

Redacted AUSA Cover Letter



U.S. Department of Justice
United States Attorney's Office
Eastern District of Virginia

Dana J. Boente ■ United States Attorney ■ 2100 Jamieson Avenue ■ Alexandria, VA 22314
(703) 299-3700 ■ (703) 299-3892 (fax)

██████████, 2016

Open Whisper Systems
Signal
San Francisco, CA

Re: ██████████

Dear Sir/Madam:

You have been served with a subpoena issued in connection with a criminal investigation being conducted in this District. That subpoena directs you to produce certain records on ██████████ 2016 before the grand jury in Alexandria, Virginia.

As a convenience to you, in lieu of appearing personally before the grand jury, you may deliver the requested documents to:

Special Agent ██████████, Federal Bureau of Investigation, Northern Virginia Region, 9325 Discovery Blvd Manassas, VA 20109 (703) ██████████ ██████████@ic.fbi.gov.

Any questions pertaining to the records under subpoena should be directed to the agent listed above. I appreciate your cooperation in this manner.

Because premature disclosure of this request might impede the investigation in this case, you are requested not to disclose the existence of this subpoena. I appreciate your cooperation in this matter. If you have any questions, please feel free to contact me at (703) 299-3700.

Sincerely,
Dana J. Boente
United States Attorney

By: ██████████

Assistant United States Attorney

Redacted E.D. Va. Subpoena

UNITED STATES DISTRICT COURT
for the
Eastern District of Virginia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Open Whisper Systems
Signal
San Francisco, CA

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: U.S. District Court 401 Courthouse Square Alexandria, VA 22314	Date and Time: [redacted], 2016 [redacted]
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You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable). **Please provide any and all subscriber account information and any associated accounts to include subscriber name, addresses, telephone numbers, email addresses, method of payment, IP registration, IP history logs and addresses, account history, toll records, upstream and downstream providers, any associated accounts acquired through cookie data, and any other contact information from inception to the present for the following accounts:**

[redacted]

This subpoena remains in effect until all documents are provided.

PLEASE NOTIFY THE UNDERSIGNED ATTORNEY BEFORE INCURRING COSTS OF MORE THAN \$300.00

Date: [redacted] 2016

CLERK OF COURT



Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are [redacted] AUSA
Office of the United States Attorney
Justin W. Williams United States Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314 (703) 299-3700

Redacted Certificate of Authenticity

**CERTIFICATE OF AUTHENTICITY OF DOMESTIC BUSINESS RECORDS
PURSUANT TO FEDERAL RULE OF EVIDENCE 902(11)**

I, _____ (name), attest under penalties of perjury (or criminal punishment for false statement or false attestation) that I am employed by _____ (business), and that my official title is _____ (title). I am a custodian of records for such business entity. I state that each of the records attached hereto is the original record or a true duplicate of the original record in the custody of _____ (business), and that I am the custodian of the attached records consisting of _____ pages. I have provided the following records to the United States:

I further state that:

- A. all records attached to this certificate were made at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person with knowledge of those matters;
- B. such records were kept in the course of a regularly conducted business activity of _____ (business); and
- C. such records were made by _____ (business) as a regular practice.

I further state that this certification is intended to satisfy Rule 902(11) of the Federal Rules of Evidence.

(Signature)



(Date)

(Address)

(Phone)

Redacted E.D. Va. Order

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE: APPLICATION FOR AN ORDER
PURSUANT TO 18 U.S.C. §2705(b)
RELATING TO A SUBPOENA TO OPEN
WHISPER SYSTEMS FOR THE
ACCOUNTS LISTED: [REDACTED] and
[REDACTED]

Case No. [REDACTED]
Grand Jury [REDACTED]

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 OPEN WHISPER SYSTEMS, an electronic communications service provider and/or a remote computing service, not to notify any person (including the subscribers or customers of the accounts listed on the subpoena) of the existence of the attached subpoena until further order of the Court.

The Court determines that there is reason to believe that notification of the existence of the attached subpoena will seriously jeopardize the investigation, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, or notify confederates. *See* 18 U.S.C. § 2705(b)(2), (3), (5).

IT IS THEREFORE ORDERED under 18 U.S.C. § 2705(b) that OPEN WHISPER SYSTEMS shall not disclose the existence of the attached subpoena, or this Order of the Court, to the listed subscriber or to any other person, for a period of one year from the date of this order, except that OPEN WHISPER SYSTEMS may disclose the attached subpoena to an attorney for OPEN WHISPER SYSTEMS for the purpose of receiving legal advice.

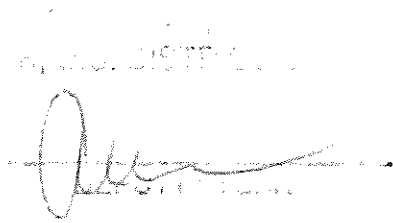
IT IS FURTHER ORDERED that the Application and this Order are sealed until one year from the date ordered by the Court.

Date  11.6



s/ Theresa C. Buchanan
United States Magistrate Judge

The Honorable Theresa C. Buchanan
United States Magistrate Judge



Redacted OWS Response to Subpoena



██████████ 2016

BY EMAIL

Special Agent ██████████
Federal Bureau of Investigation,
Northern Virginia Region
9325 Discovery Blvd.
Manassas, Virginia 20109
██████████@ic.fbi.gov

**Re: Response to Grand-Jury Subpoena Directed at Open
Whisper Systems ██████████**

Dear Special Agent ██████████

This letter responds to the ██████████ 2016 grand-jury subpoena directed at Open Whisper Systems (“OWS”) that seeks “subscriber account information” for two phone numbers. The American Civil Liberties Union represents OWS for purposes of responding to the subpoena. Please direct future correspondence about this matter to undersigned counsel.

Only one of the two listed phone numbers is associated with a Signal account: ██████████. Open Whisper Systems has no record of an account associated with the second listed phone number, ██████████ and therefore has no records to provide as to that number.

The only information responsive to the subpoena held by OWS is the time of account creation and the date of the last connection to Signal servers for account ██████████. Consistent with the Electronic Communications Privacy Act (“ECPA”), 18 U.S.C. § 2703(c)(2), OWS is providing this information in response to the subpoena. *See* Attachment A.

Although OWS does not have, and therefore cannot produce, other categories of information listed in the subpoena, OWS notes that not all of those types of information can be appropriately requested with a subpoena. Under ECPA, the government can use a subpoena to compel disclosure of information from an electronic communications service provider only if that information falls within the categories listed at 18 U.S.C. § 2703(c)(2). For other types of information, the government must obtain a court order or search warrant. OWS objects to use of the grand-jury subpoena to request information beyond what is authorized in Section 2703(c)(2).

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ROBERT B. REMAR
TREASURER

OWS also has concerns about the scope of the nondisclosure order included with the subpoena. *See* Order, Case No. [REDACTED] ([REDACTED] 2016 E.D. Va.). Undersigned counsel expects to communicate separately with the U.S. Attorney's Office about this issue.

Respectfully,



Brett Max Kaufman
American Civil Liberties Union
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125 Broad Street—18th Floor
New York, New York 10004
T: 212.549.2603
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bkaufman@aclu.org

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

cc: Special Agent [REDACTED] FBI Washington Field Office,
[REDACTED]@ic.fbi.gov

Attachment A

<u>Account</u>	<u>Information</u>
[REDACTED]	N/A
[REDACTED]	Last connection date: [REDACTED] Unix millis Account created: [REDACTED] Unix millis

Redacted OWS Letter to AUSA



██████████ 2016

BY EMAIL

██████████ AUSA
Justin W. Williams United States
Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
██████████@usdoj.gov

Re: Grand-Jury Subpoena Directed at Open Whisper Systems
██████████

Dear ██████████,

This letter concerns the gag order issued by Magistrate Judge Theresa C. Buchanan in connection with a ██████████ 2016 grand-jury subpoena directed at Open Whisper Systems ("OWS") seeking "subscriber account information" for two phone numbers. *See* Order, No. ██████████ (E.D. Va. ██████████ 2016).¹ The American Civil Liberties Union represents OWS in this matter.

As I indicated in my ██████████ 2016 letter to Special Agent ██████████ ██████████ providing OWS's response to the subpoena, OWS has concerns about the scope of the gag order issued against it. Specifically, OWS believes the gag order to be unconstitutional because it is not narrowly tailored to a compelling government interest. I am writing in the hope of resolving this matter without the need for litigation, and I would welcome the opportunity to discuss it with you at your earliest convenience.

OWS seeks to make public redacted versions of: the government's cover letter; the grand-jury subpoena and gag order issued to OWS; OWS's response to the subpoena; and this letter. OWS also seeks to speak publicly about its receipt and compliance with the subpoena. As illustrated in the attachments to this letter, OWS's versions of the documents redact,

from the government's cover letter:

- the date of the letter,
- the case-specific information in the subject line, and

¹ On ██████████ 2016, OWS timely responded to the grand-jury subpoena with the responsive information in its possession by email to Special Agent ██████████

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ROBERT B. BEMAR
TREASURER

- the production deadline in the first paragraph;

from the subpoena:

- the case-specific information in the header,
- the date and time of the scheduled grand-jury hearing,
- the two target phone numbers, and
- the date of the subpoena;

from the certificate of authenticity:

- the case-specific information to the right of the signature block;

from the gag order:

- the target phone numbers in the case caption,
- the dates at the top and bottom of the order, and
- the case-specific information to the right of the case caption;

from OWS's response to the subpoena:

- the date of the response,
- the case-specific information in the subject line,
- the date of the subpoena in the first paragraph,
- the two target phone numbers,
- the case-specific information and date in the citation on page 2, and
- two target phone numbers and responsive information in the attachment;

and, from this letter:

- the date of the letter,
- the case-specific information in the subject line and first paragraph,
- the dates of the subpoena and gag order in the first paragraph, and
- the date of OWS's response to the subpoena in footnote 1 and the second paragraph.

OWS would also like to publicly explain that it received the request in the first half of 2016 for two target phone numbers, and that it later complied by sharing the only information it retains—the “last connection date” and the “account creation date”—for the only one of the two accounts as to which it possessed records.²

² OWS notes, as it did in its letter to Special Agent ██████ that not all of the types of information listed in the grand-jury subpoena issued to OWS can be appropriately requested with a subpoena. Under ECPA, the government can use a subpoena to compel disclosure of information from an electronic communications service provider only if that information falls within the categories listed at 18 U.S.C. § 2703(c)(2). For other types of information, the

Neither the government nor a court may constitutionally prohibit OWS's proposed disclosures. The information OWS seeks to disclose would not reveal the target of the government's subpoena or any other information that could reasonably impair any legitimate governmental interest. Instead, the information OWS seeks to disclose would confirm only that it has received a subpoena for certain information relating to one of its millions of users; that it complied with the subpoena; and that it is currently forbidden from identifying the target of the subpoena. The government has no legitimate interest in restricting that speech, while OWS would further a significant public interest in making it. The proper role, scope, and limits of government surveillance are quintessential matters of public concern under the First Amendment, and electronic service providers—who have dual roles as custodians of Americans' private data and as necessary actors in the execution of government surveillance requests—have a critical role to play, and perspective to share publicly, about government surveillance practices.

Even more broadly, it is far from clear from the gag order that the government has satisfied the high constitutional hurdle for imposing any prior restraint on OWS. The order recites the government's general interest in keeping its criminal investigations secret, but that general interest applies in virtually every criminal investigation, including the countless ones in which the government routinely executes search warrants *with notice* to the targets of the investigation. *See* Order at 1 (“The Court determines that there is reason to believe that notification of the existence of the attached subpoena will seriously jeopardize the investigation, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, or notify confederates.”); *see also* 18 U.S.C. § 2705(b)(2), (3), (5). To justify the extraordinary remedy of restraining truthful speech, the government must make a greater showing.

Thank you for your attention to this matter. I look forward to speaking with you soon.

Respectfully,

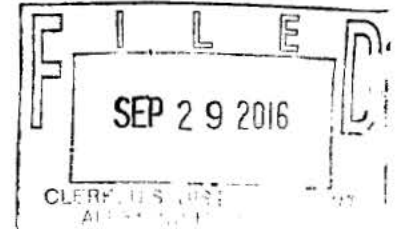


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government must obtain a court order or search warrant. OWS objects to use of the grand-jury subpoena to request information beyond what is authorized in Section 2703(c)(2), though it did not possess any such information in this case.

Redacted Superseding Order

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



IN RE: APPLICATION FOR AN ORDER
PURSUANT TO 18 U.S.C. §2705(b)
RELATING TO A SUBPOENA TO OPEN
WHISPER SYSTEMS FOR THE
ACCOUNTS: [REDACTED] AND
[REDACTED]

Case No. [REDACTED]
Grand Jury [REDACTED]

Filed Under Seal

SUPERSEDING ORDER

On [REDACTED], 2016, this Court entered an Order commanding Open Whisper Systems, an electronic communications service provider and/or a remote computing service, not to notify any person (including the subscribers or customers of the accounts listed on the subpoena attachment) of the existence of the attached subpoena until further order of the Court. This Court signed the Order upon an application for a protective order submitted by the United States pursuant to 18 U.S.C. § 2705(b).

With the consent of the United States and counsel for Open Whisper Systems, the Order entered on [REDACTED], 2016, is hereby modified to permit public disclosure of the (1) redacted subpoena, (2) redacted Court Order and (3) redacted related documents. A copy of the redacted material is attached to this Superseding Order as Exhibit A. Open Whisper Systems may also release a redacted version of this Superseding Order.

IT IS THEREFORE ORDERED under 18 U.S.C. § 2705(b) that Open Whisper Systems is permitted to disclose the redacted versions of these materials governed by this Superseding Order. The information that remains redacted shall not be publicly disclosed until further Order of this Court.

Sept. 29, 2016
Date

/s/ JFA
John F. Anderson
~~United States Magistrate Judge~~
United States Magistrate Judge

SEEN, AGREED AND CONSENTED TO:



09-29-2016

Assistant United States Attorney

BMK 09.28.2016
Brett Max Kaufman
American Civil Liberties Union Foundation
Counsel for Open Whisper Systems

A TRUE COPY, TESTE:
CLERK, U.S. DISTRICT COURT

BY [Signature]
DEPUTY/CLERK