

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN ORDER
PURSUANT TO 18 U.S.C. § 2705(b)
CONCERNING LEGAL PROCESS
DIRECTED AT [REDACTED] FOR
[REDACTED]

Case: 17-mc-02272

Filed Under Seal

APPLICATION OF THE UNITED STATES FOR ADDITIONAL
NONDISCLOSURE ORDER PURSUANT TO 18 U.S.C. § 2705(b)

The United States of America, moving by and through its undersigned counsel, respectfully submits under seal this *ex parte* application for an Order under 18 U.S.C. § 2705(b) directed at [REDACTED] an electronic communication and/or remote computing service provider located in [REDACTED]. The proposed Order would direct Google not to disclose the existence of legal process previously issued pursuant to 18 U.S.C. §§ 2703 and 2705(b) having tracking and subpoena number [REDACTED] (the “Legal Request”) for a period of one year or until further order of the Court.

JURISDICTION

1. This Court has jurisdiction to issue the requested order because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. Specifically, the Court is a “district court of the United States . . . that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i). As discussed more fully below, acts or omissions in furtherance of the offenses under investigation occurred within Washington., D.C. See 18 U.S.C. § 3237. Finally, the offenses under investigation are the subject of a grand jury investigation in the District of Columbia.

FACTUAL BACKGROUND

2. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3. In the ongoing effort to determine [REDACTED]
[REDACTED], the Government has served subpoenas, court orders, and/or
search warrants under 18 U.S.C. § 2703 upon various electronic communication and/or remote
computing service providers, including the Legal Request to [REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] prior to serving [REDACTED] the
Government obtained a corresponding nondisclosure order under 18 U.S.C. § 2705(b) for the
Legal Request. The nondisclosure orders will begin to expire on September 13, 2018.

LEGAL BACKGROUND

4. [REDACTED] provides an “electronic communications service,” as defined in 18 U.S.C.
§ 2510(15), and/or “remote computing service,” as defined in 18 U.S.C. § 2711(2). The Stored
Communications Act (“SCA”), 18 U.S.C. §§ 2701-2712, governs how [REDACTED] may be compelled

to supply communications and other records using a subpoena, court order, or search warrant. Specifically, Section 2703(c)(2) authorizes the Government to obtain certain basic “subscriber information” using a subpoena, Section 2703(d) allows the Government to obtain other “non-content” information using a court order, and Section 2703(a)-(b)(1)(A) allows the Government to obtain contents of communications using a search warrant. *See* 18 U.S.C. § 2703.

5. The SCA does not set forth any obligation for providers to notify subscribers about subpoenas, court orders, or search warrants under Section 2703. However, many have voluntarily adopted policies of notifying subscribers about such Legal Request. Accordingly, when necessary, Section 2705(b) of the SCA enables the Government to obtain a court order to preclude such notification. In relevant part, Section 2705(b) provides as follows:¹

(b) Preclusion of notice to subject of governmental access. — A governmental entity acting under section 2703 . . . may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

18 U.S.C. § 2705(b). The United States District Court for the District of Columbia has made clear that a nondisclosure order under Section 2705(b) must be issued once the Government makes the requisite showing about potential consequences of notification:

¹ Section 2705(b) contains additional requirements for legal process obtained pursuant to 18 U.S.C. § 2703(b)(1)(B), but the Government does not seek to use the proposed Order for any legal process under that provision.

The explicit terms of section 2705(b) make clear that if a courts [sic] finds that there is reason to believe that notifying the customer or subscriber of the court order or subpoena may lead to one of the deleterious outcomes listed under § 2705(b), the court must enter an order commanding a service provider to delay notice to a customer for a period of time that the court determines is appropriate. Once the government makes the required showing under § 2705(b), the court is required to issue the non-disclosure order.

In re Application for Order of Nondisclosure Pursuant to 18 U.S.C. § 2705(b) for Grand Jury Subpoena #GJ2014031422765, 41 F. Supp. 3d 1, 5 (D.D.C. 2014).

6. Accordingly, this application sets forth facts showing reasonable grounds to command [REDACTED] not to notify any other person (except attorneys for [REDACTED] for the purpose of receiving legal advice) of the existence of the Legal Request for a period of one year or until further order of the Court.

REQUEST FOR NON-DISCLOSURE

7. The Legal Request [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8. [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] should circumstances change such that court-ordered nondisclosure under Section 2705(b) becomes no longer needed, the Government will notify the Court and seek appropriate relief.

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, this Court should command [REDACTED] not to notify any other person (except attorneys for [REDACTED] for the purpose of receiving legal advice) of the existence of the Legal Request for a period of one year or until further order of the Court.

10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ACCORDINGLY, it is respectfully requested that the Court grant the attached Order directing that [REDACTED] shall not notify any other person (except attorneys for [REDACTED] for the purpose of receiving legal advice) of the existence of the Legal Request for one year (commencing on the date of the proposed Order) or until further order of the Court.

Respectfully submitted,

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D.C. Bar Number 472845

By:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]