

12/21/2020

CLERK'S OFFICE  
AT GREENBELT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

BY   jf  , DEPUTY CLERK

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

2020 FEB -5 P 12:43

**IN RE APPLICATION OF THE  
UNITED STATES OF AMERICA  
FOR AN ORDER PURSUANT TO  
18 U.S.C. § 2703(d)**

**CASE NO. 19-MC-624  
CASE NO. 19-MC-682**

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**UNDER SEAL**

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**SECOND AMENDED ORDER**

FEB 21 2020

In November and December 2019, the United States submitted Applications in the above-captioned cases, pursuant to 18 U.S.C. § 2703(d), requesting that the Court issue Orders to Microsoft Corporation, headquartered at One Microsoft Way, Redmond, California (the "service provider"), to disclose certain records and other information related to Microsoft's enterprise customer, [REDACTED] ("[REDACTED]"), a subsidiary of [REDACTED] ("[REDACTED]") (collectively, the "Applications").

AT GREENBELT  
CLERK, U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

DEPUTY

On or about November 26, 2019 (Case No. 19-MC-682) and on or about December 6, 2019 (Case No. 19-MC-624), the Court issued the requested Orders to Microsoft and prohibited Microsoft from disclosing the existence of the Applications and Orders, pursuant to 18 U.S.C. § 2705(b), to the subscribers of the accounts described in the Applications and Orders for a period of up to 12 months (collectively, "the Orders").

Microsoft complied with the Court's orders to disclose the requested records and other information to the United States. However, on or about December 27, 2019, Microsoft moved to modify the Orders to permit Microsoft to notify an appropriate individual within [REDACTED] or [REDACTED] of the United States' data requests.

On or about January 14, 2020, based upon the specific facts of the investigation and due to developments in the investigation since the issuance of the Applications and Orders (including developments related to the covert nature of the investigation and diminished need for secrecy),

the United States consented to Microsoft's motion, and in particular to Microsoft's request to notify ██████████ who serves as counsel for ██████████ and ██████████ of the existence of the Orders and of the fact that the United States consented to the Court amending the Orders following the filing of a motion by Microsoft to permit notification, but not the target accounts identified in Attachment A to the Orders.<sup>1</sup> The Court entered an Amended Order permitting this disclosure on January 23, 2020.

Although the Orders were to expire twelve months after their issuance, the Amended Order on its face would remain in effect until further order of the Court. Microsoft and the United States agree, however, that the nondisclosure provisions of the Amended Order need not extend beyond the period established in the Orders. This Second Amended Order therefore restores the duration provision in the Orders, with the modifications to Microsoft's nondisclosure obligations described above.

Consistent with the Orders and the Amended Order, the Court hereby finds that the United States has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

The Court further determines that there is reason to believe that notification of the existence of the Orders and this Amended Order to any person other than ██████████ ██████████ who serves as counsel for ██████████ and ██████████ and the notification of

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<sup>1</sup> More specifically, the Court finds that based on the unique facts and circumstances of the investigation, the government formally requested records directly from ██████████ and ██████████ through ██████████ thereby (1) disclosing the existence—and in part the nature—of the investigation to ██████████ and ██████████ and (2) obviating the need to keep the existence of the Orders entirely covert, while nevertheless requiring continued secrecy regarding the details of the Orders, including the identity of the target accounts. The Court does not opine on whether the modification contemplated in this Order would be warranted absent the government's voluntary disclosure.

the target accounts identified in Attachment A to the Orders to any person, will seriously jeopardize the ongoing 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. 18 U.S.C. § 2705(b)(2), (3), (5).

IT IS FURTHER ORDERED under 18 U.S.C. § 2705(b), that Microsoft shall not disclose the existence of the Applications of the United States, or the existence of the Orders of the Court, to the subscribers of the accounts listed in Attachment A, or to any other person, prior to December 6, 2020, or unless otherwise authorized to do so by the Court, except: (1) Microsoft may disclose the Orders, the Amended Order, and this Second Amended Order to an attorney for the service provider for the purpose of receiving legal advice; and (2) Microsoft may disclose the existence of the Orders, the Amended Order, and this Second Amended Order of the fact that the United States consented to amending the Orders following the filing of a motion by Microsoft, to [REDACTED] [REDACTED] who serves as counsel for [REDACTED] and [REDACTED] but <sup>may</sup> ~~not~~ disclose the specific target accounts identified in Attachment A to the Orders.

IT IS FURTHER ORDERED that the Applications, the Orders, the Amended Order, and this Second Amended Order are sealed until otherwise ordered by the Court.

February 20, 2020

Date



Honorable Timothy J. Sullivan  
United States Magistrate Judge