

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

2011 JAN 26 P 2:54

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

Misc. No. 10G035703

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

**DECLARATION OF ADEN J. FINE IN SUPPORT
OF MOTION TO UNSEAL**

I, Aden J. Fine, hereby declare and state as follows:

1. I am a senior staff attorney at the American Civil Liberties Union Foundation, 125 Broad St., 18th Floor, New York, NY 10004, and am co-counsel for real party in interest Birgitta Jonsdottir.

2. This declaration is submitted in support of the Motion of Real Parties in Interest Jacob Appelbaum, Rop Gonggrijp, and Birgitta Jonsdottir for Unsealing of Sealed Court Records and Memorandum of Points and Authorities in Support Thereof.

3. Attached as Exhibit A hereto is a true and correct copy of the Order Pursuant to 18 U.S.C. § 2703(d) issued by the Court, dated December 14, 2010.

4. Attached as Exhibit B hereto is a true and correct copy of the Order to Unseal the Order Pursuant to 18 U.S.C. § 2703(d) issued by the Court, dated January 5, 2011.

5. Attached as Exhibit C hereto is a true and correct copy of a January 7, 2011 email from Twitter to Birgitta Jonsdottir.

6. Attached as Exhibit D hereto is a true and correct copy of a decision adopted by the Committee on the Human Rights of Parliamentarians of the Inter-Parliamentary Union during its session from January 17-20, 2011.

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7. Attached as Exhibit E hereto is a true and correct copy of a letter, dated January 12, 2011, from the Acting Permanent Secretary of State of Iceland.

Pursuant to 28 U.S.C. § 1746, I hereby declare and state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on January 26, 2011

A handwritten signature in black ink, appearing to read "Aden J. Fine", written over a horizontal line.

ADEN J. FINE

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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

MISC. NO. 10GJ3793

Filed Under Seal

ORDER

This matter having come before the Court pursuant to an application under Title 18, United States Code, Section 2703, which application requests the issuance of an order under Title 18, United States Code, Section 2703(d) directing Twitter, Inc., an electronic communications service provider and/or a remote computing service, located in San Francisco, California, to disclose certain records and other information, as set forth in Attachment A to this Order, the Court finds that the applicant 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.

IT APPEARING that the information sought is relevant and material to an ongoing criminal investigation, and that prior notice of this Order to any person of this investigation or this application and Order entered in connection therewith would seriously jeopardize the investigation;

IT IS ORDERED pursuant to Title 18, United States Code, Section 2703(d) that Twitter, Inc. will, within three days of the date of this Order, turn over to the United States the records and other information as set forth in Attachment A to this Order.

IT IS FURTHER ORDERED that the Clerk of the Court shall provide the United States Attorney's Office with three (3) certified copies of this application and Order.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court, and that Twitter shall not disclose the existence of the application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person, unless and until authorized to do so by the Court.

/s/
Theresa Carroll Buchanan
United States Magistrate Judge

12/14/10
Date

AT THE COURT OF THE
CLERK U.S. DISTRICT COURT
BY [Signature]
DEPUTY CLERK

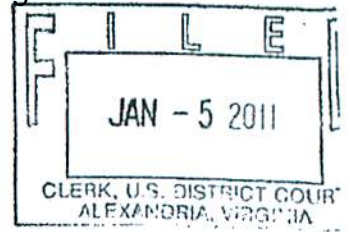
ATTACHMENT A

You are to provide the following information, if available, preferably as data files on CD-ROM, electronic media, or email (tracy.mccormick@usdoj.gov) or otherwise by facsimile to 703-299-3981:

- A. The following customer or subscriber account information for each account registered to or associated with Wikileaks; rop_g; ioerror; birgittaj; Julian Assange; Bradley Manning; Rop Gongrijp; Birgitta Jonsdottir for the time period November 1, 2009 to present:
 - 1. subscriber names, user names, screen names, or other identities;
 - 2. mailing addresses, residential addresses, business addresses, e-mail addresses, and other contact information;
 - 3. connection records, or records of session times and durations;
 - 4. length of service (including start date) and types of service utilized;
 - 5. telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
 - 6. means and source of payment for such service (including any credit card or bank account number) and billing records.

- B. All records and other information relating to the account(s) and time period in Part A, including:
 - 1. records of user activity for any connections made to or from the Account, including the date, time, length, and method of connections, data transfer volume, user name, and source and destination Internet Protocol address(es);
 - 2. non-content information associated with the contents of any communication or file stored by or for the account(s), such as the source and destination email addresses and IP addresses.
 - 3. correspondence and notes of records related to the account(s).

EXHIBIT B



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

Alexandria Division

IN THE MATTER OF THE)
§2703(d) ORDER RELATING TO) MISC. NO. 10GJ3793
TWITTER ACCOUNTS:)
WIKILEAKS, ROP_G; IOERROR;)
AND BIRGITTAJ)

ORDER TO UNSEAL THE
ORDER PURSUANT TO 18 U.S.C. §2703(D)

This matter having come before the Court pursuant to an application under Title 18, United States Code, §2703(d), it appearing that it is in the best interest of the investigation to unseal the Court's Order of December 14, 2010 and authorize Twitter to disclose that Order to its subscribers and customers, it is hereby ORDERED that the above-captioned Order of December 14, 2010 pursuant to 18 U.S.C. §2703(d) be UNSEALED and that Twitter is authorized to disclose such Order. In all other respects, the Court's Order of December 14, 2010 remains in effect

/s/
Theresa Carroll Buchanan
United States Magistrate Judge

Date: 1/5/11

Alexandria, Virginia

EXHIBIT C

Subject: Fwd: #1466264 Twitter Support: update on "Twitter Receipt of Legal Process"

From: Birgitta Jorsdottir [REDACTED]

Sent: Friday, January 07, 2011 7:10 PM

Subject: Fwd: #1466264 Twitter Support: update on "Twitter Receipt of Legal Process"

Begin forwarded message:

From: Kessel [REDACTED]

Date: January 7, 2011 7:21:05 PM GMT

To: birgittaj [REDACTED]

Subject: #1466264 Twitter Support: update on "Twitter Receipt of Legal Process"

Reply-To: Twitter Support

<support+id1466264@twitter.zendesk.com>

##- Please do not write below this line -##

Kessel, Jan-07 11:20 am (PST):

Dear Twitter User:

We are writing to inform you that Twitter has received legal process requesting information regarding your Twitter account, @birgittaj. A copy of the legal process is attached. The legal process requires Twitter to produce documents related to your account.

Please be advised that Twitter will respond to this request in 10 days from the date of this notice unless we receive notice from you that a motion to quash the legal process has been filed or that this matter has been otherwise resolved.

To respond to this notice, please e-mail us at twitter-legal@twitter.com.

This notice is not legal advice. You may wish to consult legal counsel about this matter. If you need assistance seeking counsel, you may consider contacting the Electronic Frontier Foundation (Kevin Bankston: bankston@eff.org, +1 415 436 9333 x126) or the ACLU (Aden Fine: afine@aclu.org, (212) 549-2693).

Sincerely,

Twitter Legal

Attachment(s)

[20101214160501127.pdf](#)

[Twitter Unsealing Order.pdf](#)

EXHIBIT D



INTER-PARLIAMENTARY UNION

CHEMIN DU POMMIER 5
1218 LE GRAND-SACONNEX / GENEVA (SWITZERLAND)

TELEPHONE + 41 22 - 919 41 50 - FAX + 41 22 - 919 41 60 - E-MAIL postbox@mail.ipu.org

CONFIDENTIAL

COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS

CASE No. IS/01 - BIRGITTA JÓNSDÓTTIR - ICELAND

*Confidential decision adopted by the Committee at its 132nd session
(Geneva, 17 - 20 January 2011)*

The Committee,

Considering the following information on file:

- Birgitta Jónsdóttir has been a member of the Icelandic Parliament since July 2009. She reportedly provided assistance to Wikileaks earlier that year in connection with the release of a video showing US soldiers shooting civilians in Bagdad from a helicopter;
- On 7 January 2011 she was informed by Twitter that it had received an Order from the United States District Court for the Eastern Division of Virginia to turn over to the United States the records and other information concerning her account contained in an Attachment. Twitter has been given a delay until 26 January to provide the information to the United States Government;
- The information sought by the US Government with respect to Birgitta Jónsdóttir concerned the period starting 1 November 2009 until present and involves subscriber account information including names, user names, screen names or other identities, mailing and other addresses, connection records, or records of session times and duration, length and types of service, telephone or instrument number or other subscriber number or identity, means and sources of payment for such services, including any credit card or bank account number, and billing records, records of user activity for any connections made to or from the account, including the date, time, length, and method of connections, data transfer volume, user name, and source and destination Internet protocol address(es), non-content information associated with the contents of any communication or file stored by or for the account, and correspondence and notes of records related to the accounts;
- Members of the Althingi are protected under Article 49 of the Icelandic Constitution, which states that "No member of Althingi may be subjected to custody on remand during a session of Althingi without the consent of Althingi, nor may a criminal action be brought against him unless he is caught in the act of committing a crime. No member of Althingi may be held accountable outside Althingi for statements made by him in Althingi, except with the consent of Althingi."
- The first court order, which was dated 14 December 2010, was originally kept secret and was only revealed to Birgitta Jónsdóttir after Twitter took steps to ensure that it could notify the individual concerned. Birgitta Jónsdóttir fears that efforts may be under way by US authorities to obtain information about her and her activities also through other US-based companies;

- Birgitta Jónsdóttir believes that the investigation carried out by the US authorities can restrict her ability to carry out her parliamentary work,

Considering moreover that:

- Members of parliament benefit from fundamental freedoms, including the right to privacy as well as of specific measures of protection to allow them to carry out their work unimpeded;
- Parliamentary immunity ensures that members of parliament cannot be held to account for the opinions they express and the votes they cast and countries have generally put special mechanisms in place to ensure that they can carry out their mandate without undue restrictions and with full respect for their freedom of expression;
- In all countries, freedom of expression is essential to enabling democracy to work; citizens cannot exercise their right to vote or take part in public decision-making if they do not have free access to information and ideas and are not able to express their views freely;
- Freedom of expression is even more essential to members of parliament and is recognized as such by courts all over the world; without the ability to express their opinions freely, members of parliament cannot represent the people who have elected them;
- Members of parliament are elected by people to represent them in parliament. In their daily work they legislate and they hold the governments to account. They are unable to perform these duties if they cannot receive and exchange information freely without fear of intimidation;
- Citizens will not communicate sometimes sensitive information to their representative without the assurance that their identity will be protected. Members of parliament, therefore, find themselves in the same situation as journalists, with an absolute need to be able to protect their sources.

Also considering the following information:

- Twitter is a website, owned and operated by Twitter Inc. It offers a social networking and microblogging service that enables its users to send and read messages called *Tweets*, which are text-based posts of up 140 characters displayed on the user's profile page. Tweets are publicly visible by default; however, senders can restrict message delivery to followers;
- Members of parliament are increasingly availing themselves of modern means of communication with citizens. A vast majority of parliamentarians today communicate by e-mail. Social media - Facebook, Twitter, etc. - are on the rise, in particular among young members of parliament and when MPs communicate with youth. These forms of communication are rapidly complementing and replacing yesterday's telex, telephone calls and faxes;
- The new social media offer vast opportunities for members of parliament to communicate with the public and to exchange information that is essential to them in their daily work. The use of these media, however, also presents significant risks to parliamentarians that their privacy will be invaded and their parliamentary work impaired;
- For members of parliament, it is essential that any private communication they receive is accorded the same level of protection regardless of the technology, platform and business model used to create, communicate and store it. This does not appear to be the case today.

1. *Recalls* that freedom of expression goes to the heart of democracy and is essential to members of parliament; without the ability to express their opinions freely, members of parliament cannot represent the people who have elected them; if they cannot receive and exchange information freely without fear of interference they cannot legislate and hold the government to account;

2. *Also recalls that* Article 19 of the Universal Declaration of Human Rights upholds the right of everyone to freedom of opinion and expression; it stipulates that this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers;
3. *Notes that* under standard human rights conventions and their jurisprudence, restrictions on the freedom of expression are subjected to a threefold test: they should be prescribed by law, they must be necessary in a democratic society and they must be proportionate to these necessary purposes;
4. *Fails to see* how the restrictions on freedom of expression that would result from compliance with the court order can be justified on such grounds and *holds that*, to the contrary, such compliance would jeopardise a member of parliament's right to freedom of expression and hence her ability to seek, receive and impart information freely, which is absolutely necessary in a democratic society;
5. *Is concerned* that the national and international legal framework concerning the use of electronic media, including social media, does not appear to provide sufficient guarantees to ensure respect for freedom of expression and parliamentary immunity;
6. *Expresses deep concern*, therefore, over the efforts made to obtain information regarding the communications of a member of parliament and the consequences this is likely to have for all members of parliament on their ability to discharge their popular mandate freely;
7. *Requests* the Secretary General to communicate these concerns to the authorities in Iceland and in the United States and to seek their views; with regard to the United States, *also requests* the Secretary General to explore the possibility of submitting a legal brief to the relevant judicial authorities setting out the IPU's concerns;
8. *Also requests* the Secretary General to conduct an urgent study with a view to formulating guidelines for strengthening the system of parliamentary immunities so that members of parliament can continue to enjoy freedom of expression while using the new social media;
9. *Decides* to continue examining this case at its next session, to be held during the 124th IPU Assembly (April 2011).

EXHIBIT E



MINISTRY FOR
FOREIGN AFFAIRS

Rauðarásílgur 25, 150 Reykjavík, Iceland
Tel: 354-545 9900, fax: 354-562 2373
external@utm.stjr.is, www.mfa.is

Ms. Cindy Cohn
Legal Director
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Reykjavík, 12 January 2011
UTN11010154/03.F.001
GG/THH

This is to confirm that the Ministry for Foreign Affairs of Iceland has met with representatives of the United States Government to discuss an order, at the request of US authorities, that Twitter hand over personal information from the account of Ms. Birgitta Jonsdottir, a Member of the Icelandic Parliament. The Ministry called for further information on the matter and expressed serious concern that an elected Member of the Icelandic Parliament was in this way subject to a criminal investigation in a foreign country. As an MP, Ms. Jonsdottir enjoys immunity and the Ministry emphasized that the matter would not have any further effect on the MP's work and the functionality of the Parliament. This includes Ms. Jonsdottir's freedom to travel and her possibilities to participate in political debate internationally.


A handwritten signature in black ink, appearing to read 'Gréta Gunnarsdóttir'.

Gréta Gunnarsdóttir
Acting Permanent Secretary of State

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was delivered by hand this 26th day of January, 2011, to the U.S. Attorney Box located in the Clerk's office, addressed to:

Tracy Doherty McCormick
U.S. Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
Ph: 703 299-3715
Email: Tracy.McCormick@usdoj.gov



Stuart Alexander Sears