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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1068

02/19/2015 Authored by Drazkowski, Lesch, Newberger, Scott and Lucero
The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to county attorneys; modifying standards related to issuance of
1.3 administrative subpoenas; requiring disclosure; amending Minnesota Statutes
1.4 2014, section 388.23, subdivisions 1, 2, 4, 6, by adding subdivisions.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2014, section 388.23, subdivision 1, is amended to read:

1.7 Subdivision 1. **Authority.** The county attorney, or any deputy or assistant county
1.8 attorney whom the county attorney authorizes in writing, has the authority to subpoena and
1.9 require the production of any records of telephone companies, cellular phone companies,
1.10 paging companies, subscribers of private computer networks including Internet service
1.11 providers or computer bulletin board systems, electric companies, gas companies, water
1.12 utilities, chemical suppliers, hotels and motels, pawn shops, airlines, buses, taxis, and
1.13 other entities engaged in the business of transporting people, and freight companies,
1.14 warehousing companies, self-service storage facilities, package delivery companies, and
1.15 other entities engaged in the businesses of transport, storage, or delivery, and records of the
1.16 existence of safe deposit box account numbers and customer savings and checking account
1.17 numbers maintained by financial institutions and safe deposit companies, insurance
1.18 records relating to the monetary payment or settlement of claims, the banking, credit
1.19 card, and financial records of a subject of an identity theft investigation or a vulnerable
1.20 adult, whether held in the name of the vulnerable adult or a third party, including but not
1.21 limited to safe deposit, loan and account applications and agreements, signature cards,
1.22 statements, checks, transfers, account authorizations, safe deposit access records and
1.23 documentation of fraud, and wage and employment records of an applicant or recipient of
1.24 public assistance who is the subject of a welfare fraud investigation relating to eligibility

2.1 information for public assistance programs. Subpoenas may only be issued for records
 2.2 that are relevant to an ongoing legitimate law enforcement investigation. ~~Administrative~~
 2.3 ~~subpoenas may only be issued in welfare fraud and identity theft cases,~~ if there is probable
 2.4 cause to believe a crime has been committed. This provision applies only to the records of
 2.5 business entities and does not extend to private individuals or their dwellings.

2.6 Sec. 2. Minnesota Statutes 2014, section 388.23, subdivision 2, is amended to read:

2.7 Subd. 2. **Enforcement; disclosure to subject.** (a) The subpoena shall be filed with
 2.8 the court administrator and is enforceable through the district court. Notwithstanding any
 2.9 data classification to the contrary, a copy of the subpoena shall be provided to any party
 2.10 whose records or documents the subpoena seeks to obtain.

2.11 (b) If the contents of a subpoena are temporarily withheld under subdivision 7, a
 2.12 notice that a subpoena has been issued, and the names of any parties identified in the
 2.13 subpoena, must be filed with the court administrator and provided to the subject of the
 2.14 records or documents that the subpoena seeks to obtain. Upon expiration of the temporary
 2.15 withholding period ordered by the court, a full copy of the subpoena must be filed and
 2.16 provided as required by paragraph (a).

2.17 Sec. 3. Minnesota Statutes 2014, section 388.23, subdivision 4, is amended to read:

2.18 Subd. 4. **Disclosure ~~prohibited~~ permitted.** The subpoena must state that the person
 2.19 to whom the subpoena is directed may ~~not~~ disclose the fact that the subpoena was issued or
 2.20 the fact that the requested records have been given to law enforcement personnel except:

2.21 (1) ~~insofar as the disclosure is necessary to find and disclose the records; or~~

2.22 (2) pursuant to court order.

2.23 Sec. 4. Minnesota Statutes 2014, section 388.23, subdivision 6, is amended to read:

2.24 Subd. 6. **Ex parte order.** Upon the ex parte request of the attorney issuing the
 2.25 subpoena, the district court may issue an order directing the production of the records. ~~It is~~
 2.26 ~~not necessary for either the request or the order to~~ The request and order shall be filed with
 2.27 the court administrator. Failure to comply with the court order subjects the person who
 2.28 fails to comply to civil or criminal contempt of court, or both.

2.29 Sec. 5. Minnesota Statutes 2014, section 388.23, is amended by adding a subdivision
 2.30 to read:

3.1 Subd. 7. **Temporary withholding of subpoena contents.** (a) Upon application of
3.2 the county attorney, the contents of a subpoena may be temporarily withheld, by court
3.3 order, from disclosure and filing as required by subdivision 2 if the judge finds that:

3.4 (1) the inquiry being conducted is within the lawful jurisdiction of the county
3.5 attorney seeking the subpoena;

3.6 (2) there is reason to believe that the records being sought are relevant to a legitimate
3.7 inquiry; and

3.8 (3) there is reason to believe that the filing or disclosure will result in:

3.9 (i) endangering the life or physical safety of any person;

3.10 (ii) flight from prosecution;

3.11 (iii) destruction or tampering with evidence;

3.12 (iv) intimidation of potential witnesses; or

3.13 (v) otherwise seriously jeopardizing or unduly delaying the inquiry.

3.14 An application to withhold the contents of a subpoena must be made with reasonable
3.15 specificity. The existence of a subpoena, and the name of any party whose records or
3.16 documents the subpoena seeks to obtain, may not be withheld under this subdivision.

3.17 (b) If the court makes the findings required in paragraph (a), it shall enter an order
3.18 withholding the subpoena contents for a period not to exceed 180 days, and an order
3.19 prohibiting any appropriate party from disclosing the nature of the records being sought or
3.20 obtained. If the court finds that there is reason to believe that the notice may endanger the
3.21 life or physical safety of any person, the court may specify that contents of the subpoena
3.22 may be withheld indefinitely.

3.23 (c) This subdivision does not apply to public disclosures required by subdivision 8.

3.24 Sec. 6. Minnesota Statutes 2014, section 388.23, is amended by adding a subdivision
3.25 to read:

3.26 Subd. 8. **Disclosure of subpoena activity.** Notwithstanding any law to the contrary,
3.27 the total number of administrative subpoenas issued in a calendar year, and detailed
3.28 information on each subpoena, including the nature of the subpoena and any data or
3.29 evidence supporting its issuance, shall be public at all times.

3.30 Sec. 7. **EFFECTIVE DATE.**

3.31 Sections 1 to 6 are effective the day following final enactment and apply to
3.32 subpoenas issued on or after that date.