of the Law Governing Lawyers § 97 cmt. c (Am. L. Inst. 2000) (stating that government lawyers may "represent the public, or the public interest"). Accordingly, the rigid rule adopted by the court of appeals impermissibly and inaccurately restricts the attorney-client privilege applicable to the Attorney General.

We decline, however, to delineate the precise circumstances in which internal communications within the Attorney General's Office may be protected by the attorney-client privilege.[3] Application of the attorney-client privilege is a fact-intensive inquiry, *see Sprader v. Mueller*, 121 N.W.2d 176, 180 (Minn. 1963), and the district court is better equipped to analyze the facts, *see St. Jude Med., Inc. v. Carter*, 913 N.W.2d 678,

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[3] Whether the communications in question here qualify for the attorney-client privilege is not before us, and we consequently express no opinion on that issue.

684 (Minn. 2018) (noting that "[t]he district court is in the best position to analyze the facts" (citation omitted) (internal quotation marks omitted)). Moreover, the parties have not asked us to identify the specific circumstances in which the attorney-client privilege applies to inter-attorney communications lacking a client. *See State ex rel. Smith v. Haveland*, 25 N.W.2d 474, 476–77 (Minn. 1946) (holding that principles of justiciability prevent us from issuing an advisory opinion that articulates "what the law would be upon a hypothetical state of facts"). Accordingly, we remand to the district court for further proceedings consistent with this opinion.

III.

As a final matter, we address the decision of the Attorney General to withhold data under Minnesota Statutes section 13.65, which is the section of the Data Practices Act that specifically addresses "data created, collected and maintained by the Office of the Attorney General." The resolution of this issue involves statutory interpretation, which we review de novo. *See Getz v. Peace*, 934 N.W.2d 347, 353 (Minn. 2019). We "construe a statute as a whole" and "interpret each section in light of the surrounding sections to avoid conflicting interpretations." *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). When the intent of the Legislature "is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and [we] apply the statute's plain meaning." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). We may not "add language to a statute; rather, we 'must apply the plain language of the statute as written.' " *Firefighters Union Loc. 4725 v. City of Brainerd*,

934 N.W.2d 101, 109 (Minn. 2019) (quoting *State v. Noggle*, 881 N.W.2d 545, 550–51 (Minn. 2016)).

The Attorney General withheld certain documents on the ground that they contain data that fall within the classifications for "private data on individuals" under section 13.65, subdivision 1, which is in turn defined as "not public," Minn. Stat.§ 13.02, subd. 12. Section 13.65 is divided into three subdivisions. Subdivision 1 classifies certain Attorney General data as "private data on individuals." Subdivision 2 classifies certain Attorney General data as "confidential." And subdivision 3 specifies that "[d]ata describing the final disposition of disciplinary proceedings held by any state agency, board, or commission are public." Subdivision 1 is the sole subdivision at issue here.

Subdivision 1 states that "[t]he following data created, collected and maintained by the Office of the Attorney General are private data on individuals":

> (a) the record, including but not limited to, the transcript and exhibits of all disciplinary proceedings held by a state agency, board or commission, except in those instances where there is a public hearing;
>
> (b) communications and noninvestigative files regarding administrative or policy matters which do not evidence final public actions;
>
> (c) consumer complaint data, other than those data classified as confidential, including consumers' complaints against businesses and follow-up investigative materials;
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> (d) investigative data, obtained in anticipation of, or in connection with litigation or an administrative proceeding where the investigation is not currently active; and
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> (e) data collected by the Consumer Division of the Attorney General's Office in its administration of the home protection hot line including: the name, address, and phone number of the consumer; the name and address of the mortgage company; the total amount of the mortgage; the amount of

> money needed to bring the delinquent mortgage current; the consumer's place of employment; the consumer's total family income; and the history of attempts made by the consumer to renegotiate a delinquent mortgage.

Minn. Stat. § 13.65, subd. 1. The Attorney General relied specifically on section 13.65, subdivision 1(b) and (d), to withhold documents. Because section 13.65 states that data in these categories are "private data on individuals," and because "private data on individuals" is elsewhere defined in the Data Practices Act as "not public," Minn. Stat. § 13.02, subd. 12, the Attorney General withheld these documents as not public.

The parties do not dispute here that the challenged documents meet the criteria of section 13.65, subdivision 1(b) or (d). The dispute arises because the Legislature classified *all* of the Attorney General data in section 13.65, subdivision 1, as "private data on individuals." The Legislature's classification includes categories of data that are clearly about individuals, such as "disciplinary proceedings," "consumers' complaints against businesses," and consumer "home protection hot line" matters. Minn. Stat. § 13.65, subd. 1(a), (c), (e). But the Legislature's classification also includes categories of data that clearly do not have to be about individuals, such as "administrative or policy matters" or "investigative data." *Id.*, subd. 1(b), (d).

Energy Policy argues that some of the documents in subdivision 1(b) and (d) are public, notwithstanding the Legislature's explicit classification of all of the Attorney General data in those categories as "private data on individuals." Minn. Stat. § 13.65, subd. 1. Energy Policy contends that the Attorney General data are "private data on individuals" only if the data are actually about individuals. *See* Minn. Stat. § 13.02, subd. 8 (defining "individual" as a "natural person"). According to Energy Policy, because the

Data Practices Act establishes a presumption that government data are public, *see* Minn. Stat. § 13.01, subd. 3, if the policy documents or investigative documents are not on individuals, the documents are necessarily public. The Attorney General counters that the plain language of section 13.65 imposes no requirement that data be about an individual to be classified as private data on individuals.

The district court found that the documents withheld under section 13.65, subdivision 1, are "private data on individuals" and need not be produced. The court of appeals reversed and remanded on this issue. *Energy Pol'y*, 963 N.W.2d at 494–95. The court of appeals concluded that the district court erred by ruling that the Attorney General data are "private data on individuals" under section 13.65, subdivision 1, without first determining whether the documents contain data on individuals. 963 N.W.2d at 495. The court of appeals reasoned that section 13.65, subdivision 1, "is concerned with data on individuals, not with data not on individuals." 963 N.W.2d at 494.

Our statutory analysis begins with the language of the statute. "The plain language of the statute is our best guide to the Legislature's intent." *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019). Section 13.65 specifically provides that the categories of Attorney General data in subdivision 1 "are private data on individuals." Minn. Stat. § 13.65, subd. 1. The statutory classification could not be clearer. The statutory classification applies to all of the categories of Attorney General data in subdivision 1, even categories like subdivision 1(b) and (d), which clearly do not have to be about individuals. We therefore hold that the Legislature meant what it plainly said—

that when the statute says all Attorney General data in subdivision 1 "are private data on individuals," the data are private data on individuals. *Id.* Our "black-letter rule of statutory interpretation" requires us to apply the plain language of the statute as written. *Firefighters Union*, 934 N.W.2d at 109.

Because "[t]he classification system determines access," we turn next to the definition of "private data on individuals" to determine access to the data. Donald A. Gemberling & Gary A. Weissman, *Data Practices at the Cusp of the Millennium*, 22 Wm. Mitchell L. Rev. 767, 787 (1996). The Data Practices Act defines "[p]rivate data on individuals" as "data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data." Minn. Stat. § 13.02, subd. 12. Applying the plain language of the statute, we conclude that the Attorney General data are not public, and the district court correctly ruled that Energy Policy is not entitled to access the data under section 13.65, subdivision 1.[4] The presumption of public access does not apply to data the Legislature explicitly classified as "private." *See* Minn. Stat. § 13.01, subd. 3 (stating that the Data Practices Act "establishes a presumption that government data are public" unless there is a statute providing that the data are not public).

Accepting the arguments of Energy Policy would require us to add language to the statute. Energy Policy contends that, despite the explicit classification in section 13.65, subdivision 1, the Legislature intended to classify the Attorney General data falling within

[4] Notably, Energy Policy does not claim to be the subject of the data requested. And because Energy Policy is not a natural person, the data would not be accessible to it even if it were the subject of the data. *See* Minn. Stat. § 13.02, subd. 12.

the categories in subdivision 1 as "private data on individuals" *only* if the data actually are on individuals. But the Legislature did not include that limitation in the statute, and we may "not add words to a statute that the Legislature has not supplied." *Johnson v. Cook County*, 786 N.W.2d 291, 295 (Minn. 2010). The Legislature clearly provided—without any exception, qualification, or limitation—that the specified Attorney General data "are private data on individuals." Minn. Stat. § 13.65, subd. 1.

In contrast, other sections of the Data Practices Act include the precise limitation that Energy Policy asks us to engraft onto this section. For example, in a section addressing welfare data, the Legislature specified that "[d]ata *on individuals* collected, maintained, used, or disseminated by the welfare system are private data on individuals." Minn. Stat. § 13.46, subd. 2 (emphasis added). The Legislature included similar "on individuals" language in numerous other sections of the Data Practices Act.[5] We "decline to add the

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[5] *See, e.g.*, Minn. Stat. § 13.587(b) (stating that "[d]ata *on individuals* maintained by a grant recipient" regarding emergency services for homeless persons "are private data on individuals" (emphasis added)); Minn. Stat. § 13.3805, subd. 2 (stating that "data created, collected, received, or maintained by the commissioner of health *on individuals* relating to genetic counseling services for Huntington's Disease . . . are private data on individuals" (emphasis added)); Minn. Stat. § 13.72, subd. 16 (stating that "[a]ny data *on individuals* in the [Department of Transportation] bid documentation are classified as private data *on individuals*" (emphasis added)); Minn. Stat. § 13.51, subd. 3 (stating that "[i]ncome information *on individuals* collected and maintained by political subdivisions . . . is private data on individuals" (emphasis added)); Minn. Stat. § 13.392, subd. 2 (stating that "[d]ata *on an individual* supplying information for an audit or investigation . . . are private data on individuals" (emphasis added)); Minn. Stat. § 13.356(a) (stating that "data *on an individual* collected, maintained, or received by a government entity for notification purposes or as part of a subscription list for an entity's electronic periodic publications as requested by the individual are private data on individuals" (emphasis added)); *cf., e.g.*, Minn. Stat. § 13.355, subd. 1 (stating that "[t]he Social Security numbers *of individuals* . . . are private data on individuals" (emphasis added)); Minn. Stat. § 13.679, subd. 2(b) (stating that "data collected by the commission or the commissioner of commerce *on individual* public utility

same words where the Legislature did not." *State v. Schwartz*, 957 N.W.2d 414, 419 (Minn. 2021). When the Legislature includes a limitation "in one part of a statute, but omits it in another, we regard that omission as intentional." *Gen. Mills, Inc. v. Comm'r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019); *cf. Seagate Tech., LLC v. W. Digit. Corp.*, 854 N.W.2d 750, 759 (Minn. 2014) (noting that "a condition expressly mentioned in one clause of a subdivision provides evidence that the Legislature did not intend for the condition to apply to other clauses in which the condition is not stated"). We accordingly decline Energy Policy's invitation to add the words "on individuals" to the categories of data listed in section 13.65, subdivision 1.

Energy Policy also argues that the classification of the Attorney General data in section 13.65, subdivision 1, is illogical and yields an absurd result. According to Energy Policy, if the Attorney General data are not "data on individuals," then the data cannot be "private data on individuals." *See* Minn. Stat. § 13.02, subd. 5 (defining the separate term "data on individuals" generally as "all government data in which any individual is or can be identified as the subject of that data").

But we do not consider "[t]he question of which reading of a statute is more logical" when the statutory language is clear and unambiguous. *State v. Altepeter*, 946 N.W.2d

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or telephone company customers or prospective customers" are "private data on individuals" (emphasis added)); Minn. Stat. § 13.791, subd. 1 (stating that data that "pertain *to individuals* applying for or receiving rehabilitation services is private data on individuals" (emphasis added)); Minn. Stat. § 13.43, subd. 5 (stating that "personnel data maintained by a government entity *relating to an individual* employed as or an applicant for employment as an undercover law enforcement officer are private data on individuals" (emphasis added)).

871, 877 (Minn. 2020); *see also Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 651 (Minn. 2012) (explaining that even an "absurd or unreasonable" result generally does not "override the plain language of a clear and unambiguous statute"). As we have explained in other decisions interpreting the Data Practices Act, even when the statutory language "seems anomalous," it is our duty to apply "the law as written by the legislature." *Int'l Brotherhood of Elec. Workers v. City of St. Cloud*, 765 N.W.2d 64, 68 (Minn. 2009); *see Harlow v. State Dep't of Hum. Servs.*, 883 N.W.2d 561, 568 (Minn. 2016) ("acknowledg[ing] that it may seem anomalous to have data classified as public for one purpose, and confidential for another purpose"). "If the literal language of [a] statute yields an unintended result, it is up to the legislature to correct it." *Haghighi v. Russian-American Broad. Co.*, 577 N.W.2d 927, 930 (Minn. 1998).

Moreover, assuming that the *classification* of the Attorney General data as "private data on individuals" conflicts with the *definition* of "private data on individuals," as Energy Policy argues, the classification would "prevail as the more specific and more recent provision." *Greene v. Minn. Bureau of Mediation Servs.*, 948 N.W.2d 675, 683 (Minn. 2020); *see* Minn. Stat. § 645.26, subd. 1 (2020) (directing that in the event of irreconcilable statutory provisions, "the special provision shall prevail and shall be construed as an exception to the general provision").[6] The dissent contends that our conclusion creates an

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[6] This statutory directive does not apply when "the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail." Minn. Stat. § 645.26, subd. 1 (2020). But the general definition was not enacted at a later session. The Legislature enacted the original definition of "private data on individuals" in 1975. Act of June 5, 1975, ch. 401, § 1, 1975 Minn. Laws 1353, 1354. The Legislature enacted the classification of the Attorney General data in

untenable, "somewhat Orwellian" shadow definition of a statutory term, but we have previously resolved similar conflicts in the Data Practices Act the same way.

In *Westrom v. Minnesota Department of Labor & Industry*, 686 N.W.2d 27 (Minn. 2004), we faced the exact same argument regarding a conflict between the statutory *classification* of government data and the statutory *definitions* that applied to that data. In *Westrom*, the government agency argued that certain "civil investigative data" that the Legislature classified as "confidential data on individuals" or "protected nonpublic data" under section 13.39, subdivision 2, were public because the data did "not fit within the definition of either 'confidential data on individuals' or 'protected nonpublic data' " under section 13.02, subdivisions 3 and 13. 686 N.W.2d at 36. We recognized that the statutory definitions specified that confidential and protected nonpublic data are not accessible to the subjects of the data; the civil investigative data at issue in *Westrom,* however, *were* accessible to the subjects of the data. *Id.* We reconciled the statutory conflict between the classification and the definitions in section 13.02 by concluding that the classification of the data would "override" the definitions that applied to the data. 686 N.W.2d at 36. We reasoned that the statutory classification "is the special provision because it deals

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1981. Act of May 29, 1981, ch. 311, § 35, 1981 Minn. Laws 1427, 1440–41. Specifically, the Legislature classified the Attorney General data in subdivision 1 as "private, pursuant to section 15.162, subdivision 5a." *Id.* At the time, section 15.162, subdivision 5a, defined "private data on individuals" as "data which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of that data," which is essentially the same as the current definition. 1981 Minn. Laws at 1428 (amending section 15.162, subdivision 5a, to remove language referencing "arrest information"). In 1985, the Legislature specified that the Attorney General data in subdivision 1 was "private data on individuals." Act of June 4, 1985, ch. 298, § 20, 1985 Minn. Laws 1372, 1382.

specifically with the subject of civil investigative data" and "prevails over the general" statutory definitions. *Id.*; *see also In re GlaxoSmithKline plc*, 732 N.W.2d 257, 264 n.4 (Minn. 2007) (explaining that "civil investigative data are protected nonpublic data even if provided by the subject of the data," notwithstanding the statutory definition of "protected nonpublic data" as "not accessible to the subject of the data").[7]

Here, as in *Westrom*, the general statutory definition would give way to the specific classification of the Attorney General data, creating a limited exception to the statutory definition. The dissent suggests that our statutory interpretation portends the dismantlement and distortion of the entire classification system of the Data Practices Act. At most, our decision recognizes a single, narrow exception to the statutory definition of "private data on individuals" for the specific, discrete subsets of Attorney General data listed in section 13.65, subdivision 1, with the general definition "applicable in all other circumstances." *Westrom*, 686 N.W.2d at 36. And any exception would be extremely narrow because the dissent acknowledges that "several categories of data listed in section 13.65, subdivision 1, will almost always, if not always, be individual data." In that event,

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[7] We recently employed the same statutory analysis in a case arising under the Workers' Compensation Act, effectively eliminating a requirement of a general definition in the circumstance of a claimed conflict with a specific benefits provision. *Sershen v. Metro. Council*, 974 N.W.2d 1, 11 (Minn. 2022). We explained that, to the extent there is a conflict in the workers' compensation statutes, the medical benefits statute (Minn. Stat. § 176.135, subd. 5 (2020)) is "an exception to the general liability limit found in the definition of 'occupational disease' " (Minn. Stat. § 176.011, subd. 15(a) (2020) (defining occupational disease)). This interpretation meant that the employer could be liable for payment of compensation for an occupational disease under the medical benefits statute, even when the occupational disease could not be "traced to the employment as a direct and proximate cause," as the definition of "occupational disease" specifies. *Sershen*, 974 N.W.2d at 11.

the data would be accessible only to the natural person who is the subject of the data. *See* Minn. Stat. § 13.02, subd. 12. The dissent's elevation of the general definition over the specific classification is not reconcilable with the rule of construction in section 645.26, subdivision 1, or our analysis in *Westrom*.[8]

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[8] The dissent states that *Westrom* is "inapposite" because there is not necessarily a statutory conflict between the classification of the Attorney General data as "private data on individuals," Minn. Stat. § 13.65, subd. 1, and the definition of "private data on individuals," Minn. Stat. § 13.02, subd. 12. The dissent claims that its interpretation of the Data Practices Act is superior because its interpretation does not create a conflict. The dissent is confused about *whose* interpretation of the Data Practices Act creates a conflict. Under the Attorney General's interpretation, which we adopt, the classification and the definition are consistent because, according to the Attorney General, "nothing in the Data Practices Act's definition of 'private data on individuals' requires the data to be about individuals."

It is the interpretation of the dissent (and Energy Policy) that creates whatever conflict may exist. By concluding that "private data on individuals" must be about individuals, the dissent creates a conflict between the classification and the definition because not all of the Attorney General data that the Legislature classified as "private data on individuals" in section 13.65, subdivision 1, are about individuals. Based on principles of judicial restraint, we do not decide whether there is in fact any such conflict between the classification and the definition because, even if there were a conflict, the classification would control as the more specific provision. *See Lipka v. Minn. Sch. Emps. Ass'n*, 550 N.W.2d 618, 622 (Minn. 1996) (stating that "judicial restraint bids us to refrain from deciding any issue not essential to the disposition of the particular controversy before us").

Our conflict analysis instead, as stated above, "*assum*[*es*] that the classification of the Attorney General data as 'private data on individuals' conflicts with the definition of 'private data on individuals,' as Energy Policy argues," and the dissent maintains—*i.e.*, that "private data on individuals" must be about individuals. (Emphasis altered.) We addressed the same type of conflict in *Westrom*. Although *Westrom* involved a different classification and different definitions, we rejected the very same argument the dissent is making here. In *Westrom*, the government agency argued that civil investigative data classified as "confidential data on individuals" or "protected nonpublic data" did "not fit within" the statutory definitions of those terms and therefore the data were public. 686 N.W.2d at 36. Here the dissent argues that Attorney General data classified as "private data on individuals" do not fit within the statutory definition of that term and therefore the data are public. In *Westrom*, we resolved the conflict by concluding that the specific classification prevailed over the general definitions and therefore the data were not public. 686 N.W.2d at 36. We would reach the same result here—that the specific classification

Moreover, the dissent's analysis inverts the structure of the Data Practices Act. "The classification system determines access." Gemberling & Weissman, *supra*, 22 Wm. Mitchell L. Rev. at 787. Under the dissent's analysis, access determines classification. The dissent implies that government data always fits neatly into one prescribed category and classification. Practitioners have observed, however, that the classification system "often results in more than one category and classification for every piece" of government data. Margaret Westin, *The Minnesota Government Data Practices Act: A Practitioner's Guide and Observations on Access to Government Information*, 22 Wm. Mitchell L. Rev. 839, 869 (1996).

Finally, Energy Policy argues that a "myopic" interpretation of the term "private data on individuals" to include Attorney General data that are not on any individual creates bad public policy. Energy Policy suggests that applying the plain language of section 13.65, subdivision 1, "would shield an entire agency from public scrutiny." According to Energy Policy, "[i]t is unfathomable that the Legislature would have intended to allow *all of the Attorney General's policy decisions* to be shielded from the public eye, in perpetuity."

The concerns of Energy Policy are exaggerated. The Legislature drafted section 13.65, subdivision 1, to apply to specified, limited categories of Attorney General data. Moreover, concerning policy decisions, Energy Policy is essentially asking us to conclude

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of the Attorney General data would prevail over the general definition and therefore the data are not public. And this result is consistent with our plain-language interpretation of section 13.65.

that communications regarding "policy matters which do not evidence final public actions" are public, Minn. Stat. § 13.65, subd. 1(b), which would have the practical effect of making nonfinal, nonpublic actions public. We cannot conclude that this result is what the Legislature intended. And we do not consider public policy when the language of the statute is unambiguous. *Firefighters Union*, 934 N.W.2d at 109.[9]

In sum, Energy Policy essentially asks us to reclassify the Attorney General data in section 13.65, subdivision 1, as public, even though the Legislature expressly designated the data as "private." The classification of data is a legislative determination, and we will not second-guess the Legislature's decision to afford protection to certain data of the Attorney General, a constitutional officer, *Clark v. Pawlenty*, 755 N.W.2d 293, 305 (Minn. 2008), and "the chief law officer of the state," *Humphrey ex rel. State v. McLaren*, 402 N.W.2d 535, 539 (Minn. 1987) (citation omitted) (internal quotation marks omitted). Even if Energy Policy is correct that the Legislature intended to limit the classification of "private data on individuals" to data about individuals, we cannot rewrite the statute and

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[9] The dissent also includes an extended discussion of an administrative interpretation of a temporary classification of Attorney General data, which predated the statutory classification here, as well as the history of the statute. Because the language of section 13.65 is clear and unambiguous, our analysis is limited to the plain language of the statute. *See, e.g.*, *Schwanke v. Minn. Dep't of Admin.*, 851 N.W.2d 591, 594 n.1 (Minn. 2014) (stating that "we owe no deference to an agency's interpretation of an unambiguous statute"); *Minn. Joint Underwriting Ass'n v. Star Trib. Media Co.*, 862 N.W.2d 62, 67 (Minn. 2015) (stating that an advisory opinion of the Commissioner of Administration is "entitled to no deference when the statute is unambiguous"); Minn. Stat. § 645.16(2) (stating that courts may consider the circumstances under which a law was enacted when the words of the law "are *not* explicit" (emphasis added)).

add language that the Legislature mistakenly or inadvertently omitted. *See Seagate Tech.*, 854 N.W.2d at 759.

We reverse the conclusion of the court of appeals that the Attorney General may withhold documents under section 13.65, subdivision 1, only to the extent that they contain "data on individuals" or "data on one or more individuals." *Energy Pol'y*, 963 N.W.2d at 494–96, 502. Consequently, there is no need for a remand to the district court on this issue, as the court of appeals ordered, to "determine whether any of the documents contain data on one or more individuals." *Id.* at 502.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court for further proceedings consistent with this opinion.

Reversed and remanded.

C O N C U R R E N C E & D I S S E N T

THISSEN, Justice (concurring in part and dissenting in part).

This appeal concerns a request for data that respondent Energy Policy Advocates submitted to appellant, the Attorney General of Minnesota, pursuant to the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01–.90 (2020) (the Act). I agree with the court that we should recognize the common-interest doctrine. I also agree that the attorney-client privilege extends to internal communications among lawyers within public law agencies like the Attorney General's office when those communications relate to legal advice. However, I conclude that the categories of data identified in section 13.65, subdivision 1, may be withheld from the public only when the data pertains to individuals. Put quite simply: I find it hard to understand how data can be "private data on individuals" when it is not data on individuals. Why would the Legislature have used the word "individuals" if it meant for section 13.65 to cover data that was not on individuals? Only a lawyer could take delight in pondering that question and reaching the result the court reaches today; other Minnesotans will be scratching their heads. Accordingly, I dissent from the court's decision on that issue.

A.

The Act presumes that all government data is public unless otherwise classified by "statute, . . . temporary classification . . . , or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential." Minn. Stat. § 13.03, subd. 1. Section 13.65 of the Act exempts from disclosure certain data retained

by the Attorney General of Minnesota. At issue in this appeal is subdivision 1 of that section, which reads as follows:

> Subdivision 1. **Private data**. The following data created, collected and maintained by the Office of the Attorney General are *private data on individuals*:
>
> (a) the record, including but not limited to, the transcript and exhibits of all disciplinary proceedings held by a state agency, board or commission, except in those instances where there is a public hearing;
>
> (b) communications and noninvestigative files regarding administrative or policy matters which do not evidence final public actions;
>
> (c) consumer complaint data, other than those data classified as confidential, including consumers' complaints against businesses and follow-up investigative materials;
>
> (d) investigative data, obtained in anticipation of, or in connection with litigation or an administrative proceeding where the investigation is not currently active; and
>
> (e) data collected by the Consumer Division of the Attorney General's Office in its administration of the home protection hot line including: the name, address, and phone number of the consumer; the name and address of the mortgage company; the total amount of the mortgage; the amount of money needed to bring the delinquent mortgage current; the consumer's place of employment; the consumer's total family income; and the history of attempts made by the consumer to renegotiate a delinquent mortgage.

Minn. Stat. § 13.65, subd. 1 (emphasis added).

The Attorney General relied on this provision to deny a request by Energy Policy Advocates for access to data that does not pertain to individuals. The Attorney General claims that subdivision 1 defines all data that falls under one of its five prongs as "private data on individuals" whether or not the data actually pertains to "individuals." The court

accepts the Attorney General's interpretation. I disagree because the position of the Attorney General and the court contradicts the plain language of the Act.

Because we read statutes "as a whole to harmonize and give effect to all [their] parts," I start with a review of the comprehensive categorization scheme set forth in the Act. *See Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 177 (Minn. 2020) (citation omitted) (internal quotation marks omitted). The Act broadly divides government data into two categories: data on individuals and data not on individuals. *See* Minn. Stat. § 13.02, subds. 4–5. "Data on individuals" is a specific term that refers to data in which any natural person can be identified. *Id.*, subds. 5, 8. By comparison, if government data does not pertain to a natural person, it is "[d]ata *not on individuals*." *Id.* subds. 4, 8 (emphasis added); *see KSTP-TV v. Ramsey County*, 806 N.W.2d 785, 789 (Minn. 2011) (asserting that "*all* government data falls into one of two main categories based on the type of information included in the data: (1) data on individuals, or government data in which any individual . . . can be identified . . . [or] (2) data not on individuals, which is *all other* government data" (emphasis added) (internal quotation marks omitted) (citing Minn. Stat. § 13.02, subds. 4, 5)).

The Act further divides "data on individuals" and "data not on individuals" into three subcategories each. Those subcategories impose graduated, parallel levels of accessibility. Each category pertaining to "data not on individuals" corresponds to a category for "data on individuals" that has the same level of access. Specifically, the Act divides "data on individuals"—in descending order of accessibility—into three categories of access: (1) public data on individuals, which is accessible to the public without

limitation; (2) private data on individuals, which is not accessible to the public but is accessible to the individual subject of the data; and (3) confidential data on individuals, which is neither accessible to the public nor to the individual subject of the data. Minn. Stat. § 13.02, subds. 3, 12, 15.

Similarly, "data not on individuals" falls into three categories of access: (1) public data not on individuals, which is accessible to the public without limitation; (2) nonpublic data, which is not accessible to the public but is accessible to the subject of the data, if any; and (3) protected nonpublic data, which is neither accessible to the public nor the subject of the data. *Id.*, subds. 9, 13, 14. These definitions apply throughout the entire Act. *Id.*, subd. 1 ("As used in this chapter, the terms defined in this section have the meanings given them."); *see also State v. Morgan*, 968 N.W.2d 25, 30 (Minn. 2021) ("If a word is defined in a statute, that definition controls.").[1] The following chart illustrates the classification plan under the Act:

[1] Authoritative scholarship on the Act emphasizes the importance of the Act's classification system (including the categories for data "not on individuals"), noting that "every government datum *must* fit" into "one and only one" of the "six discrete data classifications," and asserting that "the linchpin of the [Act] is the mechanism for classifying government data." Donald Gemberling & Gary Weissman, *Data Privacy: Everything You Wanted to Know About the Minnesota Government Data Practices Act—From "A" to "Z"*, 8 Wm. Mitchell L. Rev. 573, 580, 595–96 (1982) (emphasis added).

CATEGORIES OF ACCESS	DATA ON INDIVIDUALS	DATA NOT ON INDIVIDUALS
1–Public without Limitation	“Public Data on Individuals”	“Public Data Not on Individuals”
2–Not Public except accessible to subject of information	“Private Data on Individuals”	“Nonpublic Data”
3–Not Accessible to Anyone	“Confidential Data on Individuals”	“Protected Nonpublic Data”

Accordingly, if the government wants to overcome the presumption under the Act that all data is public and make data that does not identify a natural person not public, it must classify the data as either nonpublic data or protected nonpublic data.

It is also important to observe at the outset that there is nothing strained or unreasonable about reading the words in section 13.65, subdivision 1—“[t]he following data created, collected and maintained by the Office of the Attorney General are private data on individuals”—in a way that limits what data is made private to data related to individuals. The language of section 13.65, subdivision 1, easily can be read to say that, as long as the data that falls within the categories listed in section 13.65, subdivision 1, are on individuals, the data is not public.

Notwithstanding the Act’s clear distinctions explained above and the express inclusion in section 13.65, subdivision 1, of the words “data on *individuals*,” the Attorney General first argues that it can keep secret the data not on individuals that Energy Policy seeks because under the general definition of “private data on individuals” in section 13.02, subdivision 12, private data on individuals does not have to relate to individuals. The Attorney General grounds its textual argument in the fact that the definition of “private

data on individuals" in section 13.02, subdivision 12, refers only to "data" and does not specify in the definition that it is data "on individuals." This argument makes no sense and the plain language of the statute does not leave room for it. I cannot imagine that the Attorney General would ever argue in a case where the Attorney General is not affected that the definition of "private data on individuals" set forth in section 13.02, subdivision 12, is not limited to data on individuals simply because the definition does not expressly repeat the words "on individuals." The court properly does not rely on this textual argument about the meaning of section 13.02, subdivision 12, but a few further words about it are in order.

The definition of private data on individuals starts out (unsurprisingly) by saying that it covers "[p]rivate data on individuals." Minn. Stat. § 13.02, subd. 12. Plainly, the Legislature is referring to data on individuals. Later in the definition, the statute clearly states that there must be an "individual" who is the subject of the data: "Private data on individuals are data made by statute or federal law applicable to the data: (a) not public; *and* (b) accessible to the *individual subject* of those data." Minn. Stat. § 13.02, subd. 12 (emphasis added) (internal quotation marks omitted). The language states that private data on individuals is data that has as its subject an individual. Data that does not pertain to and identify an individual as its subject is not private data on individuals under the section 13.02, subdivision 12, definition.[2] *See State v. Irby*, 967 N.W.2d 389, 395 (Minn. 2021) (noting that "and" is generally conjunctive).

[2] By comparison, the Act defines the corresponding access category for data "not on individuals"—"[n]onpublic data"—as "data *not on individuals* made by statute or federal

Section 13.03, subdivision 1, reaffirms that conclusion. The subdivision states that "[a]ll government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified . . . as nonpublic or protected nonpublic, or *with respect to data on individuals*, as private or confidential." Minn. Stat. § 13.03, subd. 1 (emphasis added). This language confirms that the classifications "private" and "confidential" data relate to data on individuals.[3]

The Attorney General does not contest any of these textual responses to his reading of section 13.02, subdivision 12, and so I will linger no further on this argument. Accordingly, I now turn to the Attorney General's other argument: that section 13.65 creates a special second, alternative definition of "private data on individuals" that applies only to the Attorney General. In other words, the Attorney General argues that "private data on individuals" means: (1) "data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data"; or (2) for data held by the Attorney General, the categories of data listed in section 13.65 regardless of

law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, *if any*, of the data." Minn. Stat. § 13.02, subd. 9. In stating that "nonpublic data" is accessible to the subject "*if any*," the Act explicitly considers the possibility that there *is not a subject of nonpublic data*. In defining "private data on individuals," the Act conspicuously omits the qualifier "if any." *Id.*, subd. 12. When the Legislature includes modifying language "in one part of a statute, but omits it in another, we regard that omission as intentional." *Gen. Mills, Inc. v. Comm'r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019). The natural inference is that, while "nonpublic data" may lack an identifiable subject, "private data on individuals" may not.

[3] Indeed, the Act often uses "private" as shorthand for "private data on individuals." *See, e.g.*, Minn. Stat. § 13.51, subd. 2 (providing that income property assessment data collected from individuals is "private").

whether any individual is or can be identified as the subject of that data. This is the position that the court adopts.

This reading of the Act—that there is a special, somewhat Orwellian, Attorney General definition of "private data on individuals" that is not limited to data "on individuals"— is not a reasonable textual interpretation of the Act (let alone the *only* reasonable interpretation of the Act, *see* Part B, *infra*). Certainly, the Legislature nowhere explicitly stated that it was creating a second, alternative definition of "private data on individuals" that applies only to the Attorney General. Rather, the Legislature expressly stated that "[a]s used in [the Act], the terms defined in [section 13.02, which includes the definition of private data on individuals,] have the meanings given them." Minn. Stat. § 13.02, subd. 1. In light of that express statutory command, I would expect the Legislature to speak much more explicitly if it intended to create in section 13.65 an additional or alternative definition for the defined term "private data on individuals" to cover data that do not relate to individuals.

Further, had the Legislature intended that all the categories of data set forth in section 13.65, subdivision 1, were to be nonpublic but accessible to the subject of the information regardless of whether the subject of the information is an individual,[4] creating

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[4] The Attorney General's alternative definition argument raises another problematic interpretive and operational question. "Private data on individuals" is not public but it is accessible to the "individual subject of [the] data." Minn. Stat. § 13.02, subd. 12. But section 13.65 also shows a clear intent that the subject of the data should have access to the categories of data set forth in section 13.65, subdivision 1, because in subdivision 2 of section 13.65, the Legislature made other types of data "confidential" and so *not* accessible to the individual subject of the data. Minn. Stat. § 13.65, subd. 2; *see* 13.02, subd. 3. Presumably the Attorney General would also argue that subdivision 2 allows it to keep

an alternative definition of "private data on individuals"—which otherwise applies only to data on individuals—seems a very odd and indirect path to take. Again, why only use the phrase "private data on individuals" if what is meant is data on individuals *and* data not on individuals, especially when the category "nonpublic data" provides precisely the same protection for data not on individuals? *See Buzzell v. Walz*, 974 N.W.2d 256, 265 (Minn. 2022) (rejecting a statutory interpretation argument on the basis that, had the Legislature intended a particular meaning, it would have chosen a more direct textual path); *Jepsen as Tr. for Dean v. County of Pope*, 966 N.W.2d 472, 486 (Minn. 2021) (same).

There is another reason that the Attorney General's and the court's interpretation is unreasonable. Again, we look to the entire law when interpreting statutory language. *Save Lake Calhoun*, 943 N.W.2d at 177. Accordingly, it is appropriate to return to the fundamental classification rule under the Act, which is the mechanism under the Act that shifts data from a presumptively public to a different status as not public.

Section 13.03, subdivision 1, states that all government data "shall be public" unless it is classified as nonpublic or protected nonpublic (when the data is not on individuals) or "with respect to data on individuals," private or confidential. Even if the court is correct that the phrase "private data on individuals" includes all types of information held by the

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secret data not on individuals even though the definition of confidential data set forth in section 13.02, subdivision 3, applies only to data on individuals. Therefore, the Attorney General's position creates a conflict: does a nonindividual subject of the data get access to the data? Section 13.65, subdivision 1, and section 13.02, subdivision 12, would say the answer is "No," but section 13.65, subdivision 2, would suggest the answer is "Yes." This wrinkle, which is caused by the Attorney General's interpretation of the statute and does not exist under my interpretation of the statute, is another reason we should not adopt the Attorney General's interpretation.

Attorney General and listed in section 13.65 regardless of whether any individual is or can be identified as the subject of that data, that data would *still be* public under the plain terms of section 13.03.

Section 13.03 only makes "private" data (data that falls into the private data on individuals bucket however defined) not public when it is "with respect to data on individuals." Minn. Stat. § 13.03, subd. 1. In other words, if data is "private" but not "with respect to individuals," it remains public under the express terms of section 13.03, subdivision 1. To make the categories of data in section 13.65, subdivision 1, not public to the extent that the data does *not* relate to individuals, section 13.03 (as well as the Act's comprehensive categorization scheme) would require that the data be classified as "nonpublic" or "protected nonpublic."

In short, the Attorney General's alternative definition argument simply does not work within the plain language of the operational provision of the Act. Even if the special alternative Attorney General definition of "private data on individuals" were adopted (that for the categories of data listed in section 13.65, subdivision 1, both data on individuals and data not on individuals are "private data on individuals"), it ultimately does not matter. The alternative route proffered by the Attorney General ends up at the same destination as the main route set forth in the Act: under section 13.03, subdivision 1, the only "private" data that is not public is data that identifies an individual as its subject. Relying on its special Attorney General definition of "private data on individuals," the Attorney General

wants to keep secret "private"[5] data that is not "with respect to individuals." The Attorney General's interpretation of the statute is inconsistent with, and does not work with, the text of section 13.03, subdivision 1.

The court's reliance on *Westrom v. Minnesota Department of Labor & Industry*, 686 N.W.2d 27 (Minn. 2004), is inapposite. In *Westrom*, the court determined that orders issued by the Department of Labor and Industry imposing penalties on an employer for failure to secure workers' compensation insurance and objections to those orders filed by the employer were civil investigative data made nonpublic by section 13.39, subdivision 2. 686 N.W. 2d at 34–36. Section 13.39 specified that civil investigative data was either protected nonpublic data or confidential data on individuals. Minn. Stat. § 13.39, subd. 2(a). (As an aside, in contrast to section 13.65, the Legislature specifically referred to the classifications for both individuals and not individuals when it wanted to make data not public for both individuals and not individuals; the Legislature clearly knows how to specifically make data not on individuals nonpublic when it wishes to.)

As part of the normal process by which the Department of Labor and Industry investigates compliance with workers' compensation law and imposes a civil penalty for failure to secure workers' compensation insurance, the Department sent the orders to the Westroms, and the Westroms themselves filed the objections. 686 N.W.2d at 30. Accordingly, the Westroms had access to the specific subspecies of civil investigative data at issue in the case, albeit for reasons wholly unrelated to the Act. *Id.*

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[5] Again, "private" as used in section 13.03, subdivision 1, refers to the category "private data on individuals."

The Department of Labor and Industry seized on this anomaly—that the Westroms had access to the data—to defend its broad release of the orders and objections to the media. Pointing out that the Legislature uses "confidential data on individuals" and "protected nonpublic data" when it wants data to be (1) not public and (2) not accessible to the individual or not individual subjects of the data, Minn. Stat. § 13.02, subds. 3, 13, the Department argued that because the orders and objections were necessarily accessible to the subjects of the data, they were inconsistent with the definitions of "protected nonpublic" and "confidential" data, each of which is definitionally *unavailable* to their subjects. Accordingly, because the orders and objections did not fall under the relevant definitions exempting investigative data from disclosure, the Department argued that the data also must necessarily be accessible to the public. Thus, the Department contended that its decision to release the information to the media was proper.

We rejected that bootstrap argument. We concluded that, in requiring that "confidential data on individuals" and "protected nonpublic data" be inaccessible to the subject, section 13.02 conflicted irreconcilably with the use of those terms in section 13.39, which included orders and objections inherently accessible to the "subject" of the data. 686 N.W.2d at 36. We resolved that *irreconcilable* conflict by applying the specific provision in section 13.39, which kept civil investigative data (including orders and objections) not public despite the fact that the general definitions in section 13.02 prohibited the subjects' access to the data. 686 N.W.2d at 36. Thus, we held that the Westroms' access to the orders and objections for reasons unrelated the Act did not justify the Department of Labor and Industry's broad release of the orders and objections to the media. *Id.*

This case presents a different question. We have not yet reached the point where we can determine whether any conflict (let alone an *irreconcilable* one) exists between the section 13.02, subdivision 12, definition of "private data on individuals" and section 13.65. The conflict the court posits as an analogy to *Westrom* is between the "general" section 13.02, subdivision 12, which defines "private data on individuals" as being about individuals, and the "specific" section 13.65, which *according to the court* includes within the meaning of "private data on individuals," data that is not about individuals. The court's interpretation creates the conflict. If my interpretation of section 13.65, subdivision 1 (that only data on individuals is private) is accepted, there is no conflict. Further, the court's attempt to fall back on the Attorney General's argument that section 13.02, subdivision 12, is not limited to data on individuals to avoid the conflict is misplaced. As I discussed earlier in the dissent, the Attorney General's argument that section 13.02, subdivision 12, does not limit the definition of "private data on individuals" to data on individuals makes absolutely no textual sense and the court does not even try to defend it.

The court's other *Westrom* argument—that my interpretation somehow creates a conflict because not all of the Attorney General data listed in section 13.65, subdivision 1, are exclusively or necessarily about individuals—begs the question; it is tautological. Indeed, the court admits that its argument assumes that its interpretation of the statute is correct, even though the whole purpose of the exercise is to determine whether its interpretation of the statute is correct. The fact that the data listed in section 13.65, subdivision 1(b) and (d), *could be* about both individuals and not individuals does not mean that it *must be* about both individuals and not individuals (particularly when the statute

expressly refers to data on individuals). It certainly does not expressly state that; indeed, that is precisely the question that we are trying to answer in this case.

Accordingly, a conflict between section 13.02, subdivision 12, and section 13.65 exists *only* if one first accepts the court's conclusion that the plain language of section 13.65 creates a second, alternative Attorney General-specific definition of "private data on individuals." But that is the question that we are trying to answer with the tool of statutory interpretation (here, the canon that the specific prevails over the general). The court is not justified in relying on a purported conflict between *its* contested interpretation of section 13.65 and the plain language of section 13.02, subdivision 12, to support the correctness of *its* interpretation of section 13.65 as an original matter. That is putting the cart far in front of the horse.[6] Indeed, the fact that the court's interpretation (unlike mine) *creates* such a conflict supports the conclusion that my interpretation is the better one.

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[6] This discussion raises a more general reservation that I have about the statutory interpretation methodology adopted by the court at several points in its analysis. The question before us is whether section 13.65, subdivision 1, only makes data on individuals private (my position) or makes data on both individuals and non-individuals private (the court's position). Accordingly, the only useful and ultimately meaningful statutory interpretation tools that the court (or I) can rely on to support our positions in this case are those that both point definitively in the direction of one meaning (for the court, data on individuals and not on individuals are made private by the statute) *and also* show that the alternative meaning (my position that only data on individuals is made private by the statute) is incorrect. If the same statutory interpretation tool that the court relies upon to show that its interpretation is reasonable would also show that the alternative interpretation is reasonable if one were to assume the alternative reading of the statute, then the tool tells us nothing helpful about which interpretation is correct. *See Johnston v. State*, 955 N.W.2d 908, 916 (Minn. 2021) (Thissen, J., dissenting) (rejecting the court's reliance on the principle that the court cannot add words to the statute to conclude one interpretation of a statute is unreasonable where the other interpretation of a statute also requires the addition of words to the statute). This requirement that, to be useful, a particular tool of statutory interpretation must both support the reasonableness of one interpretation and not support

The court also relies heavily on provisions in the Act where the Legislature used the construction "data on individuals" are "private data on individuals." And it is true that the Legislature could have used that same construction in section 13.65, subdivision 1—"The following data [on individuals] created, collected and maintained by the Office of the Attorney General are private data on individuals . . . ."—to accomplish the goal of making sure readers understood that the provision was limited to data on individuals. But the fact that the Legislature did not do so here is not decisive.

The Legislature has also repeatedly used the construction "private data on individuals *or nonpublic data*" when it wanted to make both data on individuals and data not on individuals not public but accessible to the subject of the data.[7] Of course, the Legislature did not do so here. In the face of that common construction, *the court's* interpretation of section 13.65 requires *the court* to add the words "or nonpublic data" to

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the reasonableness of an alternative interpretation (taking that alternative interpretation on its own terms) is a cousin to Karl Llewellyn's observations about the Newtonian principle that for each canon of construction there is an opposing canon. Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes Are to Be Construed*, 3 VAND. L. REV. 395, 401-05 (1950). "Plainly, to make any canon take hold in a particular instance, the construction contended for must be sold, essentially, by means other than the use of the canon: The good sense of the situation and a *simple* construction of the available language to achieve that sense, *by tenable means*, *out of the statutory language*." *Id*. at 401.

[7] *See, e.g.*, Minn. Stat. §§ 13.15, subd. 2, 13.201, 13.44, subd. 3(b), 13.591, subd. 1, 13.64, subd. 3(b), 13.82, subd. 7; *see also* Minn. Stat. § 13.39, subd.2 (using the construction "protected nonpublic data pursuant to section 13.02, subdivision 13, in the case of data not on individuals and confidential pursuant to section 13.02, subdivision 3, in the case of data on individuals").

the statute.[8] The court's reliance on the rule of construction that we decline to add words where the Legislature did not cuts both ways and does not advance the ball at all. If anything, the second construction—adding the words "or nonpublic data"—would have been a more straightforward way to express a legislative intent to cover both individuals and not individuals and more consistent with the overall classification scheme in the Act.[9]

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[8] The statutory (not legislative) history highlights the absence of such language. The original version of the Act covered only data on individuals; it made no provision for data not on individuals. *See* Minn. Stat. § 15.162 (2020); Act of June 5, 1975, ch. 401, 1975 Minn. Laws 1353; Act of April 11, 1974, ch. 479, 1974 Minn. Laws 1199. In 1980, the Legislature added categories for data not on individuals including nonpublic data. Act of April 23, 1980, ch. 603, §§ 1–7, 1980 Minn. Laws 1144, 1144–45. The Legislature added the Attorney General's provisions in section 13.65 in 1981 within a year of adding the category for nonpublic data. Act of May 29, 1981, ch. 311, § 35, 1981 Minn. Laws 1427, 1440–41. Of course, "[i]n enacting statutes, we presume that the legislature acts with full knowledge of existing law." *Goodyear Tire & Rubber Co. v. Dynamic Air, Inc.*, 702 N.W.2d 237, 244 (Minn. 2005). Yet the statute enacted in 1981 referred only to the definition of private data on individuals and made no mention of nonpublic data. Act of May 29, 1981, ch. 611, § 35, 1981 Minn. Laws 1427, 1441. *See infra*, at C/D-18–20.

[9] Another alternative construction is the language we considered in *Cilek v. Office of the Minnesota Secretary of State*, 941 N.W.2d 411 (Minn. 2020). The provision at issue was part of Minnesota's election law, Minn. Stat. § 200.01 (2018). The court noted that Minn. Stat. § 13.607 (2018), expressly limited the application of the Act's "general regime when campaign and election data are at issue" and provided that certain sections of election law codified outside the Act may limit access to data even if the data were not classified as private, confidential, nonpublic or protected nonpublic. 941 N.W.2d at 415–16. The court concluded that Minn. Stat. § 201.091 limited access to registered voter lists and, accordingly, those lists were not public even though the lists were not classified as private, confidential, nonpublic or protected nonpublic. 941 N.W.2d at 415–16. Of course, in practical terms, that is what the Attorney General wants us to do with the data listed in section 13.65—in the absence of properly classifying the data to cover both individual data and data not on individuals under the general classification regime of the Act, an easy alternative would have been to generally restrict access to the data. The Legislature did not choose that easy and clear route.

The same is true if one views the competing interpretations through the lens of an opposite canon of construction—that each interpretation is unreasonable not because the interpretation impermissibly adds words to the statute, but rather because it renders other statutory language superfluous. *State v. Strobel*, 932 N.W.2d 303, 309 (Minn. 2019) (explaining that "[u]nder the State's interpretation, paragraph b would do no work"). Admittedly, the interpretation advanced by this dissent arguably makes redundant the occasional limiting proviso "on individuals" in other parts of the Act. But the court's view of the Act renders completely superfluous the access categories that apply to data "not on individuals." And in the end, my conclusion is that the magnitude of the surplusage caused by these two interpretations is not comparable. The court's interpretation works much greater distortion on the Act.

The bottom line is that the Legislature over time has used several different sentence structures to identify categories of not public data which identify an individual while including or excluding data which does not identify an individual. Against that backdrop, running an inventory of those various sentence structures is simply not helpful to the interpretive project. And because the implication of applying these canons of construction is at best indecisive, the general presumption in the Act that all data is public unless classified as not public favors an interpretation of section 13.65, subdivision 1, that leaves data not on individuals public.

My position that private data on individuals means that the data is not public only if it is data on individuals is not an application of the absurdity doctrine as the court posits. I do not argue that what the Legislature is doing is so illogical that we must step in and

correct its error despite the plain language of the statute. For that reason, the court's reliance on cases like *State v. Altepeter*, 946 N.W.2d 871 (Minn. 2020), *Harlow v. State, Department of Human Services*, 883 N.W.2d 561 (Minn. 2016), and *Schatz v. Interfaith Care Center*, 811 N.W.2d 643 (Minn. 2012) is beside the point. Rather, I am making a statutory interpretation argument that flows from the plain meaning of a text which expressly includes the word "individual." The court chooses not to engage with that textual argument.

The court also maintains that, by limiting "private data on individuals" to data "on individuals," I am reclassifying the data in section 13.65 as "public" even though the Act classifies that data as "not public." Like the court's *Westrom* argument, *see supra* C/D-11-13 and n.6, this argument makes sense only if one first presumes that the court is correct in its analysis of the statutory language; it is not an argument that makes the court's statutory interpretation correct. In other words, the court cannot argue that its interpretation is correct (and, more importantly, that an alternative interpretation is incorrect) based on an assumption that its interpretation is correct. My textual argument is that section 13.03 makes *all* data public and only excepts "private" data from that public presumption if it is "on individuals." Minn. Stat. § 13.03, subd. 1. Accordingly, if one accepts that position, it is definitionally impossible to reclassify data not pertaining to "individuals" from "private data on individuals" to "public data" because, as a threshold matter, "private data on individuals" *cannot include* data "not on individuals."

B.

Because I conclude that the Attorney General's reading of the statute creating a special definition of "private data on individuals" for the Attorney General is unreasonable, I need not turn to post-ambiguity canons of construction. But if the language were ambiguous, extra-textual considerations plainly repudiate the Attorney General's position.

For instance, the underlying purpose of the Act is to protect "the right of the public to know what the government is doing." *Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299, 307 (Minn. 1990); *see also* Minn. Stat. § 645.16(4) (2020) (permitting this court, in the absence of clear language, to consider "the object to be attained" by the statute). Accordingly, "the general presumption that data are public informs our interpretation of every provision of the Data Practices Act." *KSTP-TV v. Metro. Council*, 884 N.W.2d 342, 347 n.2 (Minn. 2016); *see also Demers v. City of Minneapolis*, 468 N.W.2d 71, 73 (Minn. 1991) ("*At the heart* of the [A]ct is the provision that all 'government data' shall be public unless otherwise classified by statute, by temporary classification under the MGDPA or by federal law." (emphasis added)). The Attorney General's position contravenes the Act's explicit goal of promoting public access to government data.

There is an implication underlying the Attorney General's argument that allowing the Attorney General to keep data on individuals private but allowing the public to see data that does not specifically identify an individual makes no sense.[10] Ultimately, that concern

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[10] Notably, several categories of data listed in section 13.65, subdivision 1, will almost always, if not always, be individual data. *See* Minn. Stat. § 13.65, subd. 1(a) (records of disciplinary proceedings), 1(c) (consumer complaint data including consumers' complaints

implicates complicated policy decisions that are best left to the Legislature. *State v. Khalil*, 956 N.W.2d 627, 633 (Minn. 2021) (deferring to Legislature's balancing of competing policy interests because "legislators are the elected representatives of the people and . . . legislative bodies are institutionally better positioned than courts to sort out conflicting interests and information surrounding complex public policy issues"). And it is not immediately clear to me why it is not sensible in some circumstances to provide more protection to individuals than corporations, non-profits, other government entities or agencies, and other non-individuals. It strikes me that individuals may have qualitatively different reputational and privacy interests at stake than non-individual entities. Indeed, the Act is replete with examples where individuals are afforded greater protections than non-individuals. *See* Minn. Stat. §§ 13.03, subd. 8 (providing that data not on individuals becomes presumptively public after 10 years; no similar provision exists for data on individuals), 13.04 (setting forth rights specific to individuals but that do not apply to nonindividuals).

In addition, the Commissioner of Administration views "private data on individuals" in section 13.65 to pertain only to data "on individuals." The Commissioner is charged with primary responsibility for enforcing and administering the Act. *Westrom*, 686 N.W.2d at 31–32. In particular, the Commissioner is authorized to give a written opinion on any question relating to public access to government data or classification of data. Minn. Stat. § 13.072, subd. 1. Although not binding, the Commissioner's opinion

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against businesses and follow-up investigative materials), 1(e) (data collected by the Consumer Division while administering the home protection hot line).

that section 13.65, subdivision 1, pertains only to data "on individuals" "must be given deference by a court . . . in a proceeding involving the data." Minn. Stat. § 13.072, subd. 2; *see also* Minn. Stat. § 645.16(8) (permitting courts to consider "administrative interpretations of the statute" if the text is not clear).

In 1977, the Attorney General asked that the Commissioner classify as not public "communications and non-investigative files regarding administrative or policy matters of the Attorney General's office which do not evidence final public actions." Memorandum from Richard Brubacher, Minn. Comm'r of Admin., to Byron Starns, Minn. Chief Deputy Att'y Gen., on Request for Emergency Classification of Data on Individuals as Non-Public Under Minnesota Statutes 15.1642, at 1, 4 (Dec. 30, 1977). The Commissioner agreed to the emergency classification but clarified that the classification only applied "[w]hen such material contains *data on individuals*." *Id*. Thus, the final language of the temporary classification made private "communications and non-investigative files regarding administrative or policy matters of the Attorney General's office which do not evidence final public actions (when such material contains data on individuals)." *Id*. at 4.

The request from the Attorney General for the temporary classification came soon after the law was first enacted at a time when the Act was much less developed and detailed than it is today. The Attorney General made its request pursuant to a provision authorizing agencies to "apply to the [C]ommissioner [of Administration] for permission to classify data . . . *on individuals* as private or confidential . . . on an emergency basis until a proposed statute can be acted upon by the legislature." Act of June 2, 1977, ch. 375, § 6, 1977 Minn. Laws 825, 826–27 (codified as amended at Minn. Stat. § 15.1642, subd. 1 (1978))

(emphasis added). Indeed, as noted above, in 1977, the Act did not cover data not on individuals at all. Minn. Stat. §§ 15.162 (1976 & 1977 Supp.), .1641 (1976).

Importantly, the law in 1977 provided that the temporary classification would "expire on . . . July 31, 1978" (unless enacted into statute) and that no more temporary classifications would be granted after that date. Act of June 2, 1977, ch. 375, § 6, 1977 Minn. Laws 825, 828 (codified as amended at Minn. Stat. § 15.1642, subd. 5 (1978)). The Legislature later delayed the expiration date for existing temporary classifications until July 31, 1979. Act of April 5, 1978, ch. 790, § 5, 1978 Minn. Laws 1155, 1156 (codified as amended at Minn. Stat. § 15.1642, subd. 5 (1980)). The next year, the Legislature again extended the lifespan of existing temporary classifications, this time until July 31, 1980. Act of June 5, 1979, ch. 328, § 13, 1979 Minn. Laws 910, 916 (codified as amended at Minn. Stat. § 15.1642, subd. 5 (1980)). Finally, for a third time, the Legislature extended the lifespan of existing temporary classifications (including the twice-extended, still-operative Attorney General classification) until July 31, 1981. Act of April 23, 1980, ch. 603, § 10, 1980 Minn. Laws 1144, 1147 (codified as amended at § 15.1642, subd. 5 (1980)).

By that point, the Legislature directed the Commissioner to submit all existing temporary classifications (including the Attorney General temporary classification at issue here) to the Legislature "in bill form" for consideration. Minn. Stat. § 15.1642, subd. 5a (1980). The next year, a few months after the directive to the Commissioner, the Legislature codified the temporary classification governing Attorney General Data as part of an extensive bill codifying specific data privacy rules for many different agencies. Act

of May 29, 1981, ch. 311 § 35, 1981 Minn. Laws 1427, 1440 (codified as amended at Minn. Stat. § 15.789 (1982)). Accordingly, the language of the 1977 emergency classification that the Commissioner determined to relate solely to individuals is the direct predecessor of the provision that is now section 13.65, subdivision 1 (and specifically section 13.65, subdivision 1(b)). Act of May 29, 1981, ch. 311, § 35, 1981 Minn. Laws 1427, 1440–41 ("The following data created, collected and maintained by the office of the attorney general are classified as private, pursuant to section 15.162, subdivision 5(a) [defining private data on individuals]: . . . (b) Communications and non-investigative files regarding administrative or policy matters which do not evidence final public actions . . . ."). And as noted earlier, the Legislature used language that referred only to private data on individuals *even though* the Legislature had just one year earlier created categories of nonpublic data related to entities that were not individuals. *See, supra,* C/D-15 n.8 (describing statutory history showing that the Legislature retained the Commissioner of Administration's limitation that the data relate to individuals rather than adding a reference to nonpublic information as well); *cf. Goodyear Tire & Rubber Co. v. Dynamic Air, Inc.*, 702 N.W.2d 237, 244 (Minn. 2005) ("In enacting statutes, we presume that the legislature acts with full knowledge of existing law.").

In summary, section 13.072, subdivision 2, directs that we give deference to the Commissioner's understanding that the scope of the language (which the Attorney General at the time reviewed for legality) is limited to individuals, especially where (as here) the Attorney General has not issued an opinion specifically contradicting the Commissioner's opinion, *see* Minn. Stat. § 13.072, subd. 1(f) (providing that "[a] written, numbered, and

published opinion issued by the attorney general shall take precedence over an opinion issued by the commissioner under this section"), and the Legislature did not see fit to alter the limitation that the data relate to individuals. *See generally Minn. Power & Light Co. v. Pers. Prop. Tax, Taxing Dist., City of Fraser, Sch. Dist. No. 695*, 182 N.W.2d 685, 689 (Minn. 1970) (stating that an agency's interpretation of a statute is ordinarily "entitled to weight . . . if the interpretation construes an ambiguous statute . . . *particularly*, if the interpretation is longstanding" (emphasis added)).

In short, the Act makes abundantly clear that "private data on individuals" must pertain to individuals. The plain language of the Act, its categorization system, generally applicable provisions, and our canons of statutory construction tell us that any conclusion to the contrary is incorrect. Concluding that "private data *on individuals*," as that term appears in section 13.65, subdivision 1, need not pertain to individuals ignores the plain text adopted by, and the manifest intent of, the Legislature. I respectfully dissent.

GILDEA, Chief Justice (concurring in part and dissenting in part).

I join in the concurrence and dissent of Justice Thissen.

ANDERSON, Justice (concurring in part and dissenting in part).

I join in the concurrence and dissent of Justice Thissen.