

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Civil, Other

Historic Summit Avenue, d/b/a Save Our Street,

Plaintiff,

vs.

City of St. Paul, Minnesota,

Defendant.

Court File No.: 62-CV-25-9036

Judge: Stephen L. Smith

**REPLY MEMORANDUM IN
SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY
INJUNCTION**

INTRODUCTION

The City of St. Paul's ("City") response opposing Historic Summit Avenue d/b/a Save Our Street's ("SOS") Motion for a Temporary Injunction ("Motion") may have done more to show that the City's responses to SOS's data requests are deficient than all SOS's filings to this point. This is because the City concedes for this first time how it manipulated criteria for prioritizing Common Cent projects for political expediency and disclosed that the City's searches failed to encompass critical city departments. The City concedes it only searched for data related to the technical scoring criteria, omitting data related to the qualitative criteria it acknowledges drove the final prioritizing. The City also concedes that its search of documents for SOS's first 22 requests searched only for documents maintained by the Parks and Recreation, and Public Works departments. No searches were made of documents held by the Mayor's Office, City Council, or Office of Financial Services.

Failing to search for documents held by these City departments alone justifies a temporary injunction. But the compelling evidence of the City’s ongoing violations does not stop there: SOS recently received responses to data requests from the City’s consultant, Stantec Consulting Services, Inc. (“Consultant”), regarding the prioritization of Summit Avenue.¹ Although SOS’s review of these documents is ongoing, SOS’s initial review confirms that the City failed to produce data responsive to SOS’s data requests. Because the City’s responses to the data requests was demonstratively deficient, the Court should grant the Motion.

I. SOS SEEKS INFORMATION REGARDING THE RE-PRIORITIZATION OF SUMMIT AVENUE.

SOS seeks data that must exist based on the documents the City has produced and public information available. The City produced a spreadsheet first created in June 2024, containing the original scoring of 52 segments of Common Cent projects. Decl. Brian B. Bell Supp. Reply Mem. Supp. SOS’s Mot. Temp. Injun. (“Bell Decl.”), Ex. A. In December 2024, the City’s Capital Improvement Board approved the 2025 Five Year Capital Plan (“Five-Year Plan”), which includes just 13 Common Cent projects to be completed through 2029. Bell Decl., Ex. B. What is striking about these two lists is how little the Five-Year Plan prioritization resembles the City’s initial prioritization. Only seven of the projects in the top 20 of the initial list are on the Five-Year Plan. Summit Avenue between Mississippi Boulevard and Fairview Avenue and Farview Avenue to Hamline

¹ The Consultant was required to respond to data requests under the Minnesota Government Data Practices Act’s (MGDPA) privatization provisions. Minn. Stat. § 13.05, subd. 11(a).

were not even in the top half of projects (28th and 31st, respectively) in the original list. Yet both segments made the list of just 13 Common Cent projects on the Five-Year Plan. Although SOS has grave concerns about this behind-the-scenes reprioritization of projects, that is not at issue in this case. What is at issue is the City's continued refusal to disclose the data created that would disclose how and why the City abandoned its original list of prioritized projects—plainly based on objective, verifiable and transparent criteria—to an entirely different sequencing of projects via a process lacking any of those safeguards. It is inconceivable that such a dramatic shift in the City's priorities could occur without data purporting to justify the changes, based not the least on the City's own concessions in its filings with this Court.

II. THE CITY SHOULD BE REQUIRED TO PRODUCE THE QUALITATIVE DATA USED TO REPRIORITIZE THE PROJECTS.

The City should be required to produce *all* the data it used to move Summit Avenue up the priority list, not just its self-selected “technical” scoring. This apparently qualitative data² certainly was within the scope of data requested in Request Nos. 4 and 23, which the City apparently unilaterally, and without any disclosure to Plaintiff, eliminated from inclusion in any of their searches.

Request No. 4 seeks “all data, including analysis, communications (including text messages) regarding any evaluation or assessment of determining which portions of

² In its response, the City claims that, “[i]n addition to the technical scores, the City also considers existing capital improvement projects proposed in the City's Construction Schedule, any available coordination with other agencies to align similar projects or avoid detrimental overlap, and geographic considerations including the proximity of different projects.” Def.'s Mem. Law in Opp'n to Pl.'s Mot. Temp. Injunc. (“City's Br.”) 2-4.

[Summit Avenue Regional Trail (“SART”)]³ will be prioritized for construction.” Verified Compl., Ex. A. Nothing in that request supports any inference that these evaluations or assessments should or could be distinguished between quantitative and qualitative analyses, and the City offers no support for its rewriting of SOS’s request to exclude the latter.

Similarly, Request No. 23 seeks “[a]ll data, including *studies*, *analysis*, computations, scoring, and *communications* relating to, recommending, or discussing the City of St. Paul’s proposal to allocate \$3.57 million dollars” for SART. *Id.* Again, this request makes no distinction between quantitative and qualitative analysis. The City attempts to avoid having to produce the latter category by suggesting that any data other than quantitative data was “not recorded or stored anywhere but in public employees’ minds.” City’s Br. at 13. This sleight of hand is disingenuous, at best, and dishonest, at worst. Apparently, the City is asking this Court to accept the fiction that the wholesale changing of the prioritization of hundreds of millions of dollars of public expenditures from the initial ranking in Bell Decl., Ex. A, to the final ranking in Bell Decl., Ex. B., occurred only in the minds of the Director and his staff at Public Works. The notion that no data whatsoever exists regarding how these projects were reprioritized—including especially internal communications after the initial quantitative scoring—would be fanciful in the

³ The City has stated repeatedly that SART would only be constructed as part of the complete reconstruction of Summit Avenue. Consequently, the prioritization of SART is inextricably linked with prioritization of Summit Avenue itself, and no amount of parsing of SOS’s requests can lead to any other conclusion.

extreme, and the City surely knows that, so it attempts to gloss over this incongruity by asking this Court to focus strictly on its rewording of Plaintiff's Request to include only the small subset of quantitative data, and thereby exclude from production all other data relating to the reprioritizing of projects.

The City should be directed to provide not just quantitative data but *all* data responsive to these requests.

III. THE CITY SHOULD BE ORDERED TO COLLECT DATA FROM ALL RELEVANT CITY DEPARTMENTS.

The Court should direct the City to respond to Request No. 4 with data from the Mayor's Office, City Council, Office of Financial Services, Department of Safety and Inspections, and Fire Department. Chief of Staff Peter Leggett's Declaration states that for Request Nos. 1-22, the City only searched for documents maintained by the Public Works, and Parks and Recreation departments. Decl. Peter Leggett in Supp. the City's Opp'n to Pl's Mot. Temp. Injunc. ("Leggett Decl.") ¶ 16. The City did not search for documents held by the Mayor's Office, City Council, Office of Financial Services, Department of Safety and Inspections, or Fire Department. *See id.*

All of these departments are likely to have responsive information, which the City tacitly acknowledges when it searched for documents from these departments in response to the narrower document Request No. 23. Leggett Decl. ¶ 23. Moreover, SOS's instructions to the data requests included in the City's online data-request portal stated, "Although all of the data requests submitted today on behalf of [SOS] select the Office of the Mayor as the Department, ALL requests submitted today are intended to request all

data possessed by the City of St Paul, regardless of the Department.” Bell Decl., Ex. C. This City ignored this instruction when it limited its search to the Public Works, and Parks and Recreation departments. The City did not even include the department SOS selected in the City’s portal, the Mayor’s Office.

The Mayor’s Office, City Council, and Office of Financial Services are especially likely to have documents responsive to Request No. 4. Prioritization of Common Cent projects, in general, and SART, in particular, is highly controversial and has been at the center of electoral politics, making it an important topic for both the Mayor and City Council. Josie Albertson-Grove, “Summit Avenue Bike Lane Feud Runs Through St. Paul Mayoral Race,” *The Minnesota Star Tribune* (Oct. 23, 2025) available at <https://www.startribune.com/summit-avenue-bike-lane-st-paul-mayors-race-2025/601488238> (“The fate of a proposed bicycle lane on Summit Avenue has been one of the hottest issues in St. Paul’s mayoral election . . .”). The Department of Financial Services should also have responsive data. The City cannot credibly argue that financial information was not part of both the technical scoring criteria and the qualitative criteria. The Office of Financial Services is the custodian of this information. The City should be directed to search for data in response to Request No. 4 in the same departments the City searched for data responsive to Request No. 23.

IV. DOCUMENTS FROM THE CITY’S CONSULTANT DEMONSTRATE THE CITY FAILED TO PRODUCE ALL RESPONSIVE DOCUMENTS.

Contrary to the City’s contentions, it is not mere speculation that additional documents exist. Documents received from the City’s Consultant provide concrete support

that the City failed to produce data responsive to SOS's data requests. On October 27, 2025,⁴ SOS requested documents from the City's Common Cent Consultant using nearly identical language to Request Nos. 4 and 23. Bell Decl., Ex. D. Within three days, the Consultant produced data prepared for the City and communications with the City regarding the prioritization of Common Cent projects not previously disclosed by the City after eight months of ostensibly diligent searching..

These documents include talking points created by the Consultant to explain why certain projects were prioritized. Bell Decl. Ex. E. With respect to Summit Avenue, the talking points explain the corridor was prioritized because "[s]ections of the corridor (especially [Mississippi River Boulevard] to Lexington) begin with a high priority due to the existing Regional Trail study." *Id.* The "Regional Trail study" referred to here apparently refers to an earlier version of the project that has become SART. This document is plainly relevant to why Summit Avenue was prioritized and is thus responsive to Request Nos. 4 and 23. Yet SOS has been unable to find it in the City's productions.⁵ The City should have possession of this document as it was sent to three individual employees of the City. *Id.*

⁴ SOS could not request these documents before this time because the Consultant was only required to produce this information if not available from the City. Minn. Stat. § 13.05, subd. 11(b) ("This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity").

⁵ SOS has not had time to review whether this document is included in documents produced by the City on October 31, 2025, *the day of this filing*. The City will be prepared to address this late production at the hearing on November 3, 2025.

The failure to produce these talking points is not some mere “gotcha again” by SOS. It matters to the public and is the focus of significant public interest. The Common Cent initiative was not sold to St. Paul residents to advance bicycle facilities. It was presented, very explicitly, as necessary to repair St. Paul’s streets and bridges and address a \$100 million backlog of deferred maintenance in the City’s Parks. City of St. Paul, 2023 Sales Tax Proposal, <https://www.stpaul.gov/sales-tax-2023>. The City’s reluctance to look for data that would disclose its duplicity in selling the sales tax for critical infrastructure, and then diverting the proceeds to pet projects should not be enabled further by this Court.

V. SOS WOULD BE IRREPARABLY HARMED BY FAILING TO GRANT A TEMPORARY INJUNCTION.

The City strains to argue that SOS would not be harmed by a further delay in receiving responses to the data requests and that SOS can be compensated for any harm in money damages. Federal case law under the Freedom of Information Act (“FOIA”) is most instructive to this question. *See Nw. Publ’ns, Inc. v. Bloomington*, 499 N.W.2d 509, 511 (Minn. Ct. App. 1993) (relying on federal cases interpreting FOIA to interpret the MGDPA). To determine whether to grant preliminary injunctive relief expediting responses to FOIA requests, courts evaluate whether a request concerns a matter of current public concern and whether delay would compromise a recognized interest. *See generally Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001). Here, both factors are met. The manipulation of the criteria for Summit Avenue in order to expedite the construction of SART so that it becomes a “done deal” and preempt further public dialogue is a “hot issue” in the upcoming municipal elections. *See, supra*, Albertson-Grove. Moreover, delay would

compromise the recognized interest of informing the public regarding matters of public concern. *See, e.g., Brennan Ctr. for Just. at NYU Sch. of L. v. Dep't of Com.*, 498 F. Supp. 3d 87, 99 (D.D.C. 2020). Regardless of the election results, the public discourse will continue until the City becomes transparent in its motives and maneuverings, unless the City's strategy of wearing out dissenting voices until they just give up is allowed to succeed. Essential to the process is the timely disclosure of critically important data to the public. Public trust should be sought, not slighted.

The City's contract with the Consultant recognizes the importance of building public trust in the prioritization of Common Cent projects. The contract provides:

The outcome of the project will be development of final documents that *will inspire confidence* in Saint Paul residents that the City has created a thoughtful and comprehensive plan for *responsible stewardship of Common Cent funds*.

Bell Decl. Ex. F (emphasis added).

The City's lack of transparency in how it has prioritized projects has done nothing to inspire confidence, and its refusal to produce documents has only exacerbated the concerns. The only way to begin to remedy the damage to public trust is to force the City to disclose the data that tells the complete story of how it manipulated the process to elevate Summit Avenue from off the list to the top of the list.

CONCLUSION

For the reasons discussed above and in SOS's initial brief, the Court should grant SOS's Motion for a Temporary Injunction.

Dated: October 31, 2025

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

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