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STATE OF MINNESOTA
COUNTY OF RAMSEY

Senate Council

DISTRICT COURT
SECOND JUDICIAL DISTRICT

In Re; Grand Jury Subpoena
for Legislative Telephone
Records

ORDER
Court File No. N/A

*part of the "Phonagate"
controversy....*

The above-entitled matter came on for hearing before the Honorable Kathleen Gearin, Judge of District Court, on March 30, 1993 pursuant to a motion filed by the Minnesota House of Representatives, Representative Dee Long, and Representative Irv Anderson. The above parties moved the court for a protective order directing the House of Representatives and David Kienitz, Administrative Services Director, to comply with the Ramsey County Grand Jury Subpoena for 1991 and 1992 House telephone records. They also requested a court order providing that any of these records, not used in the prosecution of an indictment, retain their status as private data.

Upon receiving notice of these motions the Ramsey County Attorney's Office filed a motion requesting that the Court issue an order ruling that the House of Representatives phone records

from the collection of: Minnesota Legislative Reference Library

are public information.

WCCO-TV, the Star Tribune newspaper, and Northwest Publications, Inc. appeared at the hearing and made unopposed motions to intervene. They supported the County's motion to have the telephone records declared public.

The House of Representatives, Representative Long, and Representative Anderson were represented by Joel Michael, Legal Services Coordinator for the House. Assistant County Attorney James Koenen represented the Ramsey County Attorney's Office. John Borger represented WCCO-TV and Star Tribune. Paul R. Hannah represented Northwest Publications, Inc. (St Paul Pioneer Press).

On April 2, 1993 another hearing was held pursuant to a motion for clarification filed by Thomas L. Fabel on behalf of the House DFL Caucus. Mr. Fabel and Jennifer S. Ware replaced Mr. Michael at this hearing.

Upon all the records, files, and proceedings herein, the Court makes the following order:

1. The motion of the Minnesota House of Representatives, Representative Dee Long, and Representative Irv Anderson to direct the House of Representatives and David Kienitz, the Administrative Services Director of the House of Representative, to comply with the Grand Jury subpoena issued by the Ramsey County Attorney's Office is granted. All parties agree with this motion.
2. The motion of the Minnesota House of Representatives, Representative Long, and Representative Anderson, to have the telephone records subpoenaed by the Ramsey County Grand Jury retain

their status as private data is denied.

3. The motion of the Ramsey County Attorney's Office supported by intervenors WCCO television, the Star Tribune Newspaper company and the St. Paul Pioneer Press Newspaper to the the telephone records designated as public data is granted.

4. The Ramsey County Attorney's Office is ordered to immediately transport a copy of the phone records in it's possession to the House of Representatives Administrative Services Department. Upon receipt, they shall be immediately accessible to the public.

5. The attached memorandum is incorporated into and made a part of this order.

Dated:

4-7-92



Kathleen Gearin
Judge of District Court

MEMORANDUM

A number of things have influenced the Court's ruling in this case. One is the presumption that all data is public in the State of Minnesota unless declared otherwise by a specific statute. The Data Privacy Act talks about different classifications of data. It talks about public data, private data on individuals, confidential data, and investigative data.

The well-known history of Minnesota's lawmakers has been to make public all information that isn't going to be specifically hurtful to people or unnecessarily deprive specific individuals of rights of privacy. In support of that long tradition in our state, the Legislature has put forward this presumption of public data regarding information collected, maintained and retained by the State.

A second factor influencing this decision was the placement of the only statute that uses the words private data in connection with telephone records of the Legislature. That statute was passed in 1989 as part of an appropriations bill. This bill appropriates specific amounts to such things as game and fish, trunk highways, metro landfill contingency funds, etcetera.

The relevant sentence is located 16 pages into the 286 page uncodified portion of the omnibus appropriations bill for state departments. It states: "Notwithstanding any law to the contrary, legislators' telephone records are private data". This is the only sentence that refers to this information anywhere in Minnesota

statutes. The bill's two-page title contains no reference to private records, phone records, legislative records, or even data.

The sentence preceding this provision reads as follows: "The Commissioner shall study the feasibility of contracting for disaster recovery services from non-state sources." The sentence following the telephone phrase reads: "Subdivision IV, Property Management, \$7,823,000, \$7,826,000."

The Legislature threw a data privacy provision into the middle of an appropriations statute. This curious position and lack of inclusion in the title raise serious constitutional questions.

Pursuant to the County Attorney and media motions, the Court has reviewed the history of the Minnesota Supreme Court's interpretation of Article 4, Section 17, of the Minnesota Constitution. That part of our Constitution states that "No law shall embrace more than one subject which shall be expressed in its title." Our Supreme Court quite eloquently discusses this Article in a number of cases.

In 1891 the Justices ruled that the title requirement existed "to provide notice of the interest likely to be affected by the law in order to prevent surprise and fraud upon the people and the legislature so that provisions in a bill are not written in such a way that the title gives no suggestion of the nature of the proposed legislation". Johnson v. Harrison, 50 N.W. 923 (1891).

The reasons for the single subject requirement in the Constitution are discussed in State v. Cassidy, 22 Minn. 312 (1875), the Court said that "the well-known object of this section

of the Constitution, which declares that 'no law shall embrace more than one subject, which shall be expressed in its title,' was to secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits, by prohibiting the fraudulent insertion therein of matters wholly foreign, and in no way related to or connected with its subject..."

Justice Yetka strongly warned the Legislature in State Ex Rel Mattson v. Kiedrowski, 391 N.W.2d 777, as follows:

"We can certainly visualize, in modern life with the complexity of the legislation appearing before the legislature, the necessity of tax conference committees to consider many different revenue-making measures to balance the budget properly. We can visualize the same situation occurring in appropriations where last-minute measures may come up where it is necessary to amend the bill to provide for matters left unattended, but to add matters totally unrelated to either taxes or appropriations seems to me a clear violation of the constitution which this court should not tolerate. The worm that was merely vexatious in the 19th century has become a monster eating the constitution in the 20th."

In State v. Stallings, a Minnesota Supreme Court case issued in 1991, cited at 478 N.W.2d 491, the Supreme Court did not overturn a provision that fit into the garbage bill category. Part of the reason they didn't do so was because this statute was enacted prior to their recent warnings about the constitutional vulnerability of "garbage bills" in other decisions.

This Court believes that its March 30 comments regarding the 1989 statute's constitutionality are correct. This sentence does violate Article 4, s17 of the Minnesota State Constitution. This seemingly technical part of the Constitution has valid public

policy reasons to support it. The phone record provision's lack of inclusion in the title makes it unexpected, confusing, and constitutionally vulnerable. Given the long history of this Article's interpretation by the Supreme Court of this state, this Court cannot treat it lightly. The Legislature's actions this session may well make appeal of this decision moot. Retroactive repeal of the relevant sentence, however, will not save future "garbage bill" provisions from attack.

Representatives Long and Anderson are concerned that a ruling of unconstitutionality would throw other, unrelated provisions into doubt. They cite Blanch v. Suburban Hennepin Reg. Park D., 449 N.W.2d 150, in support of these fears. The law of severability and the narrow approach courts take to declarations of unconstitutionality should alleviate their fears. Other provisions of this bill are simply not before the Court. The other provisions are not voided by the ruling that this one provision is unconstitutional.

Minnesota law follows the rule of severability, as stated in Minn. Stat. §645.20:

"If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the Court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon the void provisions, that the Court cannot presume the Legislature would have enacted the remaining valid provisions without the void one; or unless the Court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent."

In Finnegan v. Burt, 225 Minn. 86, 90, 29 N.W.2d 655, 657 (1947), the Supreme Court invalidated one section of a broader statute as violating the single subject clause of the State

Constitution. The Court made the following statement regarding the rest of the statute:

"It does not follow that the act as a whole is void on that account. . . . Where a portion of a statute conflicts with the constitution, the question whether the other parts are also void must depend upon a consideration of the object of the law, and in what manner and to what extent the unconstitutional portion affects the remainder. The familiar rule on the subject is that, while a part of the statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the one without the other."

The relevant sentence in this case is clearly not connected to or dependent upon other provisions of the chapter.

In making this ruling, the Court does not mean to imply that the Legislature's concern with whether this is private data or public data has not been a legitimate concern. This Court has had to deal with constitutionality of statutes issues in the past. Good faith arguments can be made on either side.

It's important for the public to know that the documents attached to the pleadings submitted by the House of Representatives indicate an intent to cooperate fully with the Grand Jury investigation and to provide them with all the information they've requested, including the phone bills. They came to court with a good faith request to a separate branch of government to interpret a statute in light of the Minnesota laws and Constitution.

Now that this Court has declared those records to be public data, available upon request by anyone, it would be inimical to the

spirit of this decision to have the data turned over to the prosecutor become confidential during the course of the investigation. If the County Attorney's Office had indicated that there was a concrete conflict between the Court's order which says the public has a right to see these records and the public's right to have a thorough, professional, adequate investigation done, the right to have that investigation done would take precedence.

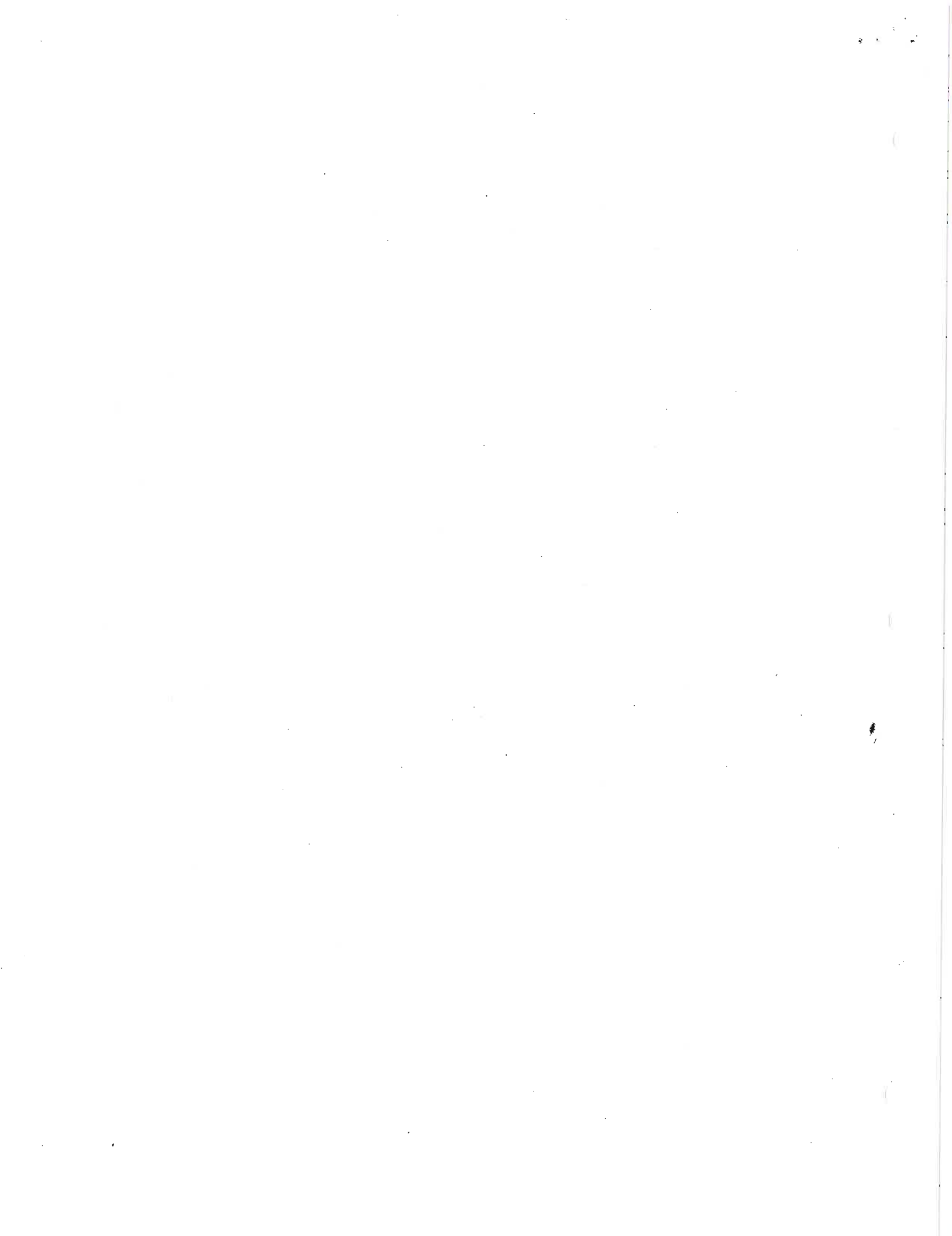
The County Attorney's Office has not opposed disclosure of these records. The Court's in camera examination of them pursuant to M.S. 13.82, Subd. 5, coupled with the lack of objection from the prosecutor's office, has convinced me that the benefits of releasing this data to the public outweighs any harm to the House, the individual legislators, or to other persons.

A copy of the records will be returned to the House immediately. They consist of thousands of pages on thin sheets. It will very likely take days to copy them. The House Administrative Services Department is urged to complete the actual physical release as quickly as possible.

The widespread public unrest and rampant rumors connected with these records cannot be ignored. Releasing them will not end this painful period of legislative history. It is hoped that this release will help legislators and their constituents to deal with phone bill issues openly and constructively. The convoluted procedural history of this case should come to an end.

K.G.





\$201,100 the first year and \$205,800 the second year must be subtracted from the amount that would otherwise be payable to local government aid under Minnesota Statutes, chapter 477A, in order to fund the local government records program and the intergovernmental information systems activity.

\$1,000,000 in contributed capital is transferred from the computer services fund to the telecommunications fund.

The commissioner shall study the feasibility of contracting for disaster recovery services from nonstate sources.

Notwithstanding any law to the contrary, legislators' telephone records are private data.

Subd. 4. Property Management
\$ 7,823,000 \$ 7,826,000

Summary by Fund

General	\$ 5,472,000	\$ 5,472,000
Special Revenue	\$ 2,351,000	\$ 2,354,000

\$175,000 the first year and \$175,000 the second year from the program's total appropriation are for capitol area repairs and replacements. Any unencumbered balance remaining in the first year does not cancel and is available for the second year.

\$3,582,000 the first year and \$3,582,000 the second year are for office space costs of the legislature and veterans organizations, for ceremonial space, and for statutorily free space.

The commissioner shall make provisions in the master plan of agency relocations for the relocation of the legislative auditor's office within the capitol complex according to the relocation requirements indicated by the legislative auditor.

