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11 [REDACTED]

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

**ORIGINAL
FILED**

MAR 14 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LB

CV 13 1165

15) Case No. _____
16)
17) **DECLARATION OF [REDACTED]**
18) **IN SUPPORT OF PETITION TO SET**
19) **ASIDE NATIONAL SECURITY LETTERS**
20) **AND NONDISCLOSURE**
21) **REQUIREMENTS IMPOSED IN**
22) **CONNECTION THEREWITH**
23)
24) FILED UNDER SEAL
25)
26)
27)
28)

IN RE MATTER OF NATIONAL SECURITY LETTERS

DECLARATION OF [REDACTED]

I, [REDACTED] declare as follows:

1. I am the Cofounder and CEO of Petitioner [REDACTED] If called upon as a witness, I could and would testify competently to the matters stated herein of my own personal knowledge.

2. I submit this declaration in support of [REDACTED] to Set Aside National Security Letters and Nondisclosure Requirements Imposed In Connection Therewith.

3. I have been CEO of [REDACTED] since 2009.

[REDACTED]

6. It is [REDACTED] policy to notify our customers whenever we are legally required to turn over their data to a third party. We only refrain from notifying our customers of a request for their information when ordered to withhold notice by a court of competent jurisdiction.

7. Additionally, [REDACTED] believes that it should ensure that any request for information about its customers fully meets both statutory and constitutional standards.

8. As transparency is a core concern for [REDACTED] and our customers, it is vital to us that government requests for data be disclosed to our customers wherever possible. In the rare situations where we are not able to disclose government requests for customer information, we require that such a gag be authorized by a court to ensure that it is legally proper.

9. [REDACTED]

[REDACTED] Companies such as Google release such reports (<https://www.google.com/transparencyreport/>) to maximize transparency, increase the confidence their users have, and contribute to the debate about the proper use of government

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requests for data. The extrajudicial nondisclosure provision of the NSL Statute makes it exceedingly difficult to release a complete and accurate Transparency Report.

10. On [redacted] 2013, [redacted] received two National Security Letters. The first, numbered [redacted] was dated [redacted] 2012, and was issued by the FBI's [redacted] field office. The other, numbered [redacted] was dated [redacted] 2012, and was issued by the FBI's [redacted] office.

11. Attached hereto as Exhibit A is a true and correct copy of the [redacted] NSL.

12. Attached hereto as Exhibit B is a true and correct copy of the [redacted] NSL.

13. The NSLs prohibit [redacted] from disclosing information about the NSLs to anyone other than our attorneys and a limited number of our staff.

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

Executed this 13 day of March, 2013. at New York. New York.

[redacted signature block]

Exhibit A

Exhibit A

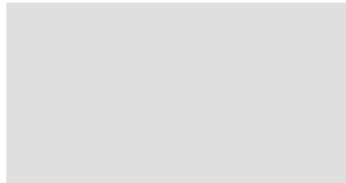


U.S. Department of Justice

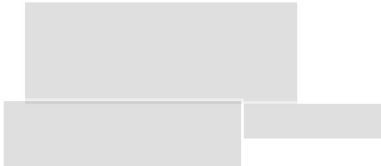
Federal Bureau of Investigation

In reply, please refer to

File No [redacted]



[redacted]
CEO



Dear [redacted]

Under the authority of Executive Order 12333, dated July 30, 2008, and pursuant to Title 18 United States Code (U.S.C.), § 2709 (§ 201 of the Electronic Communications Privacy Act of 1986) (as amended), you are hereby directed to provide to the Federal Bureau of Investigation (FBI) the names, addresses, and length of service and electronic communications transactional records, to include existing transaction/activity logs and all electronic mail (e-mail) header information, for the below-listed email/IP address holder(s):

Accounts:	For Following Date(s) (YYYY-MM-DD):
[redacted]	From Inception to Present
[redacted]	From Inception to Present
[redacted]	From Inception to Present
[redacted]	From Inception to Present
[redacted]	From Inception to Present

Accounts:	For Following Date(s) (YYYY-MM-DD):
[redacted]	From Inception to Present

Please see the attachment following this letter for the types of information that you might consider to be an electronic communications transactional record. We are not directing you to provide, nor should you provide, information pursuant to this letter that would disclose the

[REDACTED]

content of any electronic communication. Title 18 United States Code § 2510(8) defines content as "any information concerning the substance, purport, or meaning of" a communication. Subject lines of e-mails and message content are content information and should not be provided pursuant to this letter.

If the period noted above is from "inception," that term is intended to apply to the current account holder only. If the period noted above is to the "present," that term is intended to direct production of information to the date of the processing of this letter. Information that is responsive to this request may include information that falls within the "billing cycle" that you use, e.g., if the request is for January 1 through July 1, but you maintain account information based on a billing cycle that runs from the 15th of the month, then you may provide information beyond the dates requested (January 1 through July 1) so long as the information provided falls within your billing cycle, i.e., you may provide information from December 15 through July 15. Accordingly, producing information outside the requested date range that is within your billing cycle is not an overproduction.

While fulfilling your obligations under this letter, please do not disable, suspend, lock, cancel or interrupt service to the above-described subscriber(s) or accounts. A service interruption or degradation may alert the subscriber(s)/account user(s) that investigative action is being taken. If you are not able to fulfill your obligations under this letter without alerting the subscriber/account user, please contact the FBI prior to proceeding.

In accordance with Title 18 U.S.C., § 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment to the Constitution of the United States.

In accordance with Title 18 U.S.C. § 2709(c)(1), I certify that a disclosure of the fact that the FBI has sought or obtained access to the information sought by this letter may endanger the national security of the United States; interfere with a criminal, counterterrorism, or counterintelligence investigation; interfere with diplomatic relations; or endanger the life or physical safety of a person. Accordingly, Title 18 U.S.C. § 2709(c)(1) and (2) prohibits you, or any officer, employee, or agent of yours, from disclosing this letter, other than to those to whom disclosure is necessary to comply with the letter or to an attorney to obtain legal advice or legal assistance with respect to this letter.

In accordance with Title 18 U.S.C. § 2709(c)(3), you are directed to notify any persons to whom you have disclosed this letter that they

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Ref: [REDACTED]

[REDACTED]

are also subject to the nondisclosure requirement and are therefore also prohibited from disclosing the letter to anyone else.

In accordance with Title 18 U.S.C. § 2709(c)(4), if the FBI asks for the information, you should identify any person to whom such disclosure has been made or to whom such disclosure will be made. In no instance will you be required to identify any attorney to whom disclosure was made or will be made in order to obtain legal advice or legal assistance with respect to this letter.

In accordance with 18 U.S.C. § 3511(a) and (b)(1), you have a right to challenge this letter if compliance would be unreasonable, oppressive, or otherwise unlawful.

You also have the right to challenge the nondisclosure requirement set forth above. If you wish to make a disclosure that is prohibited by the nondisclosure requirement, you must notify the FBI, in writing, of your desire to do so within 10 calendar days of receipt of this letter. That notice must be mailed or faxed to the [REDACTED] Division, attention: [REDACTED] (phone number: [REDACTED], with a copy to FBI HQ, attention: General Counsel (fax number: 202-324-5366) and must reference the date of the NSL and the identification number found on the upper left corner of the NSL. If you send notice within 10 calendar days, the FBI will initiate judicial proceedings in approximately 30 days in order to demonstrate to a federal judge the need for nondisclosure and to obtain a judicial order requiring continued nondisclosure. The nondisclosure requirement will remain in effect unless and until there is a final court order holding that disclosure is permitted.

If you do not send notice of your desire to disclose the NSL or the fact that you produced records in response to it within 10 calendar days of receipt, then the nondisclosure provision will remain in effect, subject to your opportunity to make an annual challenge to the nondisclosure requirement as provided by subsection 3511(b).

In accordance with Title 18 U.S.C. § 3511(c), an unlawful failure to comply with this letter, including any nondisclosure requirement, may result in the United States bringing an enforcement action.

You are directed to provide records responsive to this letter personally to a representative of the [REDACTED] Division within 21 business day(s) of receipt of this letter. If possible, please provide records in response to this letter in electronic format. Due to security considerations, you should neither send the records through routine mail service nor non-secure fax, nor disclose the substance of this letter in any telephone conversation. In responding to this request in order to facilitate processing of the information, please reference the [REDACTED]

[REDACTED]

Any questions you have regarding this letter should be directed to
the [REDACTED] Division or [REDACTED]

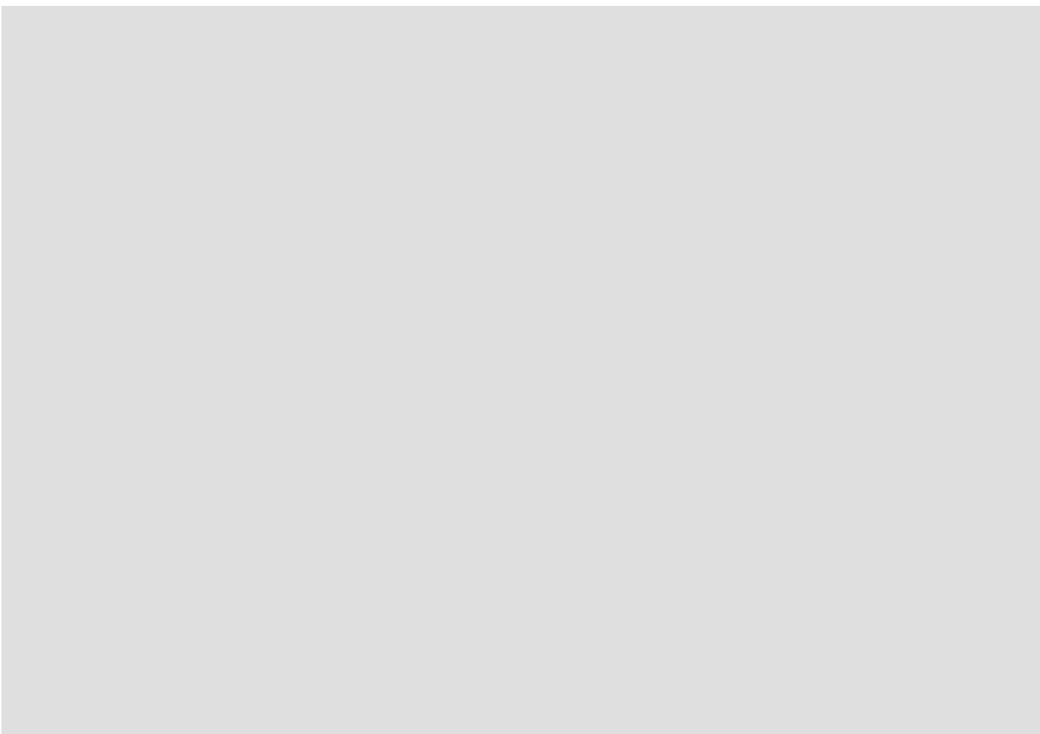
Your cooperation in this matter is greatly appreciated.

Sincerely,

[REDACTED]

ATTACHMENT

In preparing your response to this National Security Letter, you should determine whether your company maintains the following types of information which may be considered by you to be an electronic communications transactional record in accordance with Title 18 United States Code § 2709.



We are not directing you to provide, nor should you provide, information pursuant to this letter that would disclose the content of any electronic communication. Title 18 United States Code § 2510(8) defines content as "any information concerning the substance, purport, or meaning of" a communication. Subject lines of e-mails are content information and should not be provided pursuant to this letter. If the records provided are particularly large we request that you provide this information in electronic format, preferably on a CD-ROM.


FOR INTERNAL USE ONLY
Ref: 

Exhibit B

Exhibit B



U.S. Department of Justice

Federal Bureau of Investigation

In reply, please refer to

File No. [REDACTED]

[REDACTED]

[REDACTED]
CEO
[REDACTED]
[REDACTED]

Dear [REDACTED]

Under the authority of Executive Order 12333, dated July 30, 2008, and pursuant to Title 18 United States Code (U.S.C.), § 2709 (§ 201 of the Electronic Communications Privacy Act of 1986) (as amended), you are hereby directed to provide to the Federal Bureau of Investigation (FBI) the names, addresses, and length of service and electronic communications transactional records, to include existing transaction/activity logs and all electronic mail (e-mail) header information, for the below-listed email/IP address holder(s):

Accounts:	For Following Date(s) (YYYY-MM-DD):
[REDACTED]	For Current Subscriber

Please see the attachment following this letter for the types of information that you might consider to be an electronic communications transactional record. We are not directing you to provide, nor should you provide, information pursuant to this letter that would disclose the content of any electronic communication. Title 18 United States Code § 2510(8) defines content as "any information concerning the substance, purport, or meaning of" a communication. Subject lines of e-mails and message content are content information and should not be provided pursuant to this letter.

If the period noted above is from "inception," that term is intended to apply to the current account holder only. If the period noted above is to the "present," that term is intended to direct production of

[REDACTED]

information to the date of the processing of this letter. Information that is responsive to this request may include information that falls within the "billing cycle" that you use, e.g., if the request is for January 1 through July 1, but you maintain account information based on a billing cycle that runs from the 15th of the month, then you may provide information beyond the dates requested (January 1 through July 1) so long as the information provided falls within your billing cycle, i.e., you may provide information from December 15 through July 15. Accordingly, producing information outside the requested date range that is within your billing cycle is not an overproduction.

While fulfilling your obligations under this letter, please do not disable, suspend, lock, cancel or interrupt service to the above-described subscriber(s) or accounts. A service interruption or degradation may alert the subscriber(s)/account user(s) that investigative action is being taken. If you are not able to fulfill your obligations under this letter without alerting the subscriber/account user, please contact the FBI prior to proceeding.

In accordance with Title 18 U.S.C., § 2709(b), I certify that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, and that such an investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment to the Constitution of the United States.

In accordance with Title 18 U.S.C. § 2709(c)(1), I certify that a disclosure of the fact that the FBI has sought or obtained access to the information sought by this letter may endanger the national security of the United States; interfere with a criminal, counterterrorism, or counterintelligence investigation; interfere with diplomatic relations; or endanger the life or physical safety of a person. Accordingly, Title 18 U.S.C. § 2709(c)(1) and (2) prohibits you, or any officer, employee, or agent of yours, from disclosing this letter, other than to those to whom disclosure is necessary to comply with the letter or to an attorney to obtain legal advice or legal assistance with respect to this letter.

In accordance with Title 18 U.S.C. § 2709(c)(3), you are directed to notify any persons to whom you have disclosed this letter that they are also subject to the nondisclosure requirement and are therefore also prohibited from disclosing the letter to anyone else.

In accordance with Title 18 U.S.C. § 2709(c)(4), if the FBI asks for the information, you should identify any person to whom such disclosure has been made or to whom such disclosure will be made. In no instance will you be required to identify any attorney to whom disclosure was made or will be made in order to obtain legal advice or legal assistance with respect to this letter.

[REDACTED]

In accordance with 18 U.S.C. § 3511(a) and (b)(1), you have a right to challenge this letter if compliance would be unreasonable, oppressive, or otherwise unlawful.

You also have the right to challenge the nondisclosure requirement set forth above. If you wish to make a disclosure that is prohibited by the nondisclosure requirement, you must notify the FBI, in writing, of your desire to do so within 10 calendar days of receipt of this letter. That notice must be mailed or faxed to the [REDACTED] Field Office, attention: [REDACTED] (phone number: [REDACTED], with a copy to FBI HQ, attention: General Counsel (fax number: 202-324-5366) and must reference the date of the NSL and the identification number found on the upper left corner of the NSL. If you send notice within 10 calendar days, the FBI will initiate judicial proceedings in approximately 30 days in order to demonstrate to a federal judge the need for nondisclosure and to obtain a judicial order requiring continued nondisclosure. The nondisclosure requirement will remain in effect unless and until there is a final court order holding that disclosure is permitted.

If you do not send notice of your desire to disclose the NSL or the fact that you produced records in response to it within 10 calendar days of receipt, then the nondisclosure provision will remain in effect, subject to your opportunity to make an annual challenge to the nondisclosure requirement as provided by subsection 3511(b).

In accordance with Title 18 U.S.C. § 3511(c), an unlawful failure to comply with this letter, including any nondisclosure requirement, may result in the United States bringing an enforcement action.

You are directed to provide records responsive to this letter personally to a representative of the San Francisco Division within 14 business day(s) of receipt of this letter. If possible, please provide records in response to this letter in electronic format. Due to security considerations, you should neither send the records through routine mail service nor non-secure fax, nor disclose the substance of this letter in any telephone conversation. In responding to this request in order to facilitate processing of the information, please reference the [REDACTED]

[REDACTED]

FOR INTERNAL USE ONLY
REF: [REDACTED]

[Redacted]

Any questions you have regarding this letter should be directed to
the [Redacted] or [Redacted]
Your cooperation in this matter is greatly appreciated.

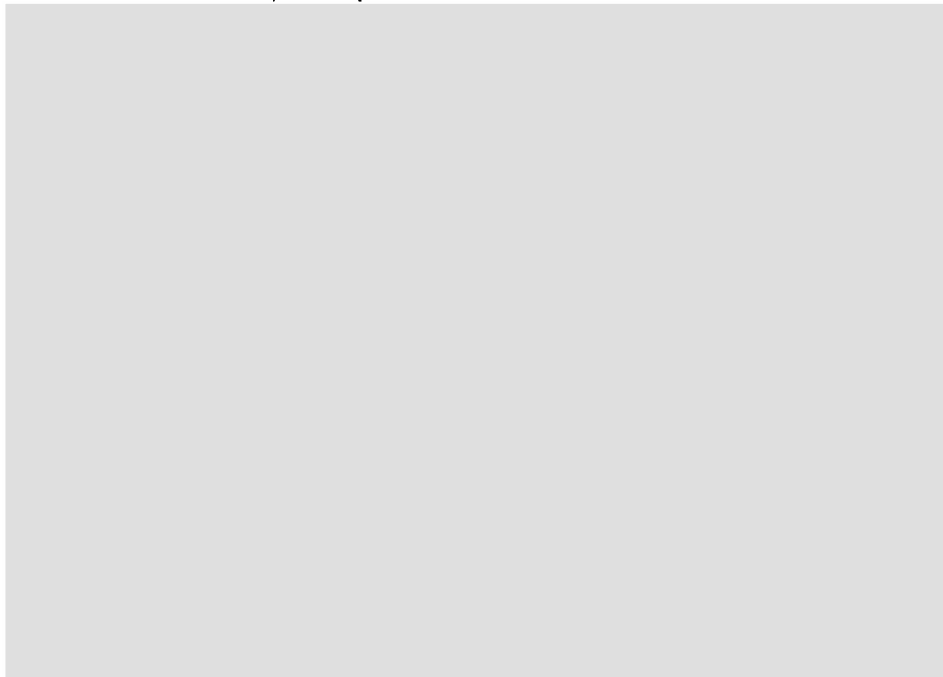
Sincerely,

[Redacted]

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ATTACHMENT

In preparing your response to this National Security Letter, you should determine whether your company maintains the following types of information which may be considered by you to be an electronic communications transactional record in accordance with Title 18 United States Code § 2709.



We are not directing you to provide, nor should you provide, information pursuant to this letter that would disclose the content of any electronic communication. Title 18 United States Code § 2510(8) defines content as "any information concerning the substance, purport, or meaning of" a communication. Subject lines of e-mails are content information and should not be provided pursuant to this letter. If the records provided are particularly large we request that you provide this information in electronic format, preferably on a CD-ROM.