

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1167**

Robert E. Cattanach,
Respondent,

vs.

City of St. Paul,
Appellant.

**Filed September 8, 2026
Affirmed in part and remanded
Larson, Judge
Concurring in part, dissenting in part, Wheelock, Judge**

Ramsey County District Court
File No. 62-CV-23-1549

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Considered and decided by Harris, Presiding Judge; Wheelock, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Following cross-motions for summary judgment, appellant City of St. Paul and respondent Robert E. Cattnach challenge the district court’s summary-judgment decision under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.991 (2024). The city argues the district court erred when it determined the city violated the MGDPA and awarded Cattnach exemplary damages. Cattnach asserts the district court erred when it did not decide his theory at summary judgment that the city violated the MGDPA when it failed to issue a preservation notice, concluded he failed to set forth an issue of material fact that he suffered “any damage,” and determined he was not entitled to attorney fees. Because Cattnach raised the preservation-notice issue at summary judgment and the district court did not decide it, we remand for the district court to consider that issue in the first instance. We otherwise affirm.

FACTS¹

The City’s MGDPA Website, Policy, and Procedure

The city maintains a website that includes a webpage designed for the public to submit data requests under the MGDPA. The webpage provides the following instruction:

Departments within the [city] each process data practices requests. Select a department below to submit a request. If you do not know which department the data resides in, use the “Keyword Search” option below. It may assist you in finding the correct department and examples of documents that are available.

¹ The following undisputed facts are drawn from the summary-judgment record. *See Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019).

The webpage lists various departments with a short description of the data the department might have. The city designed the webpage so data requests are department-specific, and requesters cannot simultaneously submit a data request to multiple departments.

As a matter of procedure, the city clerk, the responsible authority,² or their designee³ will help locate relevant data for a requester. The city clerk has designated various department heads or directors as designees. When a request comes in, a designee from the relevant department gets an email from the system that includes the text of the data request. If a designee receives a data request and believes the data is located in a different department, the designee can reassign the data request to another department. If a designee believes the data request may involve data in *multiple* departments, the designee can make a “child request” and open a “ticket” with both departments.⁴ Per city policy, a designee’s decision to open a “child request” is fully discretionary. As a result, designees use the “child request” process inconsistently.⁵ The webpage does not describe this procedure.

² As relevant here, MGDPA defines “‘responsible authority’ in any political subdivision [to] mean[] the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law.” Minn. Stat. § 13.02, subd. 16(b).

³ The MGDPA defines “designee” to mean “any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data.” Minn. Stat. § 13.02, subd. 6.

⁴ A “ticket” is opened when a MGDPA request is submitted through the webpage. When a designee selects another department that may have data, the vendor calls it a “child request” and creates another “ticket.”

⁵ For example, the parks department and the public-works department received identical data requests from Cattanaach on February 5, 2023. The public-works department made a “child request” to the financial-services department. The parks department did not make any “child request.”

When a designee receives a data request for communications or emails, the city's Office of Technology and Communication (OTC) conducts the search. OTC has the capability to search all city emails. OTC executes search queries based on forms the designees provide, which include keywords and can identify specific email addresses to search. Very rarely will OTC alter keywords. When submitting the form to OTC, designees defer to the data request if the requester specifies keywords. If the requestor does not specify keywords, designees have discretion to formulate keywords. Typically, more general keyword searches will return a larger quantity of emails, which designees must review to determine if they contain data that must be produced; longer or more specific keyword searches will return fewer emails that designees must review.

Cattanach's MGDPA Requests

In 2022, the city was considering a proposal to construct a bike trail along Summit Avenue (the project). From July 22, 2022, through March 9, 2023, Cattanach, as a citizen interested in the project, submitted numerous data requests under the MGDPA to the city. The data requests and the city's responses are summarized below.

A. July 22, 2022 – Part III(A) in District Court Order

On July 22, 2022, Cattanach submitted his first five MGDPA requests seeking information on the project. Cattanach selected the parks department on the webpage. Cattanach broadly requested all “public data created, produced, received, maintained, or disseminated” on broad topics concerning the project. His requests included, for example, “all analysis studies, or documentations that were performed, if any, that compare the hazards to cyclists of the proposed plan relative to the existing bike lanes, or that support

the city’s assertion that the proposed two-way trail is in fact safer than the existing one-way bike lanes,” and any “analysis, communications, or discussions that currently exist” regarding plans to conduct environmental review.

The parks-department designee (parks designee) received the July 22, 2022 requests. The parks designee then met with parks-department staff members to identify the staff in their department who might have relevant data. Subsequently, the parks designee submitted a search request to OTC. The parks designee limited its OTC request to search the emails of just five members of the parks-department staff. The city provided Cattanaach responsive data in September 2022, November 2022, and December 2022.

The parks designee also sent an email to the designee in the public-works department (public-works designee) to informally flag the requests, meaning the “child request” process was not used. The public-works designee only solicited information from public-works-department staff on the third request, despite noting that the requests “obviously [were] overlapping” with public-works matters. In March 2023, approximately eight months after Cattanaach sent the third request, OTC was asked to search for relevant documents. That search produced 202 responsive emails. The record does not reflect whether the city produced any data to Cattanaach as a result of the March 2023 search.

B. December 26, 2022 – Part III(B) in District Court Order

On December 26, 2022, Cattanaach submitted another MGDPA request, seeking data regarding communications with specific groups—including “elected officials.” Cattanaach selected the parks department on the webpage. The parks designee again received the request. The parks designee determined that OTC should use the same keyword searches

it used to find data responsive to the July 22, 2022 requests. It does not appear that the parks designee contacted any other department about this request. The city provided Cattanach responsive data in February 2023. On April 12, 2023, following Cattanach's request for a temporary restraining order (TRO), the district court ordered the city to supplement its responses to Cattanach's MGDPA requests prior to an evidentiary hearing on the TRO motion (April 2023 order). In response to this order, the city produced additional data responsive to this request on April 20, 2023—almost four months after the initial request.

C. January 16, 2023 – Part III(C) in District Court Order

Cattanach submitted another MGDPA request on January 16, 2023, seeking documents, emails, and text messages from specific individuals “regarding the removal of ash trees from Summit Avenue.” Cattanach again selected the parks department on the webpage. The parks designee requested that OTC search the emails of five specific individuals for the phrase “removal of ash trees from Summit Avenue.” The parks designee also informally asked one staff member in the parks department if they had responsive text messages; the staff member responded that they did not. Based upon this search, the city provided Cattanach 11 responsive documents in February 2023. Upon conducting a more thorough search to comply with the April 2023 order, however, the OTC search uncovered an additional 775 responsive emails. We have not located any record evidence to indicate whether this search resulted in the city producing documents to Cattanach.

D. January 29, 2023 – Parts III(D)-(E) in District Court Order

Cattanach submitted two MGDPA requests on January 29, 2023. Cattanach selected the parks department on the webpage for both requests. The first request broadly sought documents about “potential funding” for the project. The parks designee directed OTC to search the emails of five parks-department staff for the terms “Summit Avenue Regional Trail funding[,]” “summit funding[,]” “summit trail funding[,]” “summit bike finding[,]” and “potential funding of the proposed bicycle facility on Summit Avenue.” Once again, the parks designee did not ask any other department if they had responsive data. OTC’s email search elicited no responsive emails. In March 2023, the city produced seven documents to Cattanach. However, the search following the April 2023 order revealed 185 additional responsive emails. That month, in a separate response, the city produced seven additional emails to Cattanach.

The second request broadly sought “[d]ocuments related to any historical review” for the project. The parks designee directed OTC to search the emails of three specific parks-department staff for the terms “Summit Avenue Historical review[,]” “106 Historical Review[,]” “HPC Review[,]” and “Summit Avenue bicycle facility section 106 historical review.” As with prior requests, the parks designee did not ask any other department if they had responsive data. The OTC search uncovered no responsive emails. In February 2023, the city produced 16 documents and informed Cattanach that there were no responsive emails. But in the search following the April 2023 order, OTC found another 65 responsive emails. The city produced 56 of the emails to Cattanach on April 17, 2023.

E. February 5, 2023 – Parts III(F)-(G) in District Court Order

On February 5, 2023, Cattnach submitted three MGDPA requests. The first request sought communications, including text messages, with a specific individual, and Cattnach selected the public-works department. The public-works designee and Cattnach reached an agreement on the emails that would be searched. After OTC conducted the search, the public-works designee produced 78 emails. At some identified time, the public-works designee asked for responsive text messages from specific employees; four text messages were produced to Cattnach.

For the second and third requests, Cattnach made identical requests to the parks department and the public-works department on the webpage, seeking all communications with a nonprofit. The public-works designee contacted Cattnach to inform him that no records were found, but that the request had been forwarded to the financial-services department. The public-works designee opened a formal “child request” with the financial-services department. The financial-services department opened a “General Multi-Department Request,” but did not locate any responsive data. The parks designee emailed Cattnach on February 6, 2023, to state that no relevant data was found. The parks designee did not create any formal “child request,” and the record does not indicate where the parks designee searched in response to this request.

F. February 13, 2023 – Parts III(H)-(I) in District Court Order

Cattnach submitted three more MGDPA requests on February 13, 2023. For the first two requests, Cattnach made identical requests to the parks department and the public-works department on the webpage, seeking all communications with an identified

person. The public-works designee reached out to Cattnach to ask whether there were any “specific city staff members” whose emails Cattnach believed should be included in the search. OTC’s search per the public-works request was then limited to the individuals Cattnach identified. The parks designee asked OTC to search the emails of the three individuals they deemed to have the most relevant information. OTC broadly searched for emails containing the identified person’s name in these three emails. These searches returned 99 emails from the public-works department and 47 emails from the parks department. The parks department produced 12 emails, and the public-works department produced one email, to Cattnach.

For the third request, Cattnach submitted a request to the public-works department, requesting information about the water infrastructure beneath Summit Avenue. The public-works designee informed Cattnach that some of the data he requested was housed in the water-services department, and the public-works designee entered a “child request” with the water-services department. Ultimately, the public-works department produced 14 documents, and the water-services department produced two documents.

G. February 28, 2023 – Parts III(J)-(L) in District Court Order

On February 28, 2023, Cattnach made three MGDPA requests and selected the public-works department on the webpage. For the first request, Cattnach broadly sought all “[d]ocuments, communications, or analysis” supporting a statement made at a public meeting regarding the project’s cost. The public-works designee did not seek data from any other department and disclosed only one document—an excel spreadsheet.

For the second request, Cattnach asked for “documents, studies or analysis” relating to another statement made at a public meeting regarding tree loss. Nothing in the record indicates the public-works designee contacted the city forester, who is a staff member in the parks department, regarding this request. Only one document—titled “RSVP Projects”—was produced in response to this request.

The third request likewise sought information about the project’s impact on trees. And, as with the second request, there is no indication that the public-works designee sought information from the city forester. The public-works designee provided only the same “RSVP Projects” document already in Cattnach’s possession and informed Cattnach that “[p]ublic works has no other responsive data as we have not done any study or analysis.”

H. March 9, 2023 – Part III(M) in District Court Order⁶

Cattnach submitted his final two MGDPA requests regarding the project on March 9, 2023, seeking “[a]ll communications in any way referencing” two specific individuals. Cattnach submitted the requests to the parks department and the public-works department.

The public-works designee emailed Cattnach seeking to “confirm [the] search parameters and key words” as the names of the two individuals and “Summit Ave Bike Trail.” Cattnach responded affirmatively. Thereafter, the public-works designee submitted the agreed-to search to OTC. The search returned only one responsive

⁶ We note the chart lists Part III(M) as occurring on February 28, 2023, but the district court’s analysis relates to the March 9, 2023 requests.

document, from an individual in the mayor's office. As with prior requests, there is no indication in the record that the public-works designee reached out to any other department.

The parks designee submitted a request to OTC to perform an email search for three identified parks-department staff. The search returned 5,139 emails, and the parks designee produced 55 emails and 31 other files to Cattanach.

A request was also submitted to OTC to search the email of the individual in the mayor's office. OTC's search returned 274 emails, but the record does not indicate whether the city produced any of these emails to Cattanach.

Procedural History

In March 2023, Cattanach, a licensed attorney who represented himself, sued the city claiming it violated the MGDPA. Cattanach also requested an injunction compelling the city to comply with the MGDPA and a TRO enjoining the city from taking further action on the project until it complied.

As noted above, the district court issued the April 2023 order. Citing *Webster v. Hennepin County*, the district court observed that "government entities are required to 'keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use.'" *See* 910 N.W.2d 420, 427 (Minn. 2018). The order also expressed concern about the city's data-retention policies. Generally, the district court was concerned with the city's procedures, for example, the fact that "[t]he record disclose[d] precious little about where the [c]ity searched and how it searched," nor about whether requestors were informed that, by selecting a department from a drop-down menu, the resulting search would be limited to that department. Moreover, the order cast doubt

on the credibility of city-staff statements in their affidavits and noted that the staff “show[ed] no urgency at all” in responding to some of Cattanach’s requests. In light of these deficiencies, the district court ordered the city to supplement its responses to Cattanach’s MGDPA requests by noon on April 26, 2023, prior to an evidentiary hearing on the TRO motion on April 27, 2023.

In response to the April 2023 order, the city produced additional data. At the evidentiary hearing on April 27, 2023, the city elicited testimony from several staff members, including the city clerk, the parks designee, the public-works designee, and OTC’s deputy director. On May 4, 2023, the district court issued an order concluding the city “did not respond to the initial data requests using [a] procedure that would insure an appropriate and prompt response” and thus likely violated the MGDPA.⁷ The district court was troubled with the witness testimony regarding how the city had located the additional documents that it produced before the evidentiary hearing. The district court had been “hopeful” that the hearing would shed more light on the issue but concluded “that did not happen.” The May 4, 2023 order concluded by requiring the parties to participate in a two-week compliance-facilitation process overseen by a neutral third party.

On May 23, 2023, after the compliance-facilitation process, the district court issued its order denying Cattanach’s request for a TRO. The district court noted that, based upon

⁷ On May 5, 2023, the city filed a notice of appeal from this order and on May 8, 2023, the city filed a motion to stay the order pending appeal. We denied the stay motion on May 19, 2023, and on July 20, 2023, we dismissed the appeal based on the city’s voluntary dismissal. *City of St. Paul v. Cattanach*, No. A23-0665 (Minn. App. July 20, 2023) (order op.).

the evidence, some of Cattanach's requests still had not been fulfilled. Per the order, "the [c]ity seem[ed] incapable or unwilling on its own to inform the [district] [c]ourt as to how it planned to or did address the identified deficiencies." The district court also found it "perplexing" that the city maintained its position that it had complied with the MGDPA even though, following the April 2023 order, the city's "own efforts . . . created an ever increasing quantity of evidence" suggesting the city had "not maintained its data in the required 'arrangement and condition,' or for that matter in any consistent arrangement and condition." But a result of this continuing production of documents, the district court noted, was that the public's interest in transparency had been "increasingly addressed." For that reason, the district court denied Cattanach's TRO request. Nonetheless, the district court directed the city to conduct further searches for some requests and instructed the parties to meet and confer to assess whether additional searches were required. Thereafter, the city determined the planning and economic development department had an entire folder titled "Summit Avenue Regional Trail Master Plan" that had not been produced to Cattanach.

On June 26, 2023, Cattanach filed a motion to compel compliance. On June 27, 2023, the city requested a conference to discuss the issues remaining in the case. Cattanach agreed. On July 25, 2023, the city filed a memorandum in response to Cattanach's motion to compel compliance. The district court held the hearing on August 8, 2023, during which the remaining issues were narrowed. The district court then directed Cattanach to submit a statement listing the violations for which he sought damages and asked the city to

respond. On September 8, 2023, Cattnach submitted the requested memorandum, requesting exemplary damages.⁸ On September 18, 2023, the city submitted its response.

On December 21, 2023, the district court issued an order. First, the district court granted Cattnach's motion to compel. Second, the district court determined Cattnach was entitled to exemplary damages if the city willfully violated the MGDPA because a "whole, separate, non-dependent liability" for exemplary damages is available even absent "actual damages" under Minn. Stat. § 13.08, subd. 1. To support its decision, the district court noted that "the requestor, more often than not, will be unable to quantify the value of the loss of transparency and confidence that the MGDPA promotes." *See* Minn. Stat. § 13.08, subd. 1. Relying on *Demers v. City of Minneapolis*, the district court explained its view that, although exemplary damages are precluded by a good faith belief that material is not public under the MGDPA, "[f]ailure to establish procedures that are in compliance with the MGDPA or failure to follow procedures that are in compliance with the MGDPA is not acting in good faith." *See* 486 N.W.2d 828, 832 (Minn. App. 1992).

After discovery concluded, the parties filed cross-motions for summary judgment, and the district court issued its order on the motions in July 2024. The district court first addressed Cattnach's request for compensatory damages for both "the time any layperson requestor would have been required to spend" in attempting to secure compliance, as well as "the time required" of him as an attorney "to commence and prosecute an action seeking compliance with the MGDPA." The district court rejected both requests on the grounds

⁸ Cattnach also noted that he may be entitled to nominal damages, without argument or analysis.

that a non-attorney cannot receive attorney fees for advocating on their own behalf, and that the purpose of attorney-fees provisions “is not served by allowing attorneys to recover fees while appearing as both attorney and client.” The district court next considered whether the city violated the MGDPA, either through its insufficient procedure producing inappropriate responses, insufficient procedure producing untimely responses, or production that was so untimely that an insufficient procedure was the only explanation supported by the record.⁹ The district court provided a detailed chart illustrating its conclusions regarding the MGDPA requests.¹⁰

⁹ For the production that was so untimely that an insufficient procedure was the only explanation supported by the record, the district court—at times—used the word “inferred.” The city does not argue that, in using this language, the district court did not appropriately draw all reasonable inferences in its favor. *See Hix v. Minn. Workers’ Comp. Assigned Risk Plan*, 520 N.W.2d 497, 503 (Minn. App. 1994) (noting that “on cross-motion for summary judgment each party benefits by a ‘view of the evidence most favorable to him, and with doubts and inferences in his favor’” (quoting *Home Mut. Ins. Co. v. Snyder*, 356 N.W.2d 780, 783 (Minn. App. 1984))).

¹⁰ The district court did not address Cattanaach’s argument that the city’s failure to issue a preservation notice constituted an MGDPA violation.

Date Request Submitted	Procedure Insufficient – Inappropriate Response (Part V(A))	Procedure Insufficient – Not Prompt (Part V(B)(1))	Not Prompt – Inferred Insufficient Procedure (Part V(B)(2))
July 22, 2022 (1)	X		
July 22, 2022 (2)	X		
July 22, 2022 (3)	Factual Dispute see Part V(A)		X
July 22, 2022 (4)	X		
July 22, 2022(5)	X		
December 26, 2022 – Part III(B)	X		X
January 16, 2023 – Part III(C)	Request sufficiently specific – appropriate search	X	
January 29, 2023 – Part III(D)	X	X	
January 29, 2023 – Part III(E)	X	X	
February 5, 2023 – Part III(F)	Request sufficiently specific – appropriate search		
February 5, 2023 – Part III(G)	X		
February 13, 2023 – Part III(H)	Agreement to specific search		
February 13, 2023 – Part III(I)	X		
February 28, 2023 – Part III(J)	X		
February 28, 2023 – Part III(K)	X		
February 28, 2023 – Part III(L)	X		
February 28, 2023 – Part III(M)	X		

The district court determined that, with respect to the 13 MGDPA violations identified with an “X” in the first column, the city’s failures to conduct appropriate searches were willful such that Cattnach was entitled to exemplary damages because the city enacted policies and procedures directly at odds with the MGDPA. Specifically, the city’s

failure to set forth a coherent policy for looking outside a single department and the webpage’s “architecture” combined to create “a policy and practice” that—no matter the nature of the request—a search for data would be limited “to a single department.” According to the district court, this policy violated the MGDPA, which does not “allow a government entity to unilaterally limit” a requester’s ability to search for data within the entire government. In reaching this decision, the district court explicitly stated that not every data request requires an entity-wide search. Instead, the search for records must be an exercise of considered judgment as to the request made. The district court noted that the starting point for the exercise of considered judgment must be that “the MGDPA identifies all data of a government entity is public.” The district court also noted that the MGDPA does not prohibit a government entity from asking the requester to narrow the search or offer “an opinion as to a department where a search might commence.” The district court was unpersuaded that the “child request” procedure resolved the inadequacies with the city’s policy and practice, because—other than the response to the third July 22, 2022 request—there was no record evidence indicating the designees engaged in reasoned decisionmaking to ascertain what departments might have responsive data.¹¹ In sum, the district court concluded that a policy that eliminates considered judgment on the part of the responsible authority or designee and, instead, creates a presumption that a government entity need only search within a single department when it receives a data request violates the MGDPA.

¹¹ The district court also noted that the undisputed evidence showed that “‘child requests’ were the exception, not the rule.”

The district court then explained why the city's single-department policy did not result in MGDPA violations for three of Cattnach's data requests. The district court noted the January 16, 2023 request and one of the February 5, 2023 requests did not result in MGDPA violations because the requests "were sufficiently specific so as to reasonably allow for a targeted search." And the district court concluded the city did not violate the MGDPA in response to one of the February 13, 2023 requests because Cattnach limited his request by agreement.

With respect to the second column, the district court identified three instances with an "X" where the city violated the MGDPA because its responses were not prompt. The district court noted that these delays were caused by a designee selecting overly restrictive initial searches. But the district court concluded that Cattnach failed to create an issue of material fact that he was entitled to exemplary damages because a lack of policy and training resulted in the untimely delays, not willful acts.

Finally, with respect to the third column, the district court found two requests, identified with an "X," that resulted in untimely responses "from which one can infer [a] procedure that does not insure compliance with the MGDPA." *See Webster*, 910 N.W.2d at 431-32. The district court noted that an OTC email search related to the third July 22, 2022 request was not initiated until eight months after Cattnach submitted it. And the OTC email search related to Cattnach's December 26, 2022 request was not initiated for nearly four months after Cattnach submitted it. The district court determined that these violations *were* willful because the city's procedures "allowed the [c]ity [to do] nothing to meet the MGDPA's requirements for too long." In total, the district court determined that

the city's responses to 15 of Cattnach's requests violated the MGDPA, and 14 of those violations were willful.¹²

After the district court issued its summary-judgment order, the parties agreed to fix exemplary damages at \$30,000 and reserve all other issues for appeal. The city appeals, and Cattnach cross-appeals the district court's summary-judgment decision.

DECISION

Both parties challenge the district court's summary-judgment decision. The district court must grant summary judgment if the moving party shows that "there is no genuine issue as to any material fact" and that the moving party is "entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. We review a district court's summary-judgment decision de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). On appeal from summary judgment on undisputed facts, our review "is limited to determining whether the district court erred in its application of the law." *Marshall v. Inn on Madeline Island*, 631 N.W.2d 113, 118 (Minn. App. 2001).

The city raises three challenges to the district court's summary-judgment decision, arguing the district court erred when it determined: (1) the city violated the MGDPA; (2) a district court can award exemplary damages absent proof that the plaintiff suffered "any damage"; and (3) the city's MGDPA violations were "willful." In his cross-appeal, Cattnach challenges the district court's summary-judgment decision on the bases that the

¹² The district court reached this number by counting multiple violations to the same request as a single violation (to avoid double counting), for a total of 15 violations and 14 willful violations.

district court: (1) improperly declined to resolve his preservation-notice argument; (2) concluded he failed to set forth an issue of material fact that he suffered “any damage”; and (3) decided he was not entitled to attorney fees.

To resolve this case, we evaluate the issues in the following order. First, we examine the arguments regarding the city’s alleged MGDPA violations. Second, we consider the parties’ arguments with respect to damages.

I.

The parties both challenge the district court’s application of the MGDPA to the city’s responses to Cattanaach’s data requests. The city argues the district court legally erred when it concluded the city violated the MGDPA. Cattanaach asserts the district court improperly failed to consider his argument that the city violated the MGDPA when it failed to issue a preservation notice. We address each argument in turn.

A. MGDPA Violations

The city argues the district court erred when it concluded the city violated the MGDPA. The MGDPA provides: “The responsible authority in every government entity shall establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner.” Minn. Stat. § 13.03, subd. 2(a). The MGDPA does not define “insure.” But the Minnesota Supreme Court has concluded that the use of the word “insure” suggests that a government

entity's "'established procedures,' when followed, should result in appropriate and prompt responses *in all cases.*" *Webster*, 910 N.W.2d at 431.

In *Webster*, the county conceded its responses to MGDPA requests were not prompt. *Id.* But the county argued the procedures were, nonetheless, appropriate because Webster failed to demonstrate that the county's procedures caused the untimely response. *Id.* at 432. The supreme court concluded that the procedure the county employed did not "insure" prompt and appropriate responses. *Id.* at 431-32. The supreme court noted that, despite the county following its established procedure, "the record contain[ed] substantial evidence of the [c]ounty's missteps and failures in responding to Webster's request at every juncture, leading inexorably to the conclusion that the existing procedures were insufficient to meet the statutory requirements." *Id.* at 432; *see also id.* at 433 (noting "the record demonstrates that the [c]ounty's missteps and delays in responding to Webster's request were not the result of the arrangement of its records but the [c]ounty's procedures, or lack thereof, for gathering responsive data").

Here, as illustrated above, the district court identified three categories of MGDPA violations based upon the undisputed facts: (1) inadequate responses caused by the city's procedure; (2) untimely responses caused by the city's procedure; and (3) production that was so untimely that an insufficient procedure was the only explanation supported by the record.

The city does not challenge any of the individual determinations or the facts underlying the district court's decision that the city violated the MGDPA. Instead, the city asserts the district court misinterpreted the MGDPA when it required a government

entity—in all cases—to conduct “entity wide searches for responsive data.” This argument mischaracterizes the district court’s decision. In fact, the district court explicitly said: “This is not to say that every request requires a[n] [entity]-wide search or contact with every . . . department.” Instead, the district court concluded that the search for records must be tailored to the request made. The district court also noted that the MGDPA does not prohibit a government entity from asking the requester to narrow the search or offer “an opinion as to a department where a search might commence.” Thus, contrary to the city’s argument, the district court did not conclude that a government entity must conduct a government-wide search in response to every MGDPA request. Instead, it concluded that a policy creating a presumption that a government entity need only search within a single department, thereby eliminating considered judgment on the part of the responsible authority, or designee, that results in inadequate or untimely disclosures violates the MGDPA.

The city separately argues, specific to the 13 MGDPA violations identified in the first column, that the district court legally erred when it concluded the city violated the MGDPA because Cattnach provided no evidence “to show why other specific departments should have been involved in any of the [c]ity’s responsive data searches.” This is not supported by the record. We provide a few illustrations.

- The December 26, 2022 request specifically sought information from “elected officials.” Yet, the city did not produce any evidence to demonstrate anyone reached out to a single elected official—or their department—to ascertain whether they had responsive data.

- Two of the February 28, 2023 requests asked for information about tree loss. Yet, nothing in the record indicates the public-works designee reached out to the city forester who was organizationally housed in the parks department.
- After the compliance-facilitation process and denial of the TRO, the record shows the city determined the planning and economic development department had an entire folder, named Summit Avenue Regional Trail Master Plan, with data responsive to Cattnach's requests.

For the foregoing reasons, we conclude the district court did not err when it concluded the city violated the MGDPA.

B. Preservation Notice

Cattnach argues the district court erroneously disregarded his theory that the city violated the MGDPA when it failed to issue a preservation notice in response to his multiple requests that the city insure that documents, emails, text messages, and other data relating to his requests were not lost.¹³ The city argues Cattnach's argument fails as a matter of law. In the alternative, the city asserts that we should remand to the district court to decide the issue in the first instance. The record demonstrates that Cattnach argued the city had an obligation to issue a preservation notice at summary judgment, and the district court did not decide the issue. "Our review is limited to those issues decided by the lower court." *Jorgensen v. Knutson*, 662 N.W.2d 893, 904 (Minn. 2003). Accordingly, we

¹³ To support the theory that the MGDPA required the city to issue a preservation notice, Cattnach relies on Minn. Stat. § 13.03, subd. 1, the supreme court's interpretation of that statute in *Halva v. Minnesota State Colleges & Universities*, 953 N.W.2d 496, 506 (Minn. 2021), and several advisory opinions from the agency charged with enforcing the MGDPA.

remand to the district court to decide this issue in a manner consistent with this opinion. *See id.* (remanding undecided issue in context of summary-judgment decision).

For the foregoing reasons, we affirm the district court’s decision that the city violated the MGDPA, and remand for the district court to consider Cattanach’s preservation-notice theory.

II.

Because we conclude the district court correctly granted summary judgment in Cattanach’s favor on the ground that the city violated the MGDPA, we next consider three legal arguments regarding Cattanach’s entitlement to damages under section 13.08, subdivision 1. The statute provides:

Notwithstanding section 466.03, a responsible authority or government entity which violates any provision of this chapter is liable to a person . . . who suffers *any damage* as a result of the violation, and the person damaged . . . may bring an action against the responsible authority or government entity to cover any damages sustained, plus costs and reasonable attorney fees. In the case of a *willful violation*, the government entity shall, *in addition*, be liable to exemplary damages of not less than \$1,000, nor more than \$15,000 for each violation.

Minn. Stat. § 13.08, subd. 1 (emphases added).

First, Cattanach argues the district court misinterpreted the phrase “any damage” when it concluded that he failed to raise an issue of material fact that the city’s MGDPA violations caused him damage. Second, the city asserts the district court erred when it concluded the statute permits a requester to recover exemplary damages absent proving

“any damage.” Third, the city contends the district court erred when it interpreted the phrase “willful” and applied it to the MGDPA violations that occurred here.

These arguments present questions of statutory interpretation that we review de novo. *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014). When interpreting a statute, our goal is to “effectuate the intention of the legislature, reading the statute as a whole.” *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 169 (Minn. 2021) (quotation omitted). “When legislative intent is clear from the statute’s plain and unambiguous language, we interpret the statute according to its plain meaning.” *City of Brainerd v. Brainerd Invs. P’ship*, 827 N.W.2d 752, 755 (Minn. 2013). When assessing whether a statute is plain and unambiguous, we look to the statute’s “text, structure, and punctuation” and apply the preambiguity canons of interpretation. *State v. Lee*, 22 N.W.3d 608, 614 (Minn. App. 2025) (quoting *State v. Pakhnyuk*, 926 N.W.2d 914, 921 (Minn. 2019)); see also *State v. Riggs*, 865 N.W.2d 679, 682 n.3 (Minn. 2015) (distinguishing between preambiguity “canons of interpretation” and postambiguity “canons of construction”). The preambiguity canons of interpretation include the ordinary-meaning canon, the whole-statute canon, the canon against surplusage, and the presumption of consistent usage. *Lee*, 22 N.W.3d at 614. “Only when [a statute’s] language is subject to more than one reasonable interpretation may we ‘consider extrinsic sources and canons.’” *Id.* (quoting *State v. Woolridge Carter*, 9 N.W.3d 839, 844 (Minn. 2024)).

We address each argument in turn.

A. “Any Damage”

Cattanach first argues the district court erred when it concluded that he did not prove that he suffered “any damage as a result of the [city’s] violation[s].” *See* Minn. Stat. § 13.08, subd. 1. According to Cattanach, the word “any” is expansive and includes two types of damages the district court disregarded: nominal damages and lost-time damages.

Beginning with nominal damages, Cattanach did not include a request for nominal damages in his complaint, he did not make any argument for why nominal damages might be included in the phrase “any damage” in district court, and the district court never decided the issue. Therefore, we need not consider whether “nominal damages” are included in the phrase “any damage” because the issue was not meaningfully raised in district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that we consider “only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it”).

Regarding lost-time damages, we assume without deciding that lost-time damages may be compensable under the MGDPA. *See* Minn. Stat. § 13.08, subd. 1 (“any damage”); *see also O’Neill v. Johnson*, 55 N.W. 601, 602 (Minn. 1893) (allowing recovery for loss of time defending malicious prosecution). But under existing precedent, a plaintiff is only entitled to lost-time damages if they prove a loss of earnings, not a loss of personal time. *See Cox v. Chicago Great W. R. Co.*, 223 N.W. 675, 677 (Minn. 1929) (“[I]t would not seem that both loss of time and loss of earnings or wages, treated as separate items and covering the same period of time, should be allowed.”); *Forbes v. Wells Fargo Bank, N.A.*,

420 F. Supp. 2d 1018 (D. Minn. 2006) (applying *Cox* and concluding that “[a] plaintiff can only recover for loss of time in terms of earning capacity or wages”).

Here, Cattnach submitted an affidavit indicating he spent seven hours on non-litigation efforts to obtain the data he requested.¹⁴ In the affidavit, he did not allege any lost earnings during these seven hours.¹⁵ At summary judgment, Cattnach had the burden to demonstrate an issue of material fact that he lost earnings during this time in order to sustain a claim for lost-time damages. Because Cattnach did not meet his burden, the district court correctly granted summary judgment with respect to Cattnach’s claim for lost-time damages. *See Adams v. Harpstead*, 947 N.W.2d 838, 842 (Minn. App. 2020) (“Proof of damages is an essential element of a claim for compensatory relief under the MGDPA.”), *rev. denied* (Minn. Oct. 1, 2020).

¹⁴ On appeal, Cattnach also argues that he is entitled to “reasonable attorney fees” under Minn. Stat. § 13.08, subd. 1. But the record reflects that Cattnach did not seek attorney fees in district court; rather, he argued his attorney time met the definition of “any damage.” Accordingly, we conclude that the issue of whether Minn. Stat. § 13.08, subd. 1, would allow a self-represented attorney to seek attorney fees is forfeited on appeal. *See Thiele*, 425 N.W.2d at 582 (noting that we consider “only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it” and that a party cannot “obtain review by raising the same general issue litigated below but under a different theory”).

¹⁵ Cattnach’s affidavit asserted that he resigned from the partnership at his law firm to litigate his claims. But this assertion goes to the time he spent litigating the case. And Cattnach did not argue in this appeal that his attorney time met the definition of “any damage.”

B. “In Addition”

Because Cattnach did not demonstrate that he suffered “any damage,” we must address the city’s argument that the district court erred when it awarded exemplary damages. We begin with the parties’ arguments.

The city contends that the legislature’s use of the phrase “in addition” contemplates that exemplary damages must be added on top of a damages award under the first sentence.¹⁶ To support its argument, the city contends: (1) the phrase “in addition” has no meaning if it does not mean on top of damages awarded under the first sentence and (2) the legislature would have created a separate subdivision to include exemplary damages if it did not intend exemplary damages to be tied to an award of “any damage.”¹⁷

In contrast, Cattnach argues the phrase “in addition” means “also” and, thereby, plainly provides that a government entity is subject two kinds of liability: liability for “any damage” and liability for exemplary damages if the plaintiff proves a willful violation. For support, Cattnach observes that: (1) the sentence relating to “any damage” targets “a

¹⁶ For support, the city relies on our decisions in *Krampf v. University of Minnesota*, No. A19-1753, 2020 WL 3410191 (Minn. App. June 22, 2020) and *Madison v. Todd County*, No. A20-0794, 2021 WL 1344021 (Minn. App. Apr. 12, 2021). But “[w]e are not bound by nonprecedential opinions.” *State v. Smeby*, 4 N.W.3d 165, 169 n.2 (Minn. App. 2024). And, because neither *Krampf* nor *Madison* engaged in any textual analysis of the statute, we conclude they are not persuasive on this point. See Minn. R. Civ. App. P. 136.01, subd. 1(c) (noting that nonprecedential decisions “may be cited as persuasive authority”).

¹⁷ Amicus Minnesotans for Open Government observes that, prior to the legislature adding additional remedies into the MGDPA, the headnote for this subdivision was “civil remedies.” While one might read the original headnote to provide some indication as to why the legislature structured the provision in this manner, as the amicus admits, headnotes are “mere catchwords to indicate the contents of the section or subdivision and are not part of the statute.” See Minn. Stat. § 645.49.

responsible authority or government entity” and the sentence regarding “exemplary damages” affects only “the government entity” and (2) the phrase “compensatory *or* exemplary damage” appears throughout the MGDPA, which suggests there are two are separate forms of liability, *see* Minn. Stat. §§ 13.072, subd. 2, 13.085, subd. 5(f), 13.32, subd. 8(f).

We begin with the common and ordinary meaning. *See City of Brainerd*, 827 N.W.2d at 755. The relevant provision provides “a responsible authority or government entity which violates [the MGDPA] is liable to a person . . . who suffers any damage as a result of the violation In the case of a willful violation, the government entity shall, *in addition*, be liable to exemplary damages” Minn. Stat. § 13.08, subd. 1 (emphasis added).

Both parties contend that the phrase “in addition” resolves the statutory interpretation question. Where, as here, the statute does not define the operative phrase, “we may look to dictionary definitions to determine . . . common and ordinary meanings.” *In re E.M.B.*, 987 N.W.2d 597, 600 (Minn. App. 2023). The dictionary defines the phrase “in addition” to mean “besides” or “also.” *Merriam-Webster Collegiate Dictionary* 20 (12th ed. 2026); *see also The American Heritage Dictionary of the English Language* 449 (5th ed. 2018) (defining “in addition” as “[a]lso; as well”).

Applying the definition, the operative phrase reads: “In the case of a willful violation, the government entity shall, [also], be liable to exemplary damages” Thus, one reasonable interpretation of this phrase is that the second sentence “also” provides a separate basis for liability, distinct from the liability established in the first sentence. And

another reasonable interpretation of the phrase is that the second sentence “also” permits damages once liability is established under the first sentence. Based upon this plain meaning, we conclude the phrase “in addition” does not resolve the question presented.

And reading the statute as whole does not resolve the question. *See State v. Johnson*, 995 N.W.2d 155, 160 (Minn. 2023) (noting whole-statute canon “provides that a statute should be read and construed as a whole so as to harmonize and give effect to all its parts”). There is some appeal to the city’s contention that other remedies are available if a government entity fails to produce relevant data and, therefore, allowing exemplary damages absent proof of “any damage” is illogical. *See* Minn. Stat. § 13.08, subd. 4 (providing civil penalty up to \$1,000 in action to compel compliance);¹⁸ Minn. Stat. § 13.085, subd. 5(a)(3) (providing for civil penalty of up to \$300 following administrative hearing). But there is also textual support for Cattanaach’s proposed interpretation, given that the MGDPA repeatedly refers to “compensatory *or* exemplary damages.” *See* Minn. Stat. §§ 13.072, subd. 2, 13.085, subd. 5(f), 13.32, subd. 8(f) (emphasis added). If a court can only impose exemplary damages after finding the existence of compensatory damages, the statute would provide “compensatory *and* exemplary.” Yet, the legislature used the disjunctive, “or,” which generally connotes two separate factual situations. *See State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000).

For these reasons, like the district court, we conclude the statute is ambiguous. When a statute is ambiguous, we may consider the post-ambiguity canons of construction

¹⁸ Subdivision 4 provides that this civil penalty is “in addition to the remedies provided in subdivisions 1 to 3.” Minn. Stat. § 13.08, subd. 4.

and other indicia of legislative intent. *See Spann v. Minneapolis City Council*, 979 N.W.2d 66, 73-76 (Minn. 2022); Minn. Stat. § 645.16. These include:

- (1) the occasion and necessity for the law;
- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be attained;
- (5) the former law, if any, including other laws upon the same or similar subjects;
- (6) the consequences of a particular interpretation;
- (7) the contemporaneous legislative history; and
- (8) legislative and administrative interpretations of the statute.

Minn. Stat. § 645.16 (2024).

“The MGDPA governs public access to information maintained by governmental agencies in Minnesota.” *Demers v. City of Minneapolis*, 468 N.W.2d 71, 72 (Minn. 1991). The MGDPA is “part of a fundamental commitment to making the operations of our public institutions open to the public.” *Prairie Island Indian Cmty. v. Minn. Dep’t of Pub. Safety*, 658 N.W.2d 876, 884 (Minn. App. 2003). The “heart of the act” is that all government data shall be public unless limited by statute. *Demers*, 468 N.W.2d at 73. Accordingly, we construe the MGDPA “in favor of public access.” *Prairie Island Indian Cmty.*, 658 N.W.2d at 884.

Upon considering this purpose, we conclude that Cattnach presents the “better” interpretation of the statute. *See State v. Hayes*, 826 N.W.2d 799, 804-05 (Minn. 2013) (resolving ambiguity by determining which interpretation of ambiguous language is “better”); *see also In re Civ. Commitment of Benson*, 12 N.W.3d 711, 716-17 (Minn. 2024) (assessing the “better” interpretation of an ambiguous statute). Given that a primary purpose of the MGDPA is government transparency, we resolve the ambiguity in a manner

that encourages government entities to comply with the MGDPA and favors public access. Accordingly, the phrase “[i]n the case of a willful violation, the government entity shall, in addition, be liable to exemplary damages” provides a second type of liability separate from liability for “any damage.”

We conclude the district court did not err when it decided that—despite failing to prove he suffered “any damage”—Cattanach could sustain a claim for exemplary damages if he proved the city willfully violated the MGDPA.

C. “Willful Violation”

Because we conclude Cattanach could sustain an exemplary-damages claim absent proof that he suffered “any damage,” we consider the city’s challenge to the district court’s decision that it willfully violated the MGDPA. As described above, a government entity is only liable for exemplary damages “[i]n the case of a willful violation.” Minn. Stat. § 13.08, subd. 1. We begin by summarizing the undisputed facts, which the district court determined demonstrated willful violations.

The district court concluded the undisputed record confirmed that “the [c]ity *affirmatively* enacted procedure both in the architecture of its data request [webpage] and in its policies . . . that are *directly* at odds with what the MGDPA requires.” (Emphases added.) To reach this decision, the district court interpreted several MGDPA provisions to conclude the statute requires “a responsible authority or designee to respond on behalf of the entire government entity” and does “not allow a government entity to unilaterally limit a response to a single sub-group within the government entity.” *See* Minn. Stat. §§ 13.02, subds. 7a, 16(a), 13.03, subds. 2(a), 3(a). And, despite this clear statutory directive, “the

undisputed evidence in this case” showed the city designed “the web[page] and accompanying [c]ity policy” to limit searches in a manner not contemplated by the MGDPA, which resulted in the city violating the MGDPA in its responses to 13 of Cattanach’s requests—identified in the first column above.

The district court also referenced *Webster*’s conclusion that a government entity fails to “insure” compliance with the MGDPA when a government entity’s “missteps and failures in responding to [a] request at every juncture, lead[s] inexorably to the conclusion that the existing procedures were insufficient to meet the statutory requirements.” 910 N.W.2d at 432. The district court then concluded the undisputed evidence documented two willful violations of the MGDPA (identified in the third column above): one where the city waited eight months to respond to a July 22, 2022 request and the other where the city waited four months to respond to the December 26, 2022 request. The district court determined these undue delays documented a “considered choice” to not respond promptly to Cattanach’s MGDPA requests.

The city argues the district court legally erred when it concluded these facts demonstrate a willful violation. Primarily,¹⁹ the city asserts the district court applied an incorrect legal standard when it relied on *Demers* to conclude a “willful” violation occurs when a government entity fails to act in good faith. *See* 486 N.W.2d at 832. Instead, the

¹⁹ The city also cites *Backlund v. City of Duluth*, 176 F.R.D. 316, 324-25 (D. Minn. 1997) for the proposition that we should interpret the phrase “willful” consistent with the use of the term in the context of common-law official immunity. Given that the legislature explicitly “waived any immunity to a cause of action brought under this chapter,” Minn. Stat. § 13.08, subd. 1, we are not persuaded that this opinion is instructive on the meaning of the phrase.

city contends we should apply the supreme court’s interpretation of “willful violation” from *In re A.D.*, 883 N.W.2d 251 (Minn. 2016).

In *A.D.*, the supreme court interpreted the phrase “willful violation” in the context of the Pupil Fair Dismissal Act, Minn. Stat. §§ 121A.40-56 (2014). *Id.* at 253. Beginning with the dictionary, the supreme court noted the word “willful” means: “[s]aid or done on purpose; deliberate,” *id.* at 257 (quoting *The American Heritage Dictionary of the English Language* 1982 (5th ed. 2011)); “done deliberately: not accidental or without purpose; intentional,” *id.* (quoting *Webster’s Third New International Dictionary* 2617 (2002)); and “intentional; deliberate,” *id.* (quoting *The New Oxford American Dictionary* 1931 (10th ed. 2001)). Consistent with these definitions, the supreme court concluded the phrase “willful violation” plainly meant that a student must “be aware of the policy and make a deliberate decision to violate it.” *Id.*

Based upon the undisputed facts, even if the city’s proposed interpretation of the phrase “willful violation” is correct, there is no issue of material fact that the city’s MGDPA violations met the *A.D.* standard. The district court noted the MGDPA set forth requirements, the city created a policy knowing the MGDPA’s requirements, and—despite knowing the requirements—*affirmatively* made a *considered choice* to adopt a policy that would not insure compliance with the MGDPA. And, as a result of this *affirmative* policy, combining the violations in the columns above, the city willfully violated the MGDPA in its responses to 14 of Cattanaach’s data requests. Thus, the undisputed facts demonstrate that the city knew the MGDPA’s requirements, knowingly decided to implement a policy

that—in some instances—would result in noncompliance with the MGDPA, and this caused the MGDPA violations in response to Cattnach’s data requests.²⁰

For the foregoing reasons, we affirm the district court’s summary-judgment decision regarding damages.

Affirmed in part and remanded.

²⁰ The city also challenges the district court’s interpretation of the word “willful” on the ground that it failed to consider the “impact this definition would have on government employees in light of Minn. Stat. § 13.09, which declares that ‘any person’ who commits a willful violation of the MGDPA is guilty of a crime and is subject to termination for just cause.” First, as discussed above, applying the definition the city proposed from *A.D.*, the city’s conduct met the “willful” requirement. Moreover, the city’s argument disregards that section 13.08, subdivision 1, applies to government entities, not people. Thus, any potential application of the criminal provision in section 13.09 will require consideration of due process. Minn. Stat. § 13.09(a), (b); *see also* U.S. Const. amend. XIV (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law”); Minn. Const. art. 1, § 7 (“No person shall be held to answer for a criminal offense without due process of law”). Therefore, we are not persuaded that the presence of criminal penalties warrants a different conclusion in this case.

WHEELLOCK, Judge (concurring in part and dissenting in part)

I respectfully concur in part and dissent in part. I would conclude that the district court erred by concluding that the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.001-.991 (2024 & Supp. 2025), allows for exemplary damages in the absence of actual damages and, because this determination would be dispositive of other issues raised on appeal by appellant City of St. Paul, I would not reach the issues of whether the district court erred in determining that the city violated the MGDPA and that the city's violations were "willful" within the meaning of Minnesota Statutes section 13.08, subdivision 1 (2024). Because I conclude that exemplary damages are not available here, I would reverse the grant of summary judgment in favor of respondent Robert E. Cattanach on these issues. As to Cattanach's cross-appeal, I agree with the majority's conclusions that the district court correctly granted summary judgment with respect to his claims for actual damages—in the form of lost-time damages—and that Cattanach forfeited the arguments that he was entitled to nominal damages and attorney fees. I also agree with the majority's decision to remand to the district court to allow it to consider in the first instance Cattanach's preservation-notice argument.

The city asserts that the district court erred by concluding that section 13.08, subdivision 1, of the MGDPA allowed Cattanach to recover exemplary damages in the absence of actual damages. To resolve this question, we must interpret the language of the MGDPA. Appellate courts consider issues of statutory interpretation *de novo*. *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014). If the statute's language is unambiguous, we apply its plain meaning. *Id.* A statute is ambiguous if it is susceptible

to more than one reasonable interpretation. *Marks v. Comm’r of Revenue*, 875 N.W.2d 321, 324 (Minn. 2016). “Multiple parts of a statute may be read together so as to ascertain whether the statute is ambiguous.” *Christianson v. Henke*, 831 N.W.2d 532, 537 (Minn. 2013). “A statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant. *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted).

The MGDPA provides:

Notwithstanding section 466.03, a responsible authority or government entity which violates any provision of this chapter is liable to a person . . . who suffers any damage as a result of the violation, and the person damaged . . . may bring an action against the responsible authority or government entity to cover any damages sustained, plus costs and reasonable attorney fees. In the case of a willful violation, the government entity shall, in addition, be liable to exemplary damages of not less than \$1,000, nor more than \$15,000 for each violation.

Minn. Stat. § 13.08, subd. 1. The precise question raised here is whether the statute provides for exemplary damages for willful violations absent a showing of actual damages. In other words, we must answer whether the statute makes an award of exemplary damages dependent on or independent of an award of actual damages. The statutory phrase at issue reads: “In the case of a willful violation, the government entity shall, in addition, be liable to exemplary damages” *Id.*¹

¹ For purposes of this analysis, I assume without deciding that the city violated the MGDPA and at least one of those violations was “willful.”

The city contends that the use of the term “in addition” contemplates that exemplary damages for willful violations are necessarily “in addition” to actual damages and are not independently available. In support, it cites nonprecedential caselaw from this court stating that “[i]t is clear from the statute that exemplary damages are only available to individuals who have suffered damages.” *Krampf v. Univ. of Minn.*, No. A19-1753, 2020 WL 3410191, at *9 (Minn. App. June 22, 2020). The district court considered *Krampf* unpersuasive. It determined that section 13.08, subdivision 1, could also be read to create separate liability for exemplary damages and that the statute is therefore ambiguous. After it determined the statute is ambiguous, the district court reasoned that independent liability for exemplary damages is appropriate in light of the value that the MGDPA places on transparency. The majority adopts this reasoning based on its interpretation of the phrase “in addition.” I disagree because I conclude that the city’s proposed interpretation is the only reasonable one.

First, I reject the alternative interpretation that Cattnach proposes on appeal. Cattnach asserts that the phrase “in addition” does not condition an exemplary-damages award on an award of actual damages; rather, the phrase works to distinguish a government entity from a responsible authority. Specifically, the first sentence of subdivision 1 provides that “a responsible authority or government entity” is liable for damages but the second sentence identifies only government entities as liable for exemplary damages. He contends that “in addition” refers to additional liability that applies only to government entities instead of referring to the damages identified in the first sentence.

Cattanach’s interpretation does not give meaning to the phrase “in addition.” If all the legislature intended to do with the phrase was distinguish responsible authorities from government entities for purposes of exemplary damages, the statute need not have included “in addition” at all. It would have the same effect to omit the phrase entirely, reading: “In the case of a willful violation, the government entity shall be liable to² exemplary damages.” Cattanach’s reading fails to give effect to all of the words of the statute. *See Schroedl*, 616 N.W.2d at 277 (“A statute should be interpreted, whenever possible, to give effect to all of its provisions . . .”). Moreover, the city’s interpretation allows for a reading of the statute as a whole. The statutory phrase that creates a cause of action for damages states that “a responsible authority or government entity which violates any provision of this chapter is liable to a person . . . who suffers any damage as a result of the violation, and the person damaged . . . may bring an action against the responsible authority or government entity to cover any damages sustained.” Minn. Stat. § 13.08, subd. 1. Subdivision 1 establishes liability “to a person . . . who suffers any damage” and creates a cause of action allowing “the person damaged” to bring a claim. But if no showing of actual damages is necessary to seek exemplary damages for a willful violation, a cause of action should exist under the statute not only for a “person damaged” but for *any* person

² I observe here that it is likely that the legislature intended this provision to say: “In the case of a willful violation, the government entity shall, in addition, be liable *for* exemplary damages,” rather than “*to* exemplary damages.” I infer this from the structure of the two sentences in the subdivision. The first sentence says the responsible authority or government entity is liable *to* a person who suffers any damages—the “whom”—and must pay *damages sustained*—the “what.” The second sentence, which is the focus of our analysis here, leaves off the “whom” and says the government entity shall “be liable *to* exemplary damages,” which are the “what” and thus results in the unusual phrasing.

who can successfully establish a willful violation. And, based on the first sentence, that is not the case. *See Adams v. Harpstead*, 947 N.W.2d 838, 842 (Minn. App. 2020) (“Proof of damages is an essential element of a claim for compensatory relief under the MGDPA.”), *rev. denied* (Minn. Sept. 29, 2020). In addition, nothing in the second sentence alters *to whom* the government entity is liable or explicitly creates another cause of action.

Second, I disagree with the majority’s reliance on a dictionary definition to establish ambiguity. The majority cites a dictionary definition of “in addition” to mean “besides” or “also” and concludes that this plain meaning does not resolve the question presented because the phrase could refer to either an additional type of liability or additional damages. This ignores the initial clause of the sentence, however, that specifies that exemplary damages are reserved for “willful violations”—violations that go beyond non-willful violations in some material way. Because a willful violation is logically a more egregious violation than a non-willful violation, the second sentence of subdivision 1 of section 13.08 allows a district court to award damages that go beyond those already listed in the first sentence—beyond “damages sustained, plus costs and reasonable attorney fees.” This indicates that the only reasonable reading of the language, “In the case of a willful violation, the government entity shall, in addition, be liable” for exemplary damages is that these are damages “besides” those identified in the first sentence. Thus, an individual who is able to establish those actual damages identified in the first sentence is “also” able to claim exemplary damages when the violation is willful in nature. It is not reasonable to read “in addition” to mean “a different kind of liability” that is independent of actual damages.

Ultimately, the majority reaches for post-ambiguity canons of construction to rely on the purpose of the MGDPA to conclude that exemplary damages may be awarded independent of actual damages. And while I agree that the heart of the act is to ensure that all government data is public unless limited by statute, *Demers v. City of Minneapolis*, 468 N.W.2d 71, 73 (Minn. 1991), I am not persuaded that the legislature’s intention in enacting the MGDPA led it to provide for exemplary damages in the absence of actual damages, particularly given that the statute provides for other remedies in other parts of the MGDPA when the act is violated.

Indeed, the MGDPA provides a separate remedy to those simply seeking to enforce compliance—they can move to compel compliance pursuant to Minnesota Statutes section 13.08, subdivision 4 (2024), which provides a civil penalty for failure to comply. This alternative relief mechanism more squarely fits Cattnach’s scenario, enabling a party to enforce compliance in the absence of actual damages and allowing the district court to impose penalties for compliance failures. In my view, the language of section 13.08, subdivision 1, that provides an action for damages for a person “who suffers any damage as a result of the violation” more appropriately applies to someone who suffers actual harm from a violation such as an unlawful disclosure of private data that results in actual damages. *See Navarre v. S. Washington Cnty. Schs.*, 652 N.W.2d 9, 30 (Minn. 2002) (concluding that emotional-distress damages are recoverable under the MGDPA).

I also reject the argument that other sections of the MGDPA support a determination that subdivision 1 is ambiguous, such as the use of the phrase “compensatory or exemplary damage” elsewhere in the MGDPA, because those instances are not inconsistent with my

interpretation of section 13.08, subdivision 1. The phrase “compensatory or exemplary” in those sections pertains to exclusions from liability and enumerates to what forms of liability the exclusion extends. For example, Minnesota Statutes section 13.085, subdivision 5(f) (2024), states that “[a] government entity or person that acts in conformity with an order issued under this section to the government entity or to any other person is not liable for compensatory or exemplary damage or awards of attorney fees for acting in conformity with that order in actions under this section or section 13.08” It is not inconsistent with my reading of section 13.08, subdivision 1, for the legislature to specify that such exclusions apply to exemplary damages, even if a showing of actual damages is a prerequisite for an award of exemplary damages. The legislature made it explicit that, in situations when a person brings a cause of action that indisputably states a claim for both compensatory damages and exemplary damages for a willful violation but is precluded from recovery by only a statutory exclusion, the exclusion extends to exemplary damages. For the same reason, the use of the disjunctive “or” in the phrase “compensatory or exemplary damage,” when used in the other instances in the MGDPA that the majority cites, also does not persuade me that there are two separate forms of liability. I thus conclude that section 13.08, subdivision 1, unambiguously does not provide for exemplary damages absent a showing of actual damages and the district court erred when it determined otherwise.

In sum, reading the multiple parts of the statute together, *see Henke*, 831 N.W.2d at 537, subdivision 1 is unambiguous that establishing actual damages is a prerequisite for an award of exemplary damages. Having determined that section 13.08, subdivision 1, of the

MGDPA does not provide for exemplary damages independent of an award of actual damages, and because I agree that Cattnach failed to establish any other form of damages that would allow his exemplary-damages claim to survive, I would reverse the district court's grant of summary judgment in favor of Cattnach and remand the preservation-notice issue.