§ 1311-a. Subpoena duces tecum. 1. At any time before an action pursuant to this article is commenced, the claiming authority may, pursuant to the provisions of subdivision two of this section, apply without notice for the issuance of a subpoena duces tecum.

2. An application for a subpoena duces tecum pursuant to this section:

(a) shall be made in the judicial district in which the claiming authority may commence an action pursuant to this article, and shall be made in writing to a justice of the supreme court, or a judge of the county court; and

(b) shall be supported by an affidavit, and such other written documentation as may be submitted which: (i) sets forth the identity of the claiming authority and certifies that the applicant is authorized to make the application on the claiming authority's behalf; (ii) demonstrates reasonable grounds to believe that the execution of the subpoena would be reasonably likely to lead to information about the nature and location of any debt or property against which a forfeiture judgment may be enforced; (iii) states whether any other such subpoena or provisional remedy has been previously sought or obtained with respect to the subject matter of the subpoena or the matter to which it relates; (iv) contains a factual statement which sets forth the basis for the issuance of the subpoena, including a particular description of the nature of the information sought to be obtained; (v) states whether the issuance of the subpoena is sought without notice to any interested party; and (vi) where the application seeks the issuance of the subpoena without notice to any interested party, contains a statement setting forth the factual basis for the claiming authority's belief that providing notice of the application for the issuance of the subpoena may result in any property being destroyed, removed from the jurisdiction of the court, or otherwise being unavailable for forfeiture or to satisfy a money judgment that may be entered in the forfeiture action, and may interfere with law enforcement investigations or judicial proceedings.

3. An application made pursuant to this section may be granted, in the court's discretion, upon a determination that the application meets the requirements set forth in subdivision two of this section; provided, however, that no such subpoena may be issued or directed to an attorney

with regard to privileged records or documents or attorney work-product relating to a client. When a subpoena has been issued pursuant to this section, the claiming authority shall have the right to possession of the subpoenaed material. The possession shall be for a period of time, and on such reasonable terms and conditions, as the court may direct. The reasonableness of such possession, time, terms and conditions shall be determined with consideration for, among other things, (a) the good cause shown by the party issuing the subpoena or in whose behalf the subpoena is issued, (b) the rights and legitimate needs of the person subpoenaed and (c) the feasibility and appropriateness of making copies of the subpoenaed material. Where the application seeks a subpoena to compel the production of an original record or document, the court in its discretion may order the production of a certified transcript or certified copy thereof.

4. Upon a determination pursuant to subdivision three of this section that the subpoena should be granted, the court shall issue the subpoena, seal all papers relating thereto, and direct that the recipient shall not, except as otherwise ordered by the court, disclose the fact of issuance or the subject of the subpoena to any person or entity; provided, however, that the court may require that notice be given to any interested party prior to the issuance of the subpoena, or at any time thereafter, when: (a) an order granting a provisional remedy pursuant to this article with respect to the subject matter of the subpoena or the matter to which it relates has been served upon the defendant whose books and records are the subject matter of the subpoena, whether such books and records are in the possession of the defendant or a third party; or (b) the court determines that providing notice of the application (i) will not result in any property being destroyed, removed from the jurisdiction of the court, or otherwise being unavailable for forfeiture or to satisfy a money judgment that may be entered in the forfeiture action and (ii) will not interfere with law enforcement investigations or judicial proceedings. For purposes of this section, "interested party" means any person whom the court determines might have an interest in the property subject to the forfeiture action brought pursuant to this article.

5. Notwithstanding the provisions of subdivision four of this section, where a subpoena duces tecum has been issued pursuant to this section without notice to any interested party, the claiming authority shall serve written notice of the fact and date of the issuance of the subpoena duces tecum, and of the fact that information was obtained thereby, upon any interested party not later than ninety days after the date of compliance with such subpoena, or upon commencement of a forfeiture action, whichever occurs first; provided, however, where the action has not been commenced and upon a showing of good cause, service of the notice required herein may be postponed by order of the court for a reasonable period of time. The court, upon the filing of a motion by any interested party served with such notice, may, in its discretion, make available to such party or the party's counsel for inspection such portions of the information obtained pursuant to the subpoena as the court directs.

6. Nothing contained in this section shall be construed to diminish or impair any right of subpoena or discovery that may otherwise be provided for by law to the claiming authority or to a defendant in a forfeiture action.