

626A.29 BACKUP PRESERVATION.

Subdivision 1. **Backup copy.** (a) A governmental entity acting under section 626A.28, subdivision 2, paragraph (b), may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of the subpoena or court order, the service provider shall create a backup copy, as soon as practicable, consistent with its regular business practices and shall confirm to the governmental entity that the backup copy has been made. The backup copy must be created within two business days after receipt by the service provider of the subpoena or court order.

(b) Notice to the subscriber or customer must be made by the governmental entity within three days after receipt of the confirmation, unless notice is delayed under section 626A.30, subdivision 1.

(c) The service provider must not destroy a backup copy until the later of:

(1) the delivery of the information; or

(2) the resolution of any proceedings, including appeals of any proceeding, concerning the subpoena or court order.

(d) The service provider shall release the backup copy to the requesting governmental entity no sooner than 14 days after the governmental entity's notice to the subscriber or customer if the service provider:

(1) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

(2) has not initiated proceedings to challenge the request of the governmental entity.

(e) A governmental entity may seek to require the creation of a backup copy under paragraph (a) if in its sole discretion the entity determines that there is reason to believe that notification under section 626A.28 of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

Subd. 2. **Customer challenges.** (a) Within 14 days after notice by the governmental entity to the subscriber or customer under subdivision 1, paragraph (b), the subscriber or customer may file a motion to quash the subpoena or vacate the court order, with copies served upon the governmental entity and with written notice of the challenge to the service provider. A motion to vacate a court order must be filed in the court which issued the order. A motion to quash a subpoena must be filed in the district court of the county in which the governmental entity issuing the subpoena is located. The motion or application must contain an affidavit or sworn statement:

(1) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for the applicant have been sought; and

(2) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

(b) Service must be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department

specified in the notice which the customer has received under sections 626A.26 to 626A.34. For the purposes of this section, the term "delivery" means handing it to the person specified in the notice or handing it to the person in charge of the office or department specified in the notice or the designee of the person in charge.

(c) If the court finds that the customer has complied with paragraphs (a) and (b), the court shall order the governmental entity to file a sworn response. The response may be filed in camera if the governmental entity includes in its response the reasons that make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct additional proceedings as it considers appropriate. Proceedings must be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

(d) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order the process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of sections 626A.26 to 626A.34, it shall order the process quashed.

(e) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

History: 1986 c 444; 1988 c 577 s 50,62; 1989 c 336 art 2 s 8