

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

T. M.,
Petitioner

**ORDER TO PRODUCE
INTOXILYZER SOURCE CODE**

v.

Commissioner of Public Safety,
Respondent

MNCIS No. 27-CV-08-30208

This matter is before the Court pursuant to the Petitioner's motion for an Order requiring the Commissioner to produce the Intoxilyzer source code.

FINDINGS

1. A motion was timely served and filed in accordance with Minn. General Rules of Practice, Rule 115.04. "[A]n analysis of the source code may reveal deficiencies that could challenge the reliability of the Intoxilyzer...." *State v. Underdahl*, ___ N.W.2d ___, 2009 WL 1150093, *8 (Minn. Apr. 30, 2009) (*Underdahl II*), *pet. for reh'g filed* (Minn. May 5, 2009). The information sought is reasonably calculated to lead to the discovery of admissible evidence. Petitioner has made the minimal showing required per *Underdahl II*.
2. The Commissioner has possession or control of the source code. *Id.*; *State v. Crane*, ___ N.W.2d ___, 2009 WL 1515264 (Minn.App. June 2, 2009). *See also Lund v. Commissioner of Public Safety*, ___ N.W.2d ___, 2009 WL 1587135 (unpublished, Minn.App. June 9, 2009).

ORDER

1. The Petitioner's motion to produce the Intoxilyzer source code is GRANTED.
2. The Commissioner shall produce a true and accurate copy of the source code for the Petitioner within 45 days from the date of this Order, subject to an appropriate protective order. Failure to produce the source code by that date may result in suppression of the Intoxilyzer test results.
3. The parties shall be available for a status conference by phone with the undersigned on August 17, 2009 at 9:30 A.M.

BY THE COURT:

Dated: _____

6-18-09

Thomas W. Syler

Judge of District Court