

Standing Order on Disclosure of Portable Recording Systems Data Provided Pursuant to Discovery in Criminal and Juvenile Delinquency Cases

Whereas, police departments and other law enforcement agencies in Hennepin County may equip law enforcement officers with portable recording systems as defined in Minn. Stat. § 13.825, subd. 1; and

Whereas, Minn. Stat. §§ 13.82, subd. 7, and 13.825, subd. 2, classify data collected by a portable recording system, and not falling within certain narrow exceptions, as confidential, private or nonpublic data; and

Whereas, Minn. R. Cr. P. 9.01 and 9.04, and other applicable statutes and/or rules of court, may compel a prosecuting authority to disclose portable recording system data to a defendant, defendant's counsel, agents of defendant's counsel and potential prosecution or defense witnesses in a criminal proceeding, including a juvenile delinquency proceeding in Juvenile Court (collectively referred to as "Litigation Parties"; individually, a "Litigation Party"); and

Whereas, portable recording system data disclosed to the Litigation Parties may contain confidential, private or nonpublic data not otherwise accessible to those parties under the Minnesota Government Data Practices Act; and

Whereas, portable recording system data disclosed to the Litigation Parties may include unredacted material subject to redaction under the Minnesota Government Data Practices Act, including but not limited to, subjects other than peace officers who do not consent to release of the data, undercover peace officers, and material that is clearly offensive to common sensibilities; and

Whereas, Minn. R. Cr. P. 9.03, subd. 5 and Minn. R. Juv. Del. P. 10.06, subd. 5, permit courts to place restrictions and conditions upon materials disclosed pursuant to the rules of discovery;

Now, therefore, the Court enters the following:

ORDER

1. Unless otherwise expressly ordered by the presiding judge in an individual case, Litigation Parties may not disclose portable recording system data, in whole or in part, (the “data”) that has been obtained from a prosecuting authority pursuant to the rules of discovery, to any other person or entity who or which is not a Litigation Party, except under the circumstances outlined in numbered paragraph 2 of this Order.
2. Any Litigation Party in possession of such portable recording system data may request from the prosecuting authority that any such data be exempt from this Order. The prosecuting authority, upon review of the data, may agree in writing or on the record to exempt the data from this Order, in its original or a redacted form, if it has determined that the Litigation Party would be independently entitled to the data upon a request made pursuant to the Minnesota Government Data Practices Act. Upon that agreement, that data is exempt from this Order.
3. Nothing in this Order prevents a Litigation Party from independently obtaining portable recording system data upon a request made pursuant to the Minnesota Government Data Practices Act, and upon receipt, disclosing the data to any other person or entity who or which is not a Litigation Party.

4. When a prosecuting authority, in the course of discovery, or a Litigation Party provides a physical or electronic copy of portable recording system data to any Litigation Party, the party providing the data shall provide a copy of this Standing Order, or otherwise convey its restrictions on further disclosure to the recipient either verbally or in writing. This requirement does not apply to internal transfers of the data between Litigation Parties employed by a single agency or firm.
5. This Standing Order shall apply permanently with respect to portable recording system data obtained or produced in all criminal and juvenile delinquency court proceedings in the Fourth Judicial District, except as may be ordered by the presiding judge in an individual case.

BY THE COURT:

Dated: December 19, 2016

Ivy S. Bernhardson
Chief Judge of District Court