

Per C. Olson, OSB #933863
HOEVET OLSON HOWES, PC
1000 SW Broadway, Suite 1500
Portland, Oregon 97205
Telephone: (503) 228-0497
Facsimile: (503) 228-7112
Email: per@hoevetlaw.com

Of Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID LEE FRY,

Defendant.

Case No. 3:16-CR-00051-13-BR

DEFENDANT'S MOTION TO
SUPPRESS EVIDENCE (FACEBOOK
ACCOUNTS)

ORAL ARGUMENT REQUESTED
(Scheduled for July 18 – 21, 2016)

Certificate of Conferral: The undersigned counsel for David Fry certifies that he has conferred with Assistant U.S. Attorney Ethan Knight regarding this motion to suppress evidence. The government opposes the motion.

Defendant David Lee Fry, through his attorney Per Olson, and on behalf of all similarly situated defendants, hereby moves to suppress evidence obtained from Facebook pursuant to a search warrant, and all fruits thereof, on the ground it is a general warrant prohibited by the express terms of the Fourth Amendment to the United States Constitution.

This motion is joined by all defendants whose Facebook accounts were unlawfully seized and searched pursuant to the warrant and who have not changed their plea or scheduled a change of plea.

This motion is supported by the Memorandum in Support of Defendant's Motion to Suppress Evidence (Facebook Accounts) and exhibits, filed herewith.

DATED this 20th day of June, 2016

s/ Per C. Olson
Per C. Olson, OSB 933863
Attorney for Defendant David Fry

Sign Up

Email or Phone

Password

Log In

Forgot account?

Safety Center

Like Share 1.1M people like this.

Welcome

Philosophy

Community

Tools

Safety and You

Parents

Teens

Teachers

The Law

Information for Law Enforcement Authorities

These operational guidelines are for law enforcement officials seeking records from Facebook. For private party requests, including requests from civil litigants and criminal defendants, visit: [facebook.com/help/473784375984502](https://www.facebook.com/help/473784375984502). Users seeking information on their own accounts can access Facebook's "Download Your Information" feature from their account settings. See [facebook.com/help/131112897028467](https://www.facebook.com/help/131112897028467). This information may change at any time.

These guidelines can also be [downloaded](#) in their original English as a PDF.

US Legal Process Requirements

We disclose account records solely in accordance with our terms of service and applicable law, including the federal Stored Communications Act ("SCA"), 18 U.S.C. Sections 2701-2712. Under US law:

- A valid subpoena issued in connection with an official criminal investigation is required to compel the disclosure of basic subscriber records (defined in 18 U.S.C. Section 2703(c)(2)), which may include: name, length of service, credit card information, email address(es), and a recent login/logout IP address(es), if available.
- A court order issued under 18 U.S.C. Section 2703(d) is required to compel the disclosure of certain records or other information pertaining to the account, not including contents of communications, which may include message headers and IP addresses, in addition to the basic subscriber records identified above.
- A search warrant issued under the procedures described in the Federal Rules of Criminal Procedure or equivalent state warrant procedures upon a showing of probable cause is required to compel the disclosure of the stored contents of any account, which may include messages, photos, videos, timeline posts, and location information.
- We interpret the national security letter provision as applied to Facebook to require the production of only 2 categories of information: name and length of service.

International Legal Process Requirements

We disclose account records solely in accordance with our terms of service and applicable law. A Mutual Legal Assistance Treaty request or letter rogatory may be required to compel the disclosure of the contents of an account. Further information can be found here: [facebook.com/about/privacy/other](https://www.facebook.com/about/privacy/other).

Account Preservation

We will take steps to preserve account records in connection with official criminal investigations for 90 days pending our receipt of formal legal process. You may expeditiously submit formal preservation requests through the Law Enforcement Online Request System at [facebook.com/records](https://www.facebook.com/records), or mail as indicated below.

Emergency Requests

In responding to a matter involving imminent harm to a child or risk of death or serious physical injury to any person and requiring disclosure of information without delay, a law enforcement official may submit a request through the Law Enforcement Online Request System at [facebook.com/records](https://www.facebook.com/records). Important note: We will not review or respond to messages sent to this email address by non-law enforcement officials. Users aware of an emergency situation should immediately and directly contact local law enforcement officials.

Extras

[Teens, Social Media, and Privacy, Pew Research Center](#)
www.pewinternet.org

["Bullying" Has Little Resonance with Teenagers, danah boyd](#)
dmlcentral.net

[Parents: Understand Your Kids & Social Media, Rosalind Wiseman](#)
www.facebookstories.com

[Parenting in the Digital Age, The Family Online Safety Institute](#)
www.fosi.org

[At Facebook, Defense is Offense, Elinor Mills](#)
news.cnet.com

[Five Myths About Bullying, Susan Swearer](#)
www.washingtonpost.com

[Character Education for the Digital Age, Jason Ohler](#)
www.ascd.org

Safety and You

[Parents](#)

[Teens](#)

[Teachers](#)

[The Law](#)

Child Safety Matters

We report all apparent instances of child exploitation appearing on our site from anywhere in the world to the National Center for Missing and Exploited Children (NCMEC), including content drawn to our attention by government requests. NCMEC coordinates with the International Center for Missing and Exploited Children and law enforcement authorities from around the world. If a request relates to a child exploitation or safety matter, please specify those circumstances (and include relevant NCMEC report identifiers) in the request to ensure that we are able to address these matters expeditiously and effectively.

Data Retention and Availability

We will search for and disclose data that is specified with particularity in an appropriate form of legal process and which we are reasonably able to locate and retrieve. We do not retain data for law enforcement purposes unless we receive a valid preservation request before a user has deleted that content from our service.

Details about data and account deletion can be found in our Data Policy (facebook.com/policy.php), Statement of Rights and Responsibilities (facebook.com/terms.php), and Help Center (facebook.com/help/131112897028467).

Form of Requests

We will be unable to process overly broad or vague requests. All requests must identify requested records with particularity and include the following:

- The name of the issuing authority, badge/ID number of responsible agent, email address from a law-enforcement domain, and direct contact phone number.
- The email address, user ID number (<http://www.facebook.com/profile.php?id=1000000XXXXXXX>) or username (<http://www.facebook.com/username>) of the Facebook profile.

User Consent

If a law enforcement official is seeking information about a Facebook user who has provided consent for the official to access or obtain the user's account information, the user should be directed to obtain that information on their own from their account. For account content, such as messages, photos, videos and timeline posts, users can access Facebook's "Download Your Information" feature from their account settings. See facebook.com/help/131112897028467. Users can also view recent IP addresses in their Account Settings under Security Settings/Active Sessions. Users do not have access to historical IP information without legal process.

Notification

Our policy is to notify people who use our service of requests for their information prior to disclosure unless we are prohibited by law from doing so or in exceptional circumstances, such as child exploitation cases, emergencies or when notice would be counterproductive. We will also provide delayed notice upon expiration of a specific non-disclosure period in a court order and where we have a good faith belief that exceptional circumstances no longer exist and we are not otherwise prohibited by law from doing so. Law enforcement officials who believe that notification would jeopardize an investigation should obtain an appropriate court order or other appropriate process establishing that notice is prohibited. If your data request draws attention to an ongoing violation of our terms of use, we will take action to prevent further abuse, including actions that may notify the user that we are aware of their misconduct.

Testimony

Facebook does not provide expert testimony support. In addition, Facebook records are self-authenticating pursuant to law and should not require the testimony of a records custodian. If a special form of certification is required, please attach it to your records request.

Cost Reimbursement

We may seek reimbursement for costs in responding to requests for information as provided by law. These fees apply on a per account basis. We may also charge additional fees for costs incurred in responding to unusual or burdensome requests.

We may waive these fees in matters investigating potential harm to children, Facebook and our users, and emergency requests.

Submission of Requests

Online
 Law enforcement officials may use the Law Enforcement Online Request System at facebook.com/records for the submission, tracking and processing of requests.

Please note that a government-issued email address is required to access the Law Enforcement Online Request System. You may also submit requests by email as indicated below.

Mail
 United States Mail Address:
 1601 Willow Road, Menlo Park CA 94025

Ireland Mail Address:
 Facebook Ireland Ltd | 4 Grand Canal Square | Dublin 2

Attention: Facebook Security, Law Enforcement Response Team

Law enforcement officials who do not submit requests through the Law Enforcement Online Request System at facebook.com/records should expect longer response times.

Notes

- Acceptance of legal process by any of these means is for convenience and does not waive any objections, including lack of jurisdiction or proper service.
- We will not respond to correspondence sent by non-law enforcement officials to the addresses above.

Like Share 5.9K people like this.

Share on Twitter · Email Article

English (US) Español Français (France) 中文(简体) العربية Português (Brasil) Italiano 한국어 Deutsch हिन्दी 日本語 ...

Cookies We've updated our policy. [Learn More.](#)

[Sign Up](#) [Log In](#) [Messenger](#) [Facebook Lite](#) [Mobile](#) [Find Friends](#) [Badges](#) [People](#) [Pages](#) [Places](#) [Games](#)
[Locations](#) [Celebrities](#) [Groups](#) [About](#) [Create Ad](#) [Create Page](#) [Developers](#) [Careers](#) [Privacy](#) [Ad Choices](#) [Terms](#)
[Help](#)

Facebook © 2016