

IN THE UNITED STATES DISTRICT COURT
FOR THE <<DISTRICT>>

<<IN THE MATTER OF THE SEARCH OF
same as warrant affidavit>>
or
<<IN RE: SUBPOENA / COURT ORDER>>

Case No. _____

Filed Under Seal

**APPLICATION FOR ORDER COMMANDING <<PROVIDER>> NOT TO NOTIFY
ANY PERSON OF THE EXISTENCE OF <<WARRANT/SUBPOENA/COURT
ORDER>>**

The United States requests that the Court order <<Provider>> not to notify any person (including the subscribers and customers of the account(s) listed in the <<warrant/subpoena/court order>>) of the existence of the attached << warrant/subpoena/court order >> until further order of the Court.

<<Provider>> is a provider of an electronic communication service, as defined in 18 U.S.C. § 2510(15), and/or a remote computer service, as defined in 18 U.S.C. § 2711(2). Pursuant to 18 U.S.C. § 2703, the United States obtained the attached <<warrant/subpoena/court order >>, which requires <<Provider>> to disclose certain records and information to the United States. This Court has authority under 18 U.S.C. § 2705(b) to issue “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.” *Id.*

[Revise this paragraph as needed:]In this case, such an order would be appropriate because the attached <<warrant/subpoena/court order>> relates to an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation, and its disclosure may alert the targets to the ongoing investigation. Accordingly, there is reason to believe that notification of the existence of the attached <<warrant/subpoena/court order>> will

seriously jeopardize the investigation or unduly delay a trial, including by <<list applicable harm(s), such as one or more of the following: giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, intimidate potential witnesses, or endanger the life or physical safety of an individual>>. See 18 U.S.C. § 2705(b). Some of the evidence in this investigation is stored electronically. If alerted to the existence of the <<warrant/subpoena/court order >>, the subjects under investigation could destroy that evidence, including information saved to their personal computers.

WHEREFORE, the United States respectfully requests that the Court grant the attached Order directing <<Provider>> not to disclose the existence or content of the attached <<warrant/subpoena/court order>>, except that <<Provider>> may disclose the attached <<warrant/subpoena/court order>> to an attorney for <<Provider>> for the purpose of receiving legal advice.

The United States further requests that the Court order that this application and any resulting order be sealed until further order of the Court. As explained above, these documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

Executed on _____.

<<AUSA_FirstName>> <<AUSA_LastName>>
<<AUSA_Title>>
State Bar # <<AUSA_barno>>
<<address1>>
<<address2>>
<<address3>>

IN THE UNITED STATES DISTRICT COURT
FOR THE <<DISTRICT>>

<<IN THE MATTER OF THE SEARCH OF
same as warrant affidavit>>
or
<<IN RE: SUBPOENA/COURT ORDER>>

Case No. _____

Filed Under Seal

ORDER

The United States has submitted an application pursuant to 18 U.S.C. § 2705(b), requesting that the Court issue an Order commanding <<Provider>>, an electronic communication service provider and/or a remote computing service, not to notify any person (including the subscribers and customers of the account(s) listed in the <<warrant/subpoena/court order>>) of the existence of the attached <<warrant/subpoena/court order>> until further order of the Court.

The Court determines that there is reason to believe that notification of the existence of the attached <<warrant/subpoena/court order>> will seriously jeopardize the investigation or unduly delay a trial, including by <<list applicable harm(s), such as one or more of the following: giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, intimidate potential witnesses, or endanger the life or physical safety of an individual>>. See 18 U.S.C. § 2705(b).

IT IS THEREFORE ORDERED under 18 U.S.C. § 2705(b) that <<Provider>> shall not disclose the existence of the attached <<warrant/subpoena/court order>>, or this Order of the Court, to the listed subscriber or to any other person, unless and until otherwise authorized to do so by the Court, except that <<Provider>> may disclose the attached <<warrant/subpoena/court order>> to an attorney for <<Provider>> for the purpose of receiving legal advice.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court.

Date

United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE [DISTRICT]

)
IN RE APPLICATION OF THE)
UNITED STATES OF AMERICA FOR) MISC. NO. ____
AN ORDER PURSUANT TO)
18 U.S.C. § 2705(b) and 20 U.S.C.)
§ 1232g(b)(1)(J)(i))
_____) Filed Under Seal

APPLICATION OF THE UNITED STATES
FOR AN 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 pursuant to 18 U.S.C. § 2705(b) and 20 U.S.C. § 1232g(b)(1)(J)(i) to direct [UNIVERSITY_NAME], located at [UNIVERSITY_ADDRESS], not to notify any other person (except as necessary to carry out the subpoena) of the existence of a subpoena seeking information pertaining to the [UNIVERSITY_NAME] account associated with the Internet Protocol (“IP”) address [IP_ADDRESS] at [DATE_TIME_ZONE], any other [UNIVERSITY_NAME] account subscribed to by the holder of that account, and/or any accounts or educational records associated with [SUBJECT_NAME] (collectively, “the Accounts”).

FACTUAL BACKGROUND

1. The United States government is investigating [CRIME_DESCRIPTION]. The investigation concerns possible violations of, inter alia, [STATUTES]. The investigation to date has provided reasonable grounds to believe that [UNIVERSITY_NAME] has records and other information pertaining to one or more of its subscribers and/or students that are relevant and material to this ongoing criminal investigation.

2. Investigators believe that matters relevant to the offenses under investigation have been and continue to be discussed through the email account [SUBJECT_EMAIL]. Investigators believe that the email address [SUBJECT_EMAIL] belongs to [SUBJECT_NAME], a student at [UNIVERSITY_NAME].

LEGAL BACKGROUND

3. [UNIVERSITY_NAME] functions both as an electronic communications service provider—providing its subscribers access to electronic communication services, including e-mail and the Internet—and as a remote computing service provider—providing the storage for and processing of electronic communications—as those terms are used in 18 U.S.C. § 2703.

4. Title 18, United States Code, Section 2703(c)(2) provides a mechanism for the government to obtain certain basic subscriber information via a subpoena from an electronic communication service or a remote computing service. This section provides in pertinent part:

A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

- (A) name;
- (B) address;
- (C) local and long distance telephone connection records, or records of session times and durations;
- (D) length of service (including start date) and types of service utilized;
- (E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- (F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury.

18 U.S.C. § 2703(c)(2).

5. When the government is acting under section 2703(c)(2), it is not required to give notice to the subscriber. 18 U.S.C. § 2703(c)(3).

6. Under certain circumstances, the government may apply for a court order directing that a provider of electronic communications service or remote computing service to whom a subpoena is directed not notify any other person of the existence of the subpoena. Title 18, United States Code, Section 2705(b) provides in pertinent part:

A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1) . . . 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.

7. [UNIVERSITY_NAME] is also an educational institution subject to the provisions of the Federal Family Educational and Privacy Rights Act (“FERPA”), which limits the circumstances under which it may make disclosure of educational records. Given that the subject of this investigation is believed to be a student at [UNIVERSITY_NAME], the records sought pursuant to the government’s subpoena may also implicate the provisions of FERPA. However, FERPA provides a mechanism similar to the one in 18 U.S.C. § 2705(b) for delaying notice of the disclosure of educational records to the government in response to federal grand jury subpoena upon a showing of good cause. Title 20, United States Code, Section 1232g(b)(1)(J)(i) permits disclosure of educational records in response to a federal grand jury subpoena, and provides in pertinent part:

the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on

which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena.

8. Accordingly, this application sets forth facts showing that reasonable grounds exist to command that [UNIVERSITY_NAME], a provider of electronic communications service or remote computing service as well as an educational institution, to whom a federal grand jury subpoena is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the subpoena under both 18 U.S.C. § 2705(b) and 20 U.S.C. § 1232g(b)(1)(J)(i).

REQUEST FOR NON-DISCLOSURE

9. The government requests that [UNIVERSITY_NAME] and its employees be directed not to notify any other person (except as necessary to carry out the subpoena) of the existence of the attached subpoena seeking information pertaining to the Accounts.

10. Given that the information sought in the attached subpoena is directly relevant to establish the illegal activity under investigation and to identify the individual(s) responsible for such activity, there is reason to believe that disclosure to potential targets of the scope and direction of the inquiry will result in the destruction of or tampering with evidence and seriously jeopardize the investigation. In particular, the conduct under scrutiny may be ongoing. If [SUBJECT_NAME], or others associated with the IP address [IP_ADDRESS] at [DATE_TIME_ZONE] were notified of the subpoena, they may be prompted to take special precautions not to communicate incriminating information via e-mail or to delete any incriminating information in their possession.

11. The United States requests that this Application and Order be sealed by the Court until such time as the court directs otherwise. Disclosure of either the Application or Order would reveal confidential sources and information.

ACCORDINGLY, it is respectfully requested that the Court grant the attached Order directing [UNIVERSITY_NAME] not to notify any other person (except as necessary to carry out the subpoena) of the existence of the attached subpoena seeking information pertaining to the Accounts.

Date _____

[USA_NAME]
United States Attorney

By: _____
[AUSA_NAME]
Assistant United States Attorney
[AUSA_ADDRESS]

UNITED STATES DISTRICT COURT
FOR THE [DISTRICT]

IN RE APPLICATION OF THE)
UNITED STATES OF AMERICA FOR) MISC. NO. ____
AN ORDER PURSUANT TO)
18 U.S.C. § 2705(b) and 20 U.S.C.)
§ 1232g(b)(1)(J)(i))
Filed Under Seal

ORDER

This matter having come before the Court pursuant to an application under Title 18, United States Code, Section 2705(b) and Title 20, United States Code, Section 1232g(b)(1)(J)(i), which application requests the issuance of an order directing [UNIVERSITY_NAME], an electronic communications service provider and a remote computing service as well as an educational institution, located at [UNIVERSITY_ADDRESS], not to notify any other person of the existence of a subpoena seeking information pertaining to the IP address [IP_ADDRESS] at [DATE_TIME_ZONE], any other [UNIVERSITY_NAME] account subscribed to by the holder of that account, and/or any account or educational records associated with [SUBJECT_NAME], the Court finds that the applicant has offered reasonable grounds to believe that such disclosure will result in the destruction of or tampering with evidence and seriously jeopardize the investigation.

IT APPEARING that the information sought for in the attached subpoena is directed at establishing the illegal activity under investigation and to identify the individual(s) responsible for such activity, there is reason to believe that disclosure to potential targets of the scope and direction of the inquiry will result in the destruction of or tampering with evidence and seriously jeopardize the investigation.

IT IS ORDERED that pursuant to Title 18, United States Code, Section 2705(b) and Title 20, United States Code, Section 1232g(b)(1)(J)(i), [UNIVERSITY_NAME] and its employees shall not disclose the existence of the attached subpoena to any other person (except as necessary to carry out the subpoena) unless and until authorized to do so by the Court.

IT IS FURTHER ORDERED that the Application and this Order be sealed until otherwise ordered by the Court, and that [UNIVERSITY_NAME] and its employees shall not disclose the existence of the Application or this Order of the Court to any other person unless and until authorized to do so by the Court.

So Ordered, this _____ day of _____ 20____.

UNITED STATES MAGISTRATE JUDGE