ICE Administrative Subpoenas to Tech Companies for Account Holder Data

Background:

In recent years, Immigration and Customs Enforcement (ICE) has issued administrative subpoenas using Form I-138 to tech companies, such as Google, for account holder data contained in its applications (email, maps, calendar etc).[1] *See* Appendix for sample administrative subpoena. This document provides background on this emerging issue of ICE administrative subpoenas and practical recommendations on how to spot and respond to these requests.

Frequently Asked Questions

1. What is an ICE administrative subpoena request?

An ICE administrative subpoena request is a written request from the Agency for information in the form of records or testimony. Sometimes, it is referred to as an "Immigration Enforcement Subpoena." While ICE has issued these subpoenas using Form I-138, it is possible that ICE may use other forms. An ICE administrative subpoena is different from a judicial subpoena. Most administrative subpoena requests are issued for civil investigation purposes carried on by a government agency under a range of purported regulatory or statutory authority.[2]

Various ICE subdivisions can issue an administrative subpoena, including the Office of Enforcement and Removal Operations (ERO) across all 24 Field Offices, Homeland Security Investigations (HSI) across its 26 Special Agent in Charge (SAC) Field Offices, and the Office for Professional Responsibility. Despite its name and coercive language, an administrative subpoena does not require the recipient's compliance without a judicial order from a federal court.[3] An administrative subpoena becomes legally enforceable only when a court orders the recipient to comply. In other words, ICE cannot compel compliance with an administrative subpoena from a tech company unless it seeks and obtains a federal court order requiring compliance.

2. What type of data does ICE request in its administrative subpoena?

It is long established that the Fourth Amendment places limitations on administrative subpoenas and requires them to be "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome."[4] However, ICE has gone beyond this limitation and uses administrative subpoenas to obtain expansive personal or sensitive information. ICE administrative subpoenas to tech companies for account holder data can request information about all or some of the following:

- Names, addresses, screen names, email addresses, and telephone numbers of all users, customers, or subscribers;
- Connection records (including assigned IP address) or record of session times and durations for all accounts;
- Location (street address) of all accounts;
- Length of service (including start date) and types of services utilized;
- Telephone or instrument number or other subscriber number or identity;
- Means or sources of payment for such service (including credit card or account numbers).

3. What information does Google or other technology companies provide based on an ICE administrative subpoena request?

Google will disclose account holder (also known as subscriber) registration information and IP addresses for Google account logins.[5] Google requires a criminal warrant to disclose information on the content of communications such as documents, emails, photos. Similarly, Twitter will disclose non- public account holder information "in response to appropriate legal process such as a subpoena" and has a policy of notifying users of information requests, unless barred from doing so.[6] Twitter will also require a search warrant for the "contents of communications," such as Direct Messages.[7] Facebook's policy, on the other hand, states that it will only disclose account or basic subscriber records if there is a "valid subpoena issued in connection with an official criminal investigation."[8]

That being said, basic subscriber registration information can include already sensitive information, such as someone's name, address, or phone number, and IP address information can include information on the user's location, when a user logged in, and for how long.

As of 2020, self-reported company data stated that, out of the total number of government requests received in the U.S., Google responded 83% of the time with some data; Twitter responded 59% of the time with some data; and Facebook responded 88% of the time with some data.[9]

4. How many ICE administrative subpoena requests does ICE send to Google and other technology companies?

We do not know the exact number of ICE administrative subpoena requests sent to tech companies for subscriber account information.[10] However, we believe that the request amount is significant based on the prevalent use of administrative subpoena requests in other ICE civil investigation contexts. For example, ICE agents issue thousands of administrative subpoenas to employers for I-9 workplace investigations.[11] It has issued hundreds of administrative subpoenas to utility and electric companies requesting consumer data in California.[12] It has issued a number of administrative subpoenas to local government agencies that limit collaboration and data sharing with ICE.[13] It has also issued administrative subpoenas to journalist requesting that it reveal its sources, implicating First Amendment concerns.[14] Most recently, it issued overbroad administrative subpoenas under specious legal authority to Western Union for bulk data on money transfer companies.[15]

5. If I or my client receives a notification of an ICE subpoena request from Google or another technology company, how can I challenge the ICE subpoena request?

Because of existing federal law, it can be challenging for a subscriber to directly challenge a subpoena issued to a technology company in court.[16]Companies, on the other hand, are well-situated and in a better position than the subscriber to seek agency or judicial redress of an ICE subpoena request, such as in the form of a motion to quash.[17]An ICE administrative subpoena request on its own does not require compliance. Again, only a federal court can compel a recipient to comply. Therefore, we believe that tech companies should not transfer the data to ICE unless there is a federal court order compelling them to do so and only after requesting a judiciary hearing to ensure that the subpoena is not overly broad and is tailored in its scope. Additionally, the Fourth Amendment places limitations on an administrative subpoena. Therefore, tech companies should seek judicial review to ensure that the subpoena is not overly broad or burdensome, and is tailored in its scope.

Practical Recommendations

- **Practice good digital security** by limiting data retention on tech platforms such as Google, and limiting logins across mobile applications (e.g. logging into Google Maps, Google Calendar, and/or YouTube). Alternatively, consider using other technology companies, such as Signal or Protonmail, which have stronger digital security protocols.

- Ask the tech company for a copy of the DHS request referenced in the notification email.

- **Monitor your email account for a notification from a tech company** notifying you that it has received legal process issued by the Department of Homeland Security (DHS) requesting the release of information related to your account. For Google, for example, the email should come from "usernotice@google.com" and the subject line should say something similar to "Notification from Google." See Appendix 1.

- **Ask the tech company for an extension of time in order to seek counsel and/or speak to the tech company's Legal Department.** When providing you with notice that it received a subpoena from DHS, the tech company may provide a deadline for you to respond. For example, Google notes that it generally expects you to respond within 7 days of the date of its notification with a filed Motion to Quash. We recommend that you consider replying to the tech company with (1) a request for an extension of their deadline for the purpose of seeking and consulting with legal counsel, (2) a request to communicate with the tech company's Legal Department through your legal counsel; and (3) a request that the tech company not hand over the account information until you are able to seek the advice of counsel and your counsel can confer with the tech company's counsel.

- **Contact immigration legal counsel to assess your risks and next steps**. Your risks of data sharing should be assessed on a case-by-case basis with an immigration attorney after a screening of your particular history and circumstance.

- **Attorneys need technical assistance? Reach out to Just Futures Law** for further technical assistance.

Big Picture: Demand Tech Company Accountability

- Demand that tech companies, such as Google, Facebook, and Twitter, limit data surveillance on its users and avoid sharing that information with ICE absent judicial review and order.

- Join the organizational letter to Google asking that Google limit data sharing with ICE absent a judicial order and avoid releasing information on ICE's requests for information. Contact Just Futures Law for additional information.

- Join Just Futures Law and Mijente in demanding #NoTechforICE. Sign up for updates at www.justfutureslaw.org and notechforice.com.

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Endnotes

[1] Johana Bhuiyan, *This is What Happens When ICE Asks Google For Your User Information*, Los Angeles Times (Mar. 24, 2021),https://www.latimes.com/business/technology/story/2021-03-24/federal-agencies-subpoena-google-personal information.

[2] In the context of civil immigration enforcement, ICE has asserted its legal authority to issue administrative subpoenas under 8U.S.C. § 1225(d)(4) and 8 C.F.R. § 287.4.

[3] *See* 8 U.S.C. § 1225(d)(4)(B) (delineating authority of District Courts to review and issue orders regarding the enforcement of ICE administrative subpoena request); 18 USC § 2073(d) (delineating authority of District Court to review and enforce request of government entity and the service provider's right to quash or modify such order). *See, e.g.*, *United States v. Iannone*, 610 F.2d 943, 945-47 (D.C.Cir.1979) (holding that a statute that grants the authority "to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data" does not include the authority to compel witness testimony); *In re Grand Jury Subpoena GJ2020111968168*, Case No. 20-sc-03082, (D.D.C. Mar. 10, 2021) (Doc. 3) (Twitter motion to quash grand jury subpoena requiring the production of information on an account user);

[4] S*ee v. City of Seattle*, 387 U.S. 541, 544 (1967); *see also* 18 USC 2073(d) ("A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.")

[5] Google Privacy & Terms, How Google handles government requests for user information, (last visited Aug. 11, 2022), https://policies.google.com/terms/information-requests.

[6] Twitter Help Center, Guidelines for Law Enforcement, https://help.twitter.com/en/rules-and-policies/twitter-law-enforcement-support (last visited Mar. 18, 2022).

[7] *Id.*

[8] Facebook Safety Center, Information for Law Enforcement Authorities https://www.facebook.com/safety/groups/law/guidelines/ (last visited Mar. 18, 2022).

[9] *Id.* at 1.

[10] Just Futures Law, Mijente Support Committee, and the Immigrants' Rights & Human Trafficking Program at Boston University School of Law filed a FOIA request to ICE requesting this data in 2021.

[11] Bruce E. Buchanan, *ICE is on the Warpath Against Employers with 3,000 I-9 Audits in 2 Months*, HR Professionals Magazine, https://hrprofessionalsmagazine.com/2019/11/03/ice-is-on-the-warpath-against-employers-with-3000-i-9-audits-in-2-months/.

[12] City News Service, *Newsom Signs Todd Gloria Bill to Limit ICE's Use of Customer Utility Data* (Sept. 28, 2020), NBC San Diego,https://www.nbcsandiego.com/news/local/newsom-signs-todd-gloria-bill-to-limit-ices-use-of-customer-utility-data/2414101/.

[13] *See e.g.* Portland City Council's Statement on ICE Subpoenas, Portland.gov (Mar. 6, 2020, 4:11PM), https://www.portland.gov/eudaly/news/2020/3/6/portland-city-councils-statement-ice- subpoenas ; *see also* Innovation Law Lab, Toolkit for Resisting ICE Administrative Subpoenas, (Mar. 3, 2020), https://innovationlawlab.org/toolkit/toolkit-resisting-ice-administrative-subpoenas/.

[14] Hamed Aleaziz, The Trump Administration Is Trying To Force BuzzFeed News To Divulge Its Sources With A Subpoena,Buzzfeed News (December 4, 2020, 8:29 pm), https://www.buzzfeednews.com/article/hamedaleaziz/ice-subpoena-buzzfeed-immigration-sources?bfsource=relatedmanual.

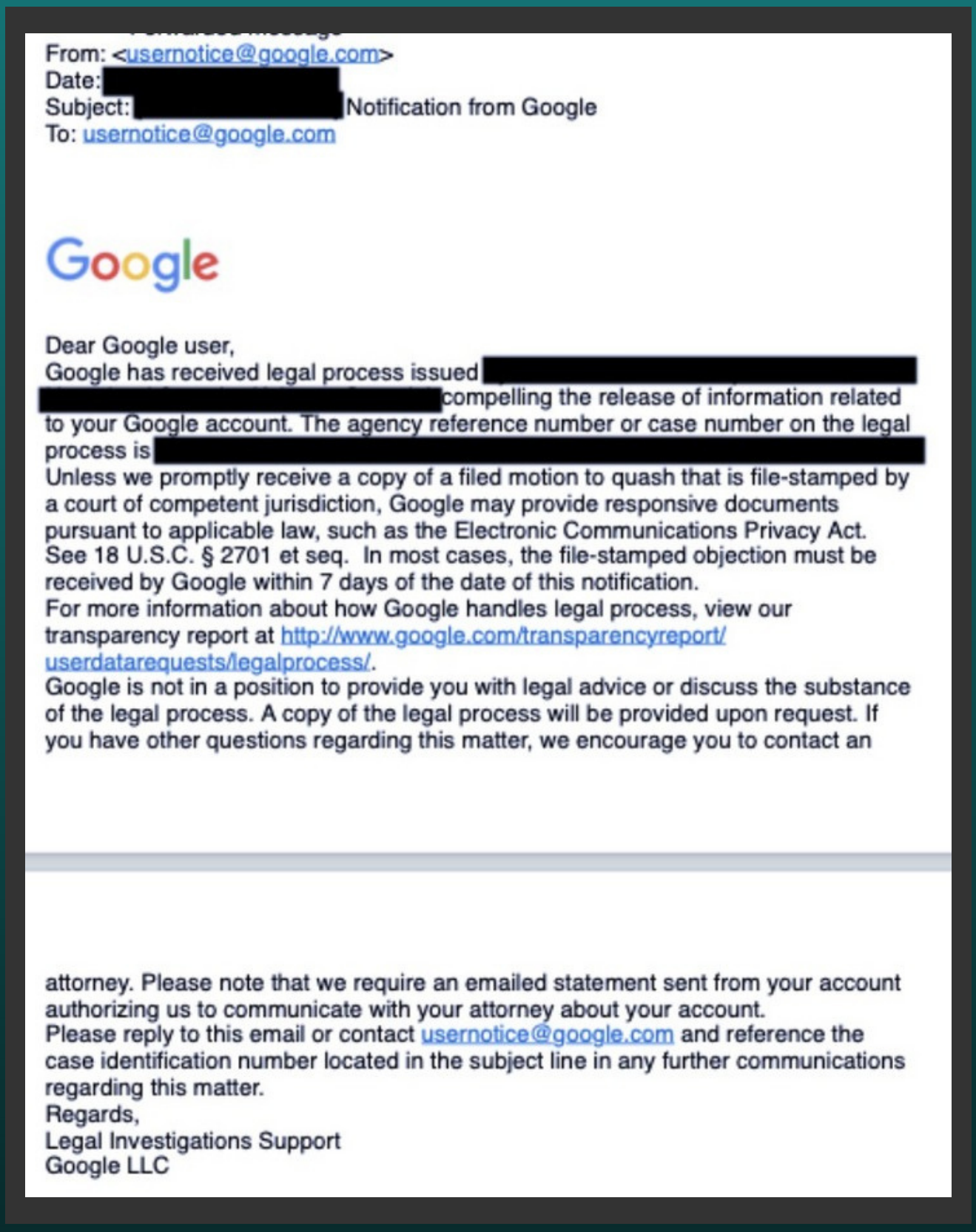
[15] Hamed Aleaziz, *ICE Conducted Sweeping Surveillance Of Money Transfers Sent To And From The US, A Senator Says*, Buzzfeed News (March 8, 2022, 6:01 am), https://www.buzzfeednews.com/article/hamedaleaziz/ice-western-union-records-wyden.

[16] For example, the statute in question does not provide a mechanism for a third party to move to quash the subpoena. 8 U.S.C. § 1225(d)(4)(B).

[17] *See e.g.* Del Quentin Wilber & Sarah D. Wire, *Twitter fights Justice Department subpoena over Rep. Nunes parody account*, Los Angeles Times (May 17, 2021, 5:08 PM), https://www.latimes.com/politics/story/2021-05-17/twitter-fights-justice-department-subpoena-over-rep-nunes-parody-account; *see also* 18 USC § 2073(d) (stating right of service provider to file a motion to quash the subpoena or modify court order).

Appendix

1. **Sample Google Notice to User's Email Account**



From: <usernotice@google.com>
Date: [redacted]
Subject: [redacted] Notification from Google
To: usernotice@google.com

Google

Dear Google user,
Google has received legal process issued [redacted] compelling the release of information related to your Google account. The agency reference number or case number on the legal process is [redacted]
Unless we promptly receive a copy of a filed motion to quash that is file-stamped by a court of competent jurisdiction, Google may provide responsive documents pursuant to applicable law, such as the Electronic Communications Privacy Act. See 18 U.S.C. § 2701 et seq. In most cases, the file-stamped objection must be received by Google within 7 days of the date of this notification.
For more information about how Google handles legal process, view our transparency report at http://www.google.com/transparencyreport/userdatarequests/legalprocess/.
Google is not in a position to provide you with legal advice or discuss the substance of the legal process. A copy of the legal process will be provided upon request. If you have other questions regarding this matter, we encourage you to contact an attorney. Please note that we require an emailed statement sent from your account authorizing us to communicate with your attorney about your account.
Please reply to this email or contact usernotice@google.com and reference the case identification number located in the subject line in any further communications regarding this matter.
Regards,
Legal Investigations Support
Google LLC

2. **Sample ICE Administrative Subpoena**

1. To (Name, Address, City, State, Zip Code)
Google LLC
[redacted]
1600 Amphitheatre Parkway
Mountain View, CA 94043

DEPARTMENT OF HOMELAND SECURITY

IMMIGRATION ENFORCEMENT SUBPOENA
to Appear and/or Produce Records
8 U.S.C. § 1225(d), 8 C.F.R. § 287.4

Subpoena Number [redacted]

2. In Reference To

_____ (Title of Proceeding) _____ (File Number, if Applicable)

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

(A) ☐ **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.

(B) ☒ **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear
[redacted]

(B) Date [redacted]

(C) Time [redacted]

4. Records required to be produced for inspection

Please see attached continuation page.

If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

5. Authorized Official
[redacted]
(Signature)
[redacted]
(Printed Name)
[redacted]
(Title)
[redacted]
(Date)

1. To (Name, Address, City, State, Zip Code) Google LLC [redacted] 1600 Amphitheatre Parkway Mountain View, CA 94043	DEPARTMENT OF HOMELAND SECURITY **IMMIGRATION ENFORCEMENT SUBPOENA (Continuation)** **to Appear and/or Produce Records** 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4

Subpoena Number [redacted]

4. Records required to be produced for inspection (continued)

The following applies if checked:

☐ **Child Exploitation:** This subpoena is in regard to an investigation involving Child Exploitation and/or transmission of Child Pornography via the internet. Please do not disclose/notify the user of the issuance of this subpoena. Disclosure to the user could impede an investigation or obstruct justice.

Pursuant to an investigation being conducted by the [redacted] your office is requested to provide the following customer/subscriber account information for any or all accounts registered to, or associated with, the account identifier:

[redacted]

For the account(s), the information shall include the following:

- All names, address, screen names, email addresses, and telephone numbers of all users, customers, or subscribers;
- Connection records (including assigned IP address) or record of session times and durations for all accounts;
- Location (street address) of all accounts;
- Length of service (including start date) and types of services utilized;
- Telephone or instrument number or other subscriber number or identity;
- Means or sources of payment for such service (including credit card or account numbers).

[redacted]

Method of Response:

Preferred:

[redacted]

NOTE: The ICE e-mail system limits incoming messages containing file attachments to 10 MB. For larger files send the subpoena response in multiple e-mail messages.