

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

vs.

J. Alexander Kueng,
Defendant.MEMORANDUM IN SUPPORT
OF MOTION TO QUASH
SUBPOENA

File No. 27-CR-20-12953

FACTS

On March 14, 2022, Defendant served two subpoenas on the City of Minneapolis. One was for the production of incident detail reports for the following police reports:

Date	Officers	Report #
12/18/19	Ketchmark & Kueng	2019-370663
1/9/20	Woods & Kueng	2020-7908
1/10/20	Woods & Kueng	2020-8133
1/14/20	Woods & Kueng	2020-11416
1/15/20	Woods & Kueng	2020-12210
2/4/20	Nerling & Kueng	2020-31596
2/4/20	Nerling & Kueng	2020-31784
2/15/20	Cape & Kueng	2020-41488
2/24/20	Cape & Keung	2020-49510
2/24/20	Cape & Kueng	2020-50219
3/1/20	Cape & Keung	2020-55010
3/7/20	Chauvin & Kueng	2020-61871
3/8/20	Chauvin & Kueng	2020-62907
3/10/20	Jensen (Allen) & Kueng	2020-64759
3/10/20	Jensen (Allen) & Kueng	2020-65093
3/11/20	Chauvin & Kueng	2020-65958
3/13/20	Chauvin & Kueng	2020-68012
3/13/20	Chauvin & Kueng	2020-68063
3/17/20	Chauvin & Kueng	2020-71901
3/17/20	Chauvin & Kueng	2020-71838
3/20/20	Chauvin & Kueng	2020-74589
3/24/20	Chauvin & Kueng	2020-78199
3/28/20	Chauvin & Kueng	2020-81866
3/29/20	Chauvin & Kueng	2020-82525
3/29/20	Chauvin & Kueng	2020-82674
3/30/20	Chauvin & Kueng	2020-83402
4/5/20	Chauvin & Kueng	2020-89319
4/6/20	Chauvin & Kueng	2020-90422
4/15/20	Chauvin & Kueng	2020-98907
4/16/20	Chauvin & Kueng	2020-99254
4/27/20	Chauvin & Kueng	2020-110815
4/27/20	Chauvin & Kueng	2020-111043
4/28/20	Chauvin & Kueng	2020-112199
4/27/20	Chauvin & Kueng	2020-110269

5/5/20	Chauvin & Kueng	2020-119490
5/8/20	Chauvin & Kueng	2020-122697
5/16/20	Blair & Kueng	2020-131219
5/17/20	Chauvin & Kueng	2020-131607
5/18/20	Chauvin & Kueng	2020-131874
5/22/20	Chauvin & Kueng	2020-137240
5/22/20	Chauvin & Kueng	2020-137496

The second subpoena requesting the following data:

“All the Minneapolis Police Department field training records including ROPES (Recruit Officer Performance Evaluations) for Inspector Katie Blackwell who started with MPD in 1999 and was officially hired in 2000. At the time Inspector Blackwell was hired she may have had a different last name.”

With regard to the second subpoena, the City is gathering the field training records for Inspector Katie Blackwell. Typically, these records are primarily private personnel data under Minnesota Statutes, Section 13.43. Field training records including frequent performance reviews and coaching of new recruits. Performance reviews and coaching are not public under Minnesota Statutes, Section 13.43, subd. 2, and are therefore private personnel data. *See* Minn. Stat. sec. 13.43, subd. 4 (2021).

Data requested in the first subpoena, the incident detail reports, may be protected in part, under the following protections:

- Driver’s License information and license plate numbers are not public. See 18 U.S.C. §§ 2721 and 2725.
- Data related to an active criminal investigation is confidential or protected nonpublic while the investigation is active, except for the data defined in Minn. Stat. § 13.82, subdivisions 2, 3 and 6. See Minn. Stat. § 13.82, subd. 7. An investigation is active until the occurrence of any of the following events:

- (1) A decision by the law enforcement agency or appropriate prosecutorial authority not to pursue the case;
- (2) Expiration of the time to bring a charge or file a complaint under the applicable statute of limitation, or 30 years after the commission of the offense, whichever comes earliest; or
- (3) Exhaustion of or expiration of all rights of appeal by a person convicted on the basis of the investigative data.

See Minn. Stat. § 13.82, subd. 7.

The City of Minneapolis moves to quash Defendant's subpoenas unless the Court makes a determination under Minn. Stat. § 13.03, subd. 6 that the private data can be released and considers whether a protective order should be fashioned and ordered. The City of Minneapolis is providing a Protective Order for the court to consider.

ARGUMENT

The City of Minneapolis is bound by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. Defendant has subpoenaed documents that likely include private personnel data under Minnesota Statutes, Section 13.43.

When there is a request for discovery of government data that is not public, the court must consider the requirements of Minn. Stat. § 13.03, subd. 6. See State v. Lynch, 392 N.W.2d 700, 705-06 (Minn. Ct. App. 1986) (holding trial court must follow the procedure under the Data Practices Act, Minn. Stat. § 13.03, subd. 6, when police department internal affairs division files are subpoenaed). Minn. Stat. § 13.03, subd. 6 provides as follows:

Subd. 6. Discoverability of not public data. If a government entity opposes discovery of government data or release of data pursuant to court order on the

grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer, arbitrator, or administrative law judge an action to compel discovery or an action in the nature of an action to compel discovery.

The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.

If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by the parties. If the data are a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse, the presiding officer shall consider the provisions of section 611A.90, subdivision 2, paragraph (b). If the data are data subject to the protections under chapter 5B or section 13.045, the presiding officer shall consider the provisions of section 5B.11.

Section 13.03, subd. 6 provides direction to the Court as follows:

1. The Court must first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.
2. If the data are discoverable, the Court shall decide whether the benefit to the Defendants outweighs any harm to the confidentiality interests of the City of Minneapolis, or any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data.
3. The Court shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given.

4. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by the parties.

If the court, after an *in camera* review, allows any Defendant to access the private data, the City of Minneapolis requests that the court issue a protective order.

CONCLUSION

The Court must consider the requirements and direction of Minnesota Statutes, Section 13.03, subd. 6. If the Court determines that the private data can be released to any of the Defendants, the City of Minneapolis requests that the Court issue a protective order as provided by the City of Minneapolis, or in another form, to protect the privacy issues involved.

Dated: March 28, 2022

James Rowader, Jr.
City Attorney
By

s/ Caroline M. Bachun
CAROLINE M. BACHUN (024370x)
Assistant Minneapolis City Attorney
210 City Hall, 350 S. 5th St.
Minneapolis, MN 55415
(612) 673-2754
Attorney for City of Minneapolis

ACKNOWLEDGMENT OF POSSIBLE SANCTIONS UNDER MINN. STAT. § 549.211

The undersigned acknowledges that sanctions may be imposed under Minnesota Statutes, Section 549.211.

Dated: March 28, 2022

JAMES ROWADER, JR.
City Attorney
By

s/ Caroline M. Bachun
CAROLINE M. BACHUN (024370x)
Assistant Minneapolis City Attorney
210 City Hall, 350 S. 5th St.
Minneapolis, MN 55415
(612) 673-2754