

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC PRIVACY)
INFORMATION CENTER,)

Plaintiff,)

v.)

Civil Action No. 18-1814 (TNM)

UNITED STATES DEPARTMENT)
OF JUSTICE,)

Defendant.)
_____)

DECLARATION OF THOMAS R. PERRICONE

I, Thomas R. Perricone, declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Eastern District of Pennsylvania ("USAO-EDPA"). I have been an AUSA since 1994, and I am currently the Chief of our National Security and Cyber Crime Unit.
2. I have relied upon my personal knowledge and also consulted with qualified information technology personnel in the USAO-EDPA to make this declaration.
3. **No Tracking or Central Filing.** USAO-EDPA does not have a system in place to track or centrally file such orders in either paper or electronic form. Each AUSA is responsible for managing their orders as required by the courts. *Some* EDPA AUSAs, beginning some time in 2017, began to enter 2703(d) Orders (of all sorts, not just for cell-site location information) in CaseView as a means of tracking deadlines for renewing non-disclosure orders that accompany some 2703(d) Orders. The practice was not uniform, so a CaseView search for such documents, even if possible, would necessarily be under-inclusive. In addition, a digital search would likely still require a burdensome physical search of the relevant files for confirmation.
4. **Manual Search.** To endeavor to do a manual search of all 2703(d) orders would require a very labor-intensive multi-step process. We would need to identify all criminal cases and matters open during each year from 2016 through October 25, 2018. There were approximately 3000 cases that were open during each of those years in the EDPA, so, even though there is significant overlap (i.e., many files that were open in 2016 were also open in 2017). We would then need to locate and retrieve each of those physical files, whose size can range from a redwell or two to dozens of bankers boxes. Some of the files are on-site; some

are in storage with a vendor at an off-site location.(on site we currently have 5800 cubic square feet of criminal files, off site we have another 3000 cubic square feet). To physically search those files for paper copies of signed 2703(d) orders would take many hundreds of person hours.

5. **System-Wide Digital Search.** USAO-EDPA network files are not kept in a document management system that would automatically index documents as they are created and allow for easy key-word or other advanced searches. Instead, files are stored in what may be analogized to a folder/subfolder tree structure. The files' contents are not indexed. The files are stored in a hybrid cloud environment where large quantities of data can be archived but where the rate of transfer of files to the user is slow. For example, some file transfers in individual cases are set to run overnight or longer. USAO-EDPA currently has about 50 TB of data and any effort by USAO-EDPA IT Services to access and index that content data would render the system largely unusable for ordinary business purposes and, quite possibly, simply crash the system. A system crash could cause a corruption of data, resulting in crucial work product becoming unusable and/or unrecoverable. Even without the risk of a crash – the system resources required to run such a search would greatly stress the system for days, disrupting normal daily activity for over 300 employees for the duration of search (sluggish network response time, inability to read/wrote network files, etc.).
6. Any effort to access just the file names to do a filename search would also crash. Our file organization in the cloud manifests as folders identified by case identifiers, not by subject matter; and within our folders we do not have a standard file structure, as each case is, of course, unique. Both of these characteristics indicate a search of the entire volume of 50TB, rather than a subset, would be necessary, with all the difficulties indicated above. We do not have an exact count of the number of digital files but believe the order of magnitude is in the 500,000,000 range. This is not a search that USAO-EDPA IT Services could run with our current system and file configuration.

Moreover, a digital search of all AUSA files (and SAUSA and paralegal files), even if it could be conducted, would not necessarily be conclusive. Most AUSAs save a Word copy of their documents electronically, but do not scan and electronically save a signed copy of the Order. So a physical search of the physical file would still be necessary to confirm if the 2703(d) Application that was *prepared* was actually presented to a judge and signed.

7. **Sealing.** Finally, it is consistent practice in EDPA that 2703(d) orders be sealed. Unsealing orders are rarely obtained. As a result, most if not all responsive orders would be subject to a court sealing order and thus exempt from disclosure in any event.
8. **Post-Carpenter Practice in EDPA.** On October 25, 2018, the Department of Justice issued guidance directing us to use search warrants, not 2703(d) orders, for cell site location information. EDPA no longer used 2703(d) Orders for cell-site location information after 10/25/2018.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Philadelphia, Pennsylvania
November 13, 2019

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

THOMAS R. PERRICONE
Assistant United States Attorney