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

IN THE MATTER OF THE 2703(d) ORDER AND 2703(f) PRESERVATION REQUEST RELATING TO GMAIL ACCOUNT	)))))	**Misc. No. 1:10GJ3793** **11-DM-2** **UNDER SEAL**

MEMORANDUM OPINION

At issue in this sealed matter is whether the magistrate judge erred in issuing an order in connection with a grand jury investigation and pursuant to 18 U.S.C. § 2703(d) directing Google, Inc., an electronic communications service provider and remote computing service, to disclose certain noncontent business subscriber and transaction records concerning a particular subscriber of its service without disclosing the existence of the order to anyone, including the subscriber, for at least ninety days. For the reasons that follow, Google's objections to the magistrate judge's ruling are overruled in all respects.

I.

This matter arises out of the government's ongoing grand jury investigation of the alleged unlawful disclosure of state secrets through the website known as WikiLeaks (the "WikiLeaks investigation"). On January 4, 2011, the government applied for and was granted an order ("Google Order") from a United States magistrate judge pursuant to 18 U.S.C. § 2703(d) directing Google to provide the government the noncontent business subscriber and transaction records for the account associated with the email address "[redacted] account"), covering the time period from November 1, 2009 to present. *In re Application of the United States of America for an Order Pursuant to 18 U.S.C. § 2703(d)*, No. 1:10GJ3793 (E.D. Va. Jan. 4, 2011) (Order). More specifically, the information ordered disclosed by the Google

Order includes, *inter alia*, contact information associated with the [redacted] account, records of user activity, and source and destination email addresses for any emails stored on the account—but not the actual content of any emails. The government also requested a provision in the Google Order pursuant to § 2705(b) barring Google from disclosing the existence of the order to anyone, a request the magistrate judge granted after finding that disclosure would "seriously jeopardiz[e] [the] investigation." *See* § 2705(b)(5).

The Google Order is not the only § 2703(d) order arising out of the government's WikiLeaks investigation. On December 14, 2010, before the issuance of the Google Order, a separate magistrate judge issued an order requiring Twitter, Inc. to disclose noncontent records for several Twitter accounts, including the account [redacted]" ("Twitter Order"). Like the Google Order, the Twitter Order originally barred disclosure of the order's existence, but at Twitter's request, the government subsequently consented to unsealing the order. After the Twitter Order was unsealed, Google then requested that the government consent to unsealing the Google Order as well. The government, however, did not consent to unsealing the Google Order entirely, agreeing instead to limit nondisclosure of the Google Order to ninety days, with an option for the government to extend the nondisclosure period an additional sixty days. Accordingly, on February 9, 2011, the magistrate judge modified the Google Order to include the ninety-day nondisclosure period with an optional sixty-day extension and rejected Google's argument that the order should be unsealed entirely. *In re 2703(d) Order and 2703(f) Preservation Request Relating to Gmail Account* [redacted] No. 1:10GJ3793 (E.D. Va. Feb. 9, 2011) (Order). Google objects to the magistrate judge's ruling, contending that the Google order should be unsealed and that Google should be permitted to notify the subscriber—in this

instance, [redacted]—of the order immediately. The government argues that the magistrate judge's ruling was appropriate in all respects and should not be modified.

II.

As always when reviewing a magistrate judge's order, it is appropriate to begin by identifying the proper the standard of review. Although the parties agree that the magistrate judge's ruling must be reviewed under Rule 59, Fed. R. Crim. P., they disagree about which subsection applies. The government contends that the ruling can only be modified if the ruling is "clearly erroneous or contrary to law standard," based on Rule 59(a). Google, on the other hand, contends that the ruling must be reviewed *de novo*, based on Rule 59(b).

Although the issue is one of first impression, a careful examination of Rule 59's text resolves the conflict in favor of the government. Rule 59(a) provides that objections to the determination of a magistrate judge on "any matter that does not dispose of a charge or defense" must be reviewed by the district court under a clearly erroneous or contrary to law standard. By contrast, Rule 59(b) provides that objections to dispositive matters—including "a defendant's motion to dismiss or quash an indictment or information, a motion to suppress evidence, or any matter that may dispose of a charge or defense"— must be reviewed by a district court *de novo*. *Id.* The government correctly recognizes that the magistrate judge's issuance of a § 2703(d) order is not a dispositive matter, and thus, under Rule 59(a), the order may be modified by the district court only if the order is clearly erroneous or contrary to law. As the government points out, the § 2703(d) order does not dispose of a charge or defense; rather, it merely orders the disclosure of material by a third party in the course of an ongoing investigation. As such, the order falls squarely within the scope of Rule 59(a). It is equally clear that the order does not fall within the scope of Rule 59(b) based on the text of that subsection, as the Google Order is not

analogous to an order on any of the matters enumerated in Rule 59(b), namely a motion to dismiss, a motion to suppress evidence, or a motion to quash an indictment.[1]

Google offers two additional arguments in support of its assertion that the magistrate judge's ruling concerned a dispositive matter under Rule 59(a). First, Google notes that in *United States v. Myers*, 593 F.3d 338 (4th Cir. 2010), the Fourth Circuit held that it had jurisdiction to hear the interlocutory appeal of a discovery order directed at a disinterested third party because such an order is treated as an immediately appealable final order as to that third party. *Id.* at 345. Yet, the mere fact that an order is considered final as to a third party and thus subject to interlocutory appeal is irrelevant to whether the matter is "dispositive" within the meaning of Rule 59, Fed. R. Crim. P. The question here is simply whether the magistrate judge's ruling disposes of a charge or defense, and it clearly does not. Whether Google may seek an interlocutory appeal in this matter is a separate issue entirely that is neither raised nor necessary to address here.

Next, Google cites *United States v. Rosen*, 447 F. Supp. 2d 538 (E.D. Va. 2006), which, *inter alia*, reviewed a probable cause determination of a Foreign Intelligence Surveillance Court ("FISC") *de novo*. As an initial matter, *Rosen* did not conduct any analysis of the standard of review, noting instead that even under the least deferential standard of review—*i.e., de novo* review—the FISC judge's probable cause determination in that case was correct. *Id.* at 545. More importantly, the statutory scheme governing Foreign Intelligence Surveillance Act

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[1] The government also notes that a court's decision to seal is generally reviewed only for abuse of discretion. *See Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 65 (4th Cir. 1989) ("The judicial officer's decision to seal, or to grant access, is subject to review under an abuse of discretion standard."). Yet, the magistrate judge's ruling here is not simply an order sealing a pleading, but rather a broader nondisclosure order pursuant to 18 U.S.C. § 2703(d). Accordingly, as the parties agree, it is appropriate to review the magistrate judge's ruling under Rule 59 rather than principles governing sealing orders under *Baltimore Sun*.

warrants is entirely distinct from the statutory scheme in issue here. *Compare* 50 U.S.C. §§ 1805, 1806, 1825 *with* 18 U.S.C. §§ 2703, 2705. Thus, the *Rosen* decision does not inform the analysis here. Instead, the analysis is appropriately guided by the plain language of Rule 59, Fed. R. Crim. P. Accordingly, the Google Order will only be modified if it is clearly erroneous or contrary to law.[2]

III.

Analysis of Google's objections to the magistrate judge's ruling begins with a brief review of the relevant provisions of the Stored Communications Act ("SCA"), 18 U.S.C. §§ 2701 *et seq*. The SCA permits the government to seek access to customer records stored by the providers of electronic communication or remote computing services. *See* 18 U.S.C. § 2703. Under § 2703(c)(1), a governmental entity may

> require a provider of electronic communication service or remote computing service . . . to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) . . . .

The SCA further provides that the government may apply for an order compelling service providers to disclose this information by demonstrating to a court "specific and articulable facts showing that there are reasonable grounds to believe . . . the records or other information sought, are relevant and material to an ongoing criminal investigation." § 2703(d). If the government seeks only noncontent information, the government is not required to notify the subscriber of the account in issue of the order's existence. *See* § 2703(c)(3). Importantly, under § 2705(b), the government may also request—as it did here—that the court bar the service provider from disclosing the existence of the § 2703(d) order. Such a request may be granted if the court

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[2] Nevertheless, while it is not necessary to review the magistrate judge's ruling *de novo*, such a review has been conducted here and reveals no basis on which to modify the magistrate judge's ruling. Thus, as explained *infra*, even were Google correct about the standard of review, its objections would be overruled.

"determines that there is reason to believe that notification of the existence" of the order "will result" in, *inter alia*, "seriously jeopardizing an investigation." § 2705(b).[3] The statute also allows a service provider to move to quash or modify the order "if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider." § 2703(d). Significantly, the statute allows no other grounds on which the service provider may challenge the order.

There is no dispute that the appropriate statutory procedures were followed by the government in obtaining the Google Order and the accompanying nondisclosure provision. The magistrate judge found that a disclosure bar was appropriate only after the government demonstrated that disclosure would seriously jeopardize its investigation. Nevertheless, Google objects to the magistrate judge's ruling barring disclosure of the Google Order on three grounds. First, Google argues that because the Twitter Order has already been unsealed, the investigation cannot be further jeopardized by disclosure of the Google Order. Second, Google contends that the Google Order may raise significant constitutional and statutory issues that the [redacted]account holder should have an opportunity to assert before the order is executed. Finally, Google argues that the nondisclosure provision constitutes an unlawful prior restraint on Google's First Amendment right to free speech. In response, the government contends that the statute does not permit a service provider to challenge a § 2703(d) order on the grounds asserted by Google, and in any event, that Google's arguments are meritless. A careful examination of the statute and the

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[3] The statute recognizes that a nondisclosure order may be justified if disclosure would result in any of the following: (i) endangering the life or physical safety of an individual; (ii) flight from prosecution; (iii) destruction of or tampering with evidence; (iv) intimidation of potential witnesses; or (v) otherwise seriously jeopardizing an investigation or unduly delaying a trial. *See* § 2705(b). The government relies on the fifth ground—seriously jeopardizing an investigation—to justify the nondisclosure provision in issue here.

record confirms that the government is correct, both as to Google's limited standing to challenge the nondisclosure provision and as to the merits of Google's arguments.

It is appropriate to begin with the government's argument that Google's objections to the nondisclosure provision are not permitted by the statute. Section 2703(d) states that a service provider may move to quash or modify the given order on two grounds, namely that the requested records are "unusually voluminous" or that compliance with the request would cause an "undue burden." The government argues that these enumerated grounds for a motion to quash or modify are the only grounds available to service providers for challenging a § 2703(d) order. The text of the statute supports the government's conclusion. Section 2703(d) plainly states that the motion to quash or modify may be brought "if" one of the two enumerated grounds are applicable. The enumeration of two, and only two, grounds for challenging the order implies—under the "time-honored maxim" *expressio unius est exclusio alterius*[4]—that no other grounds may serve as the basis for a motion to quash or modify the order. Had Congress wished to authorize a service provider to assert other grounds to challenge the order, it easily could have done so either by enumerating those additional grounds or by noting that the list was not exhaustive.[5] Congress did neither in the SCA, and its failure to do so must be regarded as a clear statement of its intent not to recognize further bases for service providers' challenges to a § 2703(d) order.

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[4] *See Ayes v. U.S. Dep't of Veterans Affairs*, 473 F.3d 104, 111 (4th Cir. 2006) (applying the "time-honored maxim *expressio unius est exclusio alterius* ('the expression of one thing implies the exclusion of another')" to find that Congress's failure to include veteran guaranty entitlements from among the list of grants enumerated in the antidiscrimination provision of the Bankruptcy Code, 11 U.S.C. § 252(a), meant that such entitlements were beyond the scope of that statute).

[5] For example, statutes often insert the word "including" before a list of examples when the list is nonexclusive. *See, e.g., West v. Gibson*, 527 U.S. 212, 218 (1999) (in analyzing the Title VII remedies statute, noting that Congress's use of the word "including" makes clear the list is not exhaustive).

Without conceding this conclusion, Google argues that even if the "voluminous records" and "undue burden" grounds are the only acceptable bases for challenging the magistrate judge's ruling, Google's arguments nonetheless may be heard because they fit within the scope of the "undue burden" provision. To reach this result, Google repackages its arguments as supporting the broad proposition that Google would suffer an undue burden if it were forced to comply with a nondisclosure order that is not adequately supported by fact or law. Google Reply Br. at 3.

The SCA's clear text fully refutes this argument. Significant in this regard is the placement of the word "otherwise" in the statutory text. Thus, the statute states that a service provider may move to quash or modify the order "if the information or records requested are unusually voluminous in nature or compliance with such order *otherwise* would cause an undue burden on such provider." § 2703(d) (emphasis added). The use of "otherwise" following the reference to "unusually voluminous" indicates—based on the maxim of *ejusdem generis*—that the only types of burdens contemplated by the statute are those similar in nature to the burdens imposed by a request for unusually voluminous records.[6] Such burdens would ostensibly include technical and logistical burdens involved in complying with the § 2703(d) order, but not Google's purported "burden" of complying with an order that, in its view, lacks a firm basis in law or fact. Were the statute read as Google suggests, the phrase "undue burden" would be broad enough to encompass any objection a service provider might imagine, thus rendering the conditional language of § 2703(d) a nullity. Accordingly, because none of Google's grounds for challenging the order are technical or logistical in nature, Google's objections to the magistrate judge's ruling must be overruled.

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[6] *See id.* at 109 n.3 ("When general words follow specific words in a statutory enumeration, we apply the interpretive principle of *ejusdem generis* ('of the same kind') and construe the general words to embrace only objects similar in nature to those objects enumerated by the preceding specific words.") (quotations and ellipsis omitted).

Nevertheless, even if one considers the merits of Google's objections, it is clear that the objections must be still overruled. Google's first objection—and certainly its most vigorously advanced objection—is that, as a factual matter, the government has failed to meet its burden of showing that disclosure of the Google Order would seriously jeopardize the government's ongoing investigation. Google essentially argues that no further injury to the government's investigation can occur beyond that which has already occurred owing to publication of the Twitter Order. Consideration of this argument must begin with an understanding of the harm purportedly caused by the unsealing of the Twitter Order itself, harm the government asserts would be compounded if the Google Order were also unsealed.

The record reflects that after the Twitter Order was unsealed, the holder of the [redacted] Twitter account posted an online message indicating that other Twitter users should not send him or her direct messages over the Twitter service because the account was being monitored by the government.[7] Given this, the government contends that because unsealing the Twitter Order apparently caused the subscriber to alter his or her behavior, it follows that unsealing the Google Order could similarly lead to a change in the email usage of whatever entity or person operates the [redacted] email account with Google.[8] This concern is well founded. Even if the [redacted] account holder already suspects that the government seeks information from his or her email

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[7] Direct messages must be distinguished from general messages—or "tweets"—on the Twitter website. A direct message is a message sent privately from one Twitter user to another. Tweets are messages broadcasted publicly by one Twitter user to any and all users who may wish to view—*i.e.*, "follow"—the user's tweets.

[8] Although the government and Google suggested in oral argument that it may be likely that the same individual maintains both the [redacted] Twitter account and the [redacted]mail.com email account, this fact is not confirmed in this record, and in any event, is immaterial to the analysis here.

account, it is reasonable to expect that *confirmation* of this fact would prompt yet additional steps by this subscriber to avoid government monitoring of his or her accounts or other activities.

In response, Google notes that the Google Order only seeks historical, not prospective, data, and that Google has already preserved this data, such that any potential change in the subscriber's future email behavior caused by unsealing the Google Order is immaterial. What this argument critically fails to recognize is that the government's investigation is ongoing, and any change in the suspect's behavior, whether with respect to internet usage or otherwise, may impact or impede subsequent steps in the investigation. For example, if the Google Order were revealed immediately, the government may be unable to obtain useful information from Google or other service providers in the future because the subjects of the investigation may alter their habits or simply destroy relevant information.

It is also important to note that revealing the existence of the Google Order might well disclose to subjects of the investigation additional information or clues about the speed, scope, and direction of the government's investigation, information the subjects could use to attempt to obstruct or frustrate the government's investigative efforts. Google counters that publication of the Google Order would result in only a trivial increase in the amount of information already publicly known about the WikiLeaks investigation. Were this argument adopted, the implications for future investigative actions by the government pursuant to the SCA would be dire. Google's argument, if followed to its logical end, would lead to the disclosure of every § 2703(d) order in the government's WikiLeaks investigation after a single initial public disclosure. Google's argument ignores this potential ripple effect. Therefore, even though the Twitter Order is already public, the government is correct in noting that disclosure of the Google Order may nonetheless further impede the WikiLeaks investigation.

In addition to concerns about the subjects of the investigation altering their behavior, the government also cites witness intimidation as a potential negative effect of unsealing the Google Order. In this regard, the government notes that the unsealing of the Twitter Order led to a wave of public criticism urging service providers to resist the government's requests for content and noncontent subscriber information. In the government's view, disclosure of the Google Order would further fuel this type of witness intimidation. Additionally, the government points out that service providers may face retribution for cooperating with the government in connection with SCA requests in the form of illegal attacks on the service providers' computer systems by supporters of WikiLeaks. The government notes that following disclosure of the Twitter Order, purported WikiLeaks supporters attacked the computer systems of various companies, including banks, that the supporters believed cooperated with the government's WikiLeaks investigation. This mode of witness intimidation, the government points out, would also be fueled by the disclosure of the Google Order. Given the events that occurred following disclosure of the Twitter Order, the government is correct to be concerned about the potential for increased witness intimidation that could result from disclosure of the Google Order. If the Google Order were unsealed, future service providers may do precisely what Google has done in this instance, namely resist compliance with a lawful § 2703(d) order by bringing baseless legal challenges that have the effect of impeding the government's progress in the WikiLeaks investigation.[9]

In sum, the government has persuasively demonstrated adequate and legitimate grounds for a court to conclude, as the magistrate judge did, that there is reason to believe that disclosure of the Google Order to the subscriber in question will seriously jeopardize the government's

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[9] Given the reaction to the publication of the Twitter Order, it appears that the government may now regret consenting to disclosure of the Twitter Order.

ongoing investigation.[10] Thus, the magistrate judge's imposition of a ninety-day disclosure bar pursuant to § 2705(b) was neither clearly erroneous nor contrary to law. Nor does a *de novo* review of the record as a whole reveal any basis on which to modify the Google Order's nondisclosure provision. Therefore, under either standard of review, Google's objection in this regard must be overruled.

In addition to arguing that the government has failed as a factual matter to demonstrate that disclosure of the Google Order would seriously jeopardize the investigation, Google also asserts two legal grounds for rejecting the disclosure bar. First, Google contends that the order raises potential constitutional and statutory issues that an affected subscriber may wish to raise, but which cannot be raised at this time because the affected subscriber is unaware of the order's existence. The short answer to this argument is that if an individual whose information is sought by the Google Order wishes to attack the validity of the order, there will be opportunities for such a challenge after the order is made public. For example, if the information obtained is offered by the government in a subsequent criminal prosecution, a defendant with standing may seek exclusion of the evidence.[11] And of course, if no one is prosecuted based on the information obtained from Google, a § 1983 action might be available if the subscriber can demonstrate the requisite elements of the § 1983 action, including, most notably, a "deprivation

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[10] The government also asserts that its investigation has been impeded following unsealing of the Twitter Order by diverting resources (i) to addressing public criticism of its investigatory tactics, and (ii) to defending its attorneys from harassment. The government contends that unsealing the Google Order would further exacerbate these conditions. The SCA does not include criticism of the government or harassment of government attorneys in the § 2705(b) calculus. Indeed, it is the integrity of the investigation itself, not the government's interests in protecting its image or defending its attorneys against harassment, that are the subject of § 2705(b).

[11] Of course, this is not to say that the defendant would have standing to challenge the admissibility of the evidence, or even that a defendant with standing could properly invoke the exclusionary rule in the circumstances. Those issues need not be and are not addressed here.

of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. Although it does not appear that a § 1983 action based on the Google Order would have any merit,[12] questions raised by such an action need not be addressed here.

Google's final objection to the Google Order's nondisclosure provision rests in the First Amendment. In essence, Google argues that the nondisclosure provision is an unlawful prior restraint on its own free speech rights inasmuch as the order prevents Google from discussing the existence of the order with anyone. Before addressing the merits of this argument, it is important to note initially that orders barring third parties from disclosing government surveillance tactics during the course of an investigation are hardly new. The government has long held the power to compel the assistance of, *inter alia*, telephone and internet service providers in monitoring communications. *See United States v. New York Tel. Co.*, 434 U.S. 159, 168 (1977) (recognizing the authority for the installation of a pen register); *United States v. Talbert*, 706 F.2d 464, 467 (4th Cir. 1983) (recognizing the authority for wiretaps); *see also* 18 U.S.C. § 3122 (authorizing statute for pen registers and trap and trace devices). Indeed, the statute invoked by the government here is nearly twenty five years old. *See* Electronic Communications Privacy Act of 1986, Pub. L. 99-508, § 201(a), 100 Stat. 1864, (1986). And when the government invokes its power to obtain information from service providers, courts routinely bar the providers from disclosing the existence of the order to anyone, including the relevant subscriber. *See, e.g.*, 18 U.S.C. § 3123(d) (barring disclosure of the existence of pen registers and trap and trace devices unless otherwise directed by a court); 18 U.S.C. § 2511(2)(a)(ii) (barring disclosure of the existence of wiretaps, unless otherwise directed by a court).

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[12] *See In Re: §2703(d) Order*, Misc. No. 1:11dm00003, 2011 U.S. Dist. LEXIS 25322, at *10-19 (E.D. Va. Mar. 11, 2011) (Memorandum Opinion) (rejecting subscribers' First and Fourth Amendment challenges to the Twitter Order).

Google's First Amendment argument amounts to an as-applied attack on the SCA's constitutionality. Yet, Google cites no case—and none has been found—striking the exercise of such power as an improper prior restraint under the First Amendment. Nondisclosure provisions of this sort are so routine that Google's argument borders on frivolous. Nevertheless, it is not difficult to perform the required constitutional analysis under the First Amendment, which makes clear that the nondisclosure provision in the Google Order passes constitutional muster.

It is true, of course, that the nondisclosure provision in issue does constitute a prior restraint on Google's right to free speech,[13] but it is equally clear that a prior restraint is permissible where the government demonstrates that the restraint is narrowly tailored to serve a compelling governmental interest. *See Va. Dep't of State Police v. Wash. Post*, 386 F.3d 567, 573 (4th Cir. 2004) (analyzing prior restraints in the context of sealed court documents). It is well settled that the government has a compelling interest in maintaining the integrity of an ongoing criminal investigation. *Wash. Post*, 386 F.3d at 579 ("We note initially our complete agreement with the general principle that a compelling governmental interest exists in protecting the integrity of an ongoing law enforcement investigation."); *In re Sealing & Non-Disclosure*, 562 F. Supp. 2d at 895 ("As a rule, sealing and non-disclosure of electronic surveillance orders [that are not permanent or indefinite] are presumptively justified while the investigation is ongoing . . . ."). Of course, "whether this general interest is applicable in a given case will depend on the specific facts and circumstances presented." *Wash. Post*, 386 F.3d at 579. In conducting such an analysis, consideration must be given to "whether the granting of access . . . will disclose facts that are otherwise unknown to the public." *Id.*

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[13] *See In re Sealing & Non-Disclosure*, 562 F. Supp. 2d 876, 882 (S.D. Tex. 2008) (noting that a nondisclosure provision in a § 1703(d) order "imposes a prior restraint on speech").

These principles, applied here, point convincingly to the conclusion that the nondisclosure provision in the Google Order does not infringe any of Google's First Amendment rights. Here, it is clear that unsealing the Google Order will reveal steps in the government's investigation that are not currently public. Although the public may speculate that the government is seeking or has sought access to noncontent subscriber information with respect to the [redacted] account, such access has ever been publicly confirmed. Moreover, as noted *infra*, there is reason to believe that such release will seriously jeopardize the government's ongoing criminal investigation. The government's interest in maintaining the integrity of its WikiLeaks investigation cannot be understated, and the temporary prior restraint on Google's free speech is narrowly tailored to serve this compelling interest. Therefore, Google's First Amendment challenge to the nondisclosure provision in the Google Order fails.

Accordingly, for the aforementioned reasons, the magistrate judge's order sealing the Google Order and barring disclosure of the existence of the Google Order for ninety days, with an optional sixty day extension, is neither clearly erroneous nor contrary to law. Additionally, a *de novo* review of the record similarly confirms that the magistrate judge's ruling was correct in all respects. Thus, Google's objections must be overruled.

The Clerk is directed to place this matter under seal and to send a copy of this Memorandum Opinion to all counsel of record.

Alexandria, Virginia
March 30, 2011

[redacted]
United States District Judge

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

IN THE MATTER OF THE 2703(d) ORDER AND 2703(f) PRESERVATION REQUEST RELATING TO GMAIL ACCOUNT	)	**Misc. No. 1:10GJ3793**
	)	**11-DM-2**
	)	**UNDER SEAL**

ORDER

The matter is before the Court on Google, Inc.'s motion to stay and objections to the magistrate judge's ruling that the order issued to Google pursuant to 18 U.S.C. § 2703(d) remain under seal and that Google be ordered not to disclose the existence of the order to anyone. *See In re Application of the United States of America for an Order Pursuant to 18 U.S.C. § 2703(d)*, No. 1:10GJ3793 (E.D. Va. Jan. 4, 2011) (Order), *as modified by In re 2703(d) Order and 2703(f) Preservation Request Relating to Gmail Account* [redacted] No. 1:10GJ3793 (E.D. Va. Feb. 9, 2011) (Order).

For the reasons stated in the accompanying Memorandum Opinion of even date, a *de novo* review of the record as a whole demonstrates that the magistrate judge's ruling is correct in all respects, and that the ruling is not contrary to law, clearly erroneous, or an abuse of discretion.

Accordingly,

It is hereby **ORDERED** that Google's objections (Doc. Nos. 15 and 16) are **OVERRULED** in all respects.

It is further **ORDERED** that Google's motion to stay (Doc. No. 17) is **DENIED AS MOOT.**

It is further **ORDERED** that this Order and the accompanying Memorandum Opinion shall **REMAIN UNDER SEAL** until further order of the Court.

It is further **ORDERED** that once the underlying grand jury investigation is completed, the government is **DIRECTED** to advise the Court whether it would then be appropriate to lift the seal on this Order and the Memorandum Opinion.

It is further **ORDERED** that Google promptly comply with the magistrate judge's § 2703(d) order compelling the disclosures described therein and comply with the accompanying nondisclosure provision in all respects.

The Clerk is directed to place this matter under seal and to send a copy of this Order to all counsel of record.

Alexandria, Virginia
March 30, 2011

[redacted]
United States District Judge