

FILED UNDER SEAL

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, S.S.

SUPERIOR COURT DEPARTMENT
DOCKET NO. SUCR2011- 1708

IN RE: ADMINISTRATIVE SUBPOENA
TO TWITTER, INC.

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)
)
) AFFIDAVIT OF COUNSEL
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)
)
)

Now comes Benjamin A. Goldberger, who states:

- (1) I am an Assistant District Attorney in Suffolk County, Massachusetts assigned to the Special Prosecutions Unit. I have been a member of the Massachusetts bar since 2002. From 2007 to present, I have worked as an Assistant District Attorney for the Suffolk County District Attorney's Office. In that role, I have prosecuted hundreds of cases, handling various stages of criminal proceedings ranging from grand jury investigations to trials to direct appeals to post-conviction proceedings. I am presently assigned to the Special Prosecutions Unit which investigates and prosecutes financial crimes, public corruption and computer crime.
- (2) In addition to my legal training, I also have a Bachelor's degree in computer science and work experience in the field of software development.
- (3) In addition to my formal education and job experience, I have received specialized training in the area of computer forensics at the National Computer Forensics Institute, a program overseen by the United States Secret Service.

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- (4) Except where otherwise noted, the following facts are based on my own personal knowledge, training and experience as well as information provided to me by various administrative staff employed by the Suffolk County District Attorney's Office and the Massachusetts District Attorney's Association. The individuals who provided information to me are personally known to me and work in the same building in which I work.
- (5) This affidavit does not contain every fact known to me about the administrative subpoena at issue before the Court or the underlying investigation. This affidavit, rather, is limited to particular facts relating to the Commonwealth's Motion to Seal.
- (6) On Friday, December 23, 2011, I became aware that a scanned copy of an administrative subpoena that I issued to Twitter, Inc., along with the associated fax cover page (the "Subpoena"), was being widely disseminated on the internet. I know based on my own personal knowledge that the Subpoena has, since December 23, been the topic of news coverage, as well as discussions on various blogs, Twitter feeds and other media. Based on a review of some of these discussions and posts, it appears that there are a number of people who believe that the underlying investigation relates to efforts by a group referring to itself as "Anonymous" to intimidate and threaten the safety of Boston Police officers and their families. I will not, at this time, confirm or deny the nature of the underlying investigation. However, the fact remains that there is a perception among a number of people that the Suffolk County District Attorney's Office and the Boston Police Department are investigating this group.

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- (7) Because of its nature, it is difficult to tell whether a particular individual is really part of the group “Anonymous” or merely wishes to use their name and reputation for his or her own purposes. The group “Anonymous” claims to be responsible for a number of computer-related crimes involving network intrusions, identity theft, larceny, extortion and other offenses. The group sometimes uses the following phrase or a variation thereof in an effort to intimidate its victims: “We are Anonymous. We are Legion. We do not forgive. We do not forget. Expect us.”
- (8) The Movant has self-identified as a member of this group based on his claim, through counsel, to the Twitter handle “p0isAn0N” which contains a reference to “Anon[ymous]” and a statement attributed to him on the internet in which he repeats the phrase referenced in the previous paragraph, directing it to the Boston Police Department and the Suffolk County District Attorney’s Office.
- (9) I have received a copy of a document purporting to be a FBI Intelligence Bulletin from August 2011 warning that law enforcement personnel may be at risk for harassment and identity theft. This document describes a July 26, 2011 threat to retaliate against FBI agents “involved in the continued unjust raiding of peaceful Anons.” This threat appears to have been made by the group “Anonymous,” based on its content, the manner in which the threat was made and the temporal relation of the threat to the July 19, 2011 arrest of suspected members of the group.
- (10) This same bulletin describes a June 2011 discussion among members of “Anonymous” and another group of an identified FBI agent, including detailed

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information relating to that person's job history. The bulletin suggests that this information was derived from an affidavit much like this one in which the affiant described his or her training and experience. This sort of personal information can be used to aid an attacker who wishes to engage in identity theft. Accordingly, the description of my training and experience in the initial paragraphs of this Affidavit is intentionally vague, but can be supplemented subject to an appropriate protective order or orally in Court.

- (11) The scanned copy of the Subpoena contains my name, my email address, my direct dial telephone number and my fax number. It also contains the street address of the Suffolk County District Attorney's Office.
- (12) On the weekend of December 24 to 25, 2011, I received over 125 emails within a period of minutes purporting to come from a single gmail.com email address. Based on the timing of these emails, and a limited review of the subject line and a portion of the content of the emails, these emails appear to me to be sent in retaliation for my issuing the Subpoena. These emails are the ones that made it through the various defensive layers surrounding the email server used by the Suffolk County District Attorney's Office. Additional emails were intercepted before they were delivered to my inbox. Investigative efforts are ongoing to determine the total number of emails sent and whether these emails were an attempt to overwhelm the email server.
- (13) The use of electronic mail has become critical to the operation of the Suffolk County District Attorney's Office, as it has with most organizations of any size. Efforts to disable or compromise the email system strike at a key piece of

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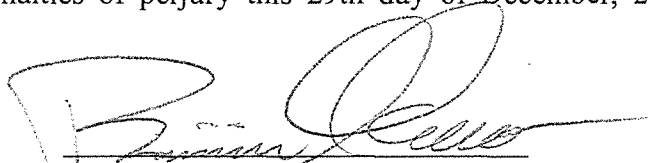
infrastructure necessary for the Suffolk County District Attorney's Office to carry out its mission.

- (14) During the week of December 26, 2011, the Suffolk County District Attorney's Office's web site was the subject of an attempted intrusion as well as a denial of service attack. A denial of service attack is an attack in which the attacker attempts to prevent a networked computer, such as a website, from fulfilling its designed function by overloading it with network requests that have no purpose other than to consume limited network resources. This is the first such attempted intrusion and denial of service attack on the website known to have taken place since the web site was first put online. Based on its timing, it appears that this attack too was in retaliation for my issuing the Subpoena.
- (15) The Suffolk County District Attorney's Office web site has become an important tool in communicating with the victims and the public which our Office serves. Efforts to disable, compromise or deface the web site interfere with the Office's ability to carry out its mission.
- (16) One aspect of the hacker sub-culture is a desire shared by many hackers to gain notoriety by engaging in high-profile network intrusions. Because of this desire, there is a direct correlation between the publicity surrounding a target and the likelihood of an attack on that target. Additional publicity surrounding the Subpoena will increase the likelihood of additional reprisals and attempted reprisals.
- (17) The public perception that the Suffolk County District Attorney's Office and the Boston Police Department are investigating "Anonymous;" the group's track

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record of crime, including efforts to retaliate against law enforcement personnel; and the recent efforts to retaliate against the Suffolk County District Attorney's Office combine to create a situation where denial of the Commonwealth's Motion to Seal will likely contribute to members of "Anonymous" engaging in future criminal acts in violation of G.L. c. 268, § 13B and other offenses. It will also likely result in additional documents relating to the investigation being widely disseminated on the internet, available to suspects and witnesses alike. This may result in the destruction of evidence and intimidation of witnesses or otherwise interfere with the integrity of the investigation.

Signed under the pains and penalties of perjury this 29th day of December, 2011 in Boston, Massachusetts.



Benjamin A. Goldberger
Assistant District Attorney

VOLUME: I
PAGES: 1-6
EXHIBITS: None

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
*
In Re: *
*
The Matter of a *
Grand Jury Investigation *
*
* * * * *

Docket No.
SUCR2011-11308

TRANSCRIPT OF HEARING (EXCERPT)
BEFORE THE HONORABLE CAROL S. BALL

- EX PARTE + UNDER SEAL -

APPEARANCES:

For the Commonwealth:

Benjamin Goldberger, A.D.A.
Donna Jalbert Patalano, A.D.A.
Suffolk County District Attorney's Office
1 Bulfinch Place, 3rd Floor
Boston, MA 02114

Boston, Massachusetts
Courtroom 704
December 29, 2011

Proceedings recorded by Court Personnel
Transcript produced by
Michelle Costantino, Approved Court Transcriber

1 THE COURT: Okay.

2 MR. GOLDBERGER: So, there is -- I think that that's
3 clearly under -- what's that case?

4 MS. PATALANO: Hrycenko, which you're well familiar with.

5 THE COURT: Our friend Peter Hrycenko.

6 MR. GOLDBERGER: Yes. Whether they had --

7 THE COURT: Poor Mr. Hrycenko.

8 MR. GOLDBERGER: Whether they had information, whether
9 they actually posted it, the threat itself is a crime, it's a
10 felony in Massachusetts. And that's what we're investigating
11 here.

12 THE COURT: Okay. I got it. So, you've got a grand jury
13 investigation.

14 MR. GOLDBERGER: Well, I haven't -- as a formal matter, I
15 have not -- I need approval from someone else in the office
16 internally to open a grand jury investigation. Just to be
17 clear, I have not received that formal approval yet. It's a
18 criminal investigation. It may end up in the grand jury. It
19 may end up in the District Court. It may end up nowhere. I
20 just don't want --

21 THE COURT: And when is it you're going to get approval to
22 -- I mean, what do you have to say about -- if it hasn't
23 formally -- a grand jury investigation hasn't formally begun,
24 then what are we doing here? Preliminary investigation, is
25 that what you're saying?

1 MR. GOLDBERGER: I think in the abstract it might be
2 perfectly legal, but the --

3 THE COURT: No, no. What they posit -- and you can see
4 why, because they don't obviously know --

5 MR. GOLDBERGER: Right.

6 THE COURT: -- is that you're investigating the posting of
7 the -- not the underlying threat. So, that's what makes the
8 potential for --

9 MR. GOLDBERGER: If information about that threat becomes
10 public, that's going to --

11 THE COURT: No, I got that. I got that.

12 MR. GOLDBERGER: Because if we ever recover electronic
13 evidence associated with a person that they know the content of
14 the threat --

15 THE COURT: I got it, I got it.

16 MR. GOLDBERGER: -- that's very --

17 THE COURT: No, I got it. But that's sliding into the
18 whole protective order.

19 MR. GOLDBERGER: Yes.

20 THE COURT: Okay. So, I just want to dot the I and cross
21 the T that we are looking at an investigation that even if a
22 grand jury hasn't begun, that I think falls into the penumbra
23 of those cases, and that -- I do think that that's true.

24 (End of audio recording at 3:41:03 p.m.)

C E R T I F I C A T I O N

I, Michelle Costantino, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript from the audio recording provided to me by the Office of Transcription Services, of the Suffolk Superior Court proceedings in the above-entitled matter.

I, Michelle Costantino, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Michelle Costantino, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

Michelle Costantino

Michelle Costantino

January 23, 2012

New England Transcription Service

31 Home Depot Drive, #182

Plymouth, Massachusetts 02360

(508) 759-6092

nettranscripts@gmail.com

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Preliminary 3:24 4:1
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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
ACTION
No. SUCR2011-11308

*File in
case
w/endorsed
copy*

IN RE: ADMINISTRATIVE SUBPOENA
TO TWITTER, INC.

IMPOUNDED

CLARIFICATION OF THE REASONS FOR THIS
COURT'S DECISION TO
(1) PROCEED IN CAMERA;
(2) IMPOUND THE CASE FILE AND TRANSCRIPTS; AND
(3) DENY THE MOTION TO QUASH

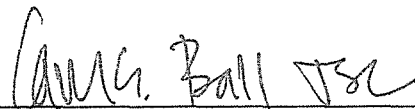
This matter involves the Commonwealth's issuance of an administrative subpoena to Twitter, Inc., seeking subscriber information regarding an account in the name of "Guido Fawkes", a pseudonym. John Doe, a/k/a/ Guido Fawkes, filed a Motion to Quash the subpoena and this judge held "side bar" hearings on the motion on December 28, 2011 and December 29, 2011, including an ex parte hearing with counsel for the Commonwealth. On December 29, 2011, I refused counsel for John Doe's request to hold any hearings in open court and quash the subpoena, and I attempted to set forth findings and the reason for this decision on the record through a JAVS recording device.

I recently received the transcripts of the December 28, 2011 and December 29, 2011 hearings and find them to be virtually unintelligible. Conceding that I may not

have been particularly articulate at the time, the transcripts are nonetheless riddled with errors. As a consequence, I have decided to restate in writing what I intended to say on December 29, 2011.

First, with regard to John Doe's objection to my decision that all hearings should be conducted in camera, and the case file and transcripts be impounded, I have relied on the pleadings filed and representations made to me, ex parte, by Assistant District Attorney Benjamin Goldberger. Whether or not a grand jury investigation was formally begun, the same considerations apply here as when motions are heard with regard to on-going grand jury matters, e.g. motions to compel testimony, for an identification procedure, for documents from third parties. This is an on-going investigation and the subpoena at issue is not unlike a search warrant which is issued out of the public eye. It makes little sense to require the Commonwealth to initiate a grand jury investigation in order to proceed in camera when, should the subpoena at issue result in exculpatory evidence, the Commonwealth may decide to drop the investigation short of grand jury involvement.

As regards to my denial of John Doe's Motion to Quash, I find that John Doe has no standing here. I reply on In re Rhode Island Grand Jury Subpoena, 414 Mass. 104 (1993).



Carol S. Ball
Associate Justice of the Superior Court

Dated: January 23, 2012

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. SJ-2012-0021

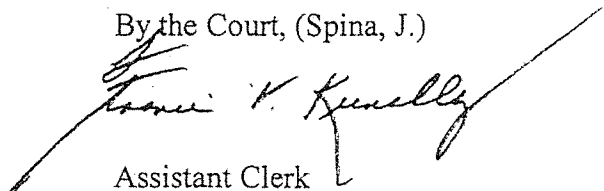
IMPOUNDED

IN RE: ADMINISTRATIVE SUBPOENA ISSUED
PURSUANT TO G.L.C. 271, § 17B

AMENDED JUDGMENT

This matter came before the Court, Spina, J., on a petition for relief pursuant to G.L. c. 211, § 3, and in accordance with the Amended Memorandum of Decision of this date, it is ORDERED that the petition be, and hereby is, denied.

By the Court, (Spina, J.)



Assistant Clerk

DATED: FEBRUARY 13, 2012

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. SJ-2012-0021

IN RE: ADMINISTRATIVE SUBPOENA ISSUED
PURSUANT TO G. L.C. 271, § 17B

IMPOUNDED

AMENDED MEMORANDUM OF DECISION

John Doe seeks relief under G. L. c. 211, § 3, from the order of a judge in the Superior Court denying his motion to quash an administrative subpoena issued by the Suffolk County District Attorney to "Twitter" that seeks only his identity as the issuer of a particular message. Doe asserts that he has a right to speak anonymously that is protected under the First Amendment that would be rendered naught if his identity were disclosed, and therefore he has standing to prosecute this interlocutory appeal. One noteworthy product of the right to speak anonymously is The Federalist Papers. I am sympathetic to his argument, as far as it goes.¹

The nature of the District Attorney's investigation for which the administrative subpoena is sought is substantial. It was communicated to the Superior Court judge *ex parte*. The transcript of that *ex parte* hearing was ordered sealed by the judge. The Commonwealth has presented that information here and asked that I extend the order to seal. I have reviewed that information and extended the order to seal until further order of the court. See and compare S.J.C. Rule 1:15, § 2 (b); Uniform Rules of Impoundment

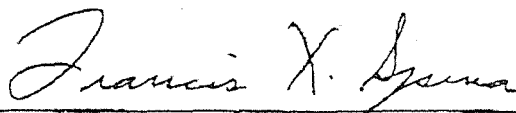
¹ Because of the importance of this case, I have retained jurisdiction and not rejected it as having been filed in the Appeals Court pursuant to G. L. c. 231, § 118.

Procedure, Rule 3. Not only is the basis of the investigation substantial, but either it is not aimed at John Doe's right to speak anonymously, or it provides compelling reason to believe that John Doe's speech is not protected, or both.

In addition, John Doe's subscription to Twitter essentially asserts that he has no reasonable expectation of anonymity, and he has at least implicitly acknowledged as much by agreeing to the subscription terms and conditions.

For the foregoing reasons, the petition for relief under G. L. c. 211, § 3, must be DENIED.

By the Court,

A handwritten signature in cursive script that reads "Francis X. Spina". The signature is written in dark ink and is positioned above a horizontal line.

Francis X. Spina

ENTERED: February 13, 2012

Peter B. Krupp

From: SJC Full Court Clerk [SJCCommClerk@sjc.state.ma.us]
Sent: Tuesday, February 28, 2012 6:00 PM
To: Peter B. Krupp
Subject: SJC-11153 - Notice of Docket Entry

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: No. SJC-11153

IN RE: ADMINISTRATIVE SUBPOENA

NOTICE OF DOCKET ENTRY

Please take note that the following entry was made on the docket of the above-referenced case:

February 28, 2012 - ORDER: It is Ordered that the Emergency Motion to Stay Enforcement of Subpoena Pending Appeal be, and hereby is, allowed until further order of this Court. (By the Court))

Susan Mellen, Clerk

Dated: February 28, 2012

To: John Reinstein, Esquire
Peter B. Krupp, Esquire
Donna Jalbert Patalano, A.D.A.
Atty. Aden Fine

This e-mail notice is being sent to you as part of a pilot program being conducted by the SJC Full Court Clerk's office. Under the program, notices will be sent by e-mail to those whose e-mail addresses have been provided to the Clerk's office. During the pilot program, a copy of the notice will also be sent to you by regular mail. If you have any comments about this e-mail notification, please let us know. If you would prefer not to receive such e-mail notices, please notify us at the above e-mail address. Thank you.

*2/29/12
Filed*

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

In the case No. SJC-11153

IN RE: ADMINISTRATIVE SUBPOENA

O R D E R

It is hereby Ordered that the stay entered on February 28, 2012, be and hereby is, vacated. It is further Ordered that the Emergency Motion to Stay Enforcement of Subpoena Pending Appeal be, and hereby is, denied.

By the Court



Susan Mellen, Clerk

ENTERED: February 29, 2012

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
No. SUCR2011-11308

IN RE ADMINISTRATIVE SUBPOENA
ISSUED PURSUANT TO G.L. c. 271, § 17B
(IMPOUNDED CASE)

MOTION FOR ACCESS TO DOCUMENTS AND TRANSCRIPTS,
TO VACATE ORDER OF IMPOUNDMENT,
AND TO UNSEAL DOCUMENTS AND TRANSCRIPTS

John Doe moves the Court to provide him access to (1) the complete docket sheet in this docket; (2) all papers filed in this docket after February 13, 2012, except papers filed *ex parte* by the District Attorney's Office that disclose the substance of a pending investigation; and (3) the transcript of all proceedings in this docket after February 13, 2012, except any portion of a hearing held *ex parte* in which the District Attorney disclosed the substance of a pending investigation. Doe also moves to vacate the order of impoundment of this docket and to unseal all of this case's documents and transcripts (including the docket sheet), aside from the *ex parte* portions of any such documents or transcripts that disclose the content of matters presented *ex parte* concerning the substance of the pending investigation. In support of this motion, Doe states as follows:

Although he is a party to this case, Doe was not served with the papers filed in this docket after February 13, 2012, and prior to his filing on February 28, 2012 of an emergency motion for additional time for Twitter, Inc. to produce records.¹ Nor was Doe given notice of

¹ Doe has received only three documents from the period between February 13, 2012 and February 28, 2012. On February 28, 2012, an Assistant District Attorney provided Doe with a copy of Commonwealth's Memorandum Regarding Twitter's Obligation to Comply with the Dec. 14, 2011 Administrative Subpoena (Feb. 27, 2012), apparently without any action by the Court unsealing or un-impounding the document. Following the hearing on February 28,

DENIED - See Memorandum of March 7, 2012 which came in by Doe and the Commonwealth May, & Amore in the Clerk's Office - March 6, 2012

3-1-12
filed

any of the hearings in this matter after February 13, 2012 and prior to the hearing on February 28, 2012. Indeed, it appears that the Commonwealth intended to keep its enforcement actions in this docket a secret from Doe, and expressly directed Twitter that, because an order was impounded, it “is not to be shared with third parties, including John Doe (a/k/a Guido Fawkes) or John Doe’s legal representatives.” See Email from ADA Benjamin A. Goldberger to Twitter (Feb. 15, 2012), attached hereto. Doe should now be given access to these documents, and the public should be allowed to see them.

Doe needs access to these documents to be able to expand the record, if permitted by the Supreme Judicial Court, in connection with the still-pending appeal in this matter to the Supreme Judicial Court. These documents, to the extent they have been sealed and impounded, or considered by the Court without Doe’s involvement, also bear on the impoundment issue before the Supreme Judicial Court, and the manner in which these hearings have been conducted. Before the Supreme Judicial Court, Doe will argue -- as he did to the Single Justice -- that the pleadings and transcripts in this matter, excluding matters presented *ex parte* that disclose the substance of a pending investigation, should not have been impounded and should be open to public scrutiny. Doe needs access to these documents to be able to consider expansion of the record on appeal.

The disclosure of these documents and transcripts should not be limited to Doe. This Court should vacate the order of impoundment in this case and -- with the exception of the substance of the Commonwealth’s *ex parte* presentations concerning a pending investigation -- unseal all case documents including this motion and the documents described in items (1), (2)

2012, the Court provided Doe with a copy of the Court’s endorsement dated February 27, 2012 on a document entitled “*Ex Parte* Order to Show Cause” (“Feb. 27 Order”), without the attachment thereto. On February 29, 2012, the Court provided Doe with a copy of the edited Administrative Subpoena, which was the attachment to the Feb. 27 Order.

and (3) of this motion's first paragraph. Although these documents pertain to a matter under investigation, they do not disclose the substance of any investigation, and there is nothing confidential or secret in any of these documents, almost all of which consist solely of legal arguments and caselaw analysis. Nor is the mere existence of a criminal investigation, which is disclosed in these documents, a secret fact: its existence is revealed by the subpoena itself, which is a publicly available document that was not issued under seal. There is a strong presumption of openness of court records. See John Doe's Response to Commonwealth's Opposition to Motion to Quash, Opposition to Commonwealth's Request for Summary Dismissal, and Opposition to Commonwealth's Oral Motion to Impound Documents and Close Hearing in This Matter at 8-9 (Dec. 29, 2011). This docket was opened when Doe filed his motion to quash the subpoena to Twitter. Nothing in that motion required it to be impounded. In addition, nothing in any other pleading other than the *ex parte* hearing(s) in which an Assistant District Attorney disclosed the substance of a pending investigation, required impoundment,² nor do they disclose anything other than the fact -- well known to the public -- that there was a subpoena to Twitter for records of Guido Fawkes, @p0isAn0N and @OccupyBoston, which the Commonwealth indicates was served in connection with a pending criminal investigation. Even if there were grounds to impound the content of the pleadings or judicial orders in this case -- though there are not -- there could hardly be good reason to impound and seal the docket sheet.

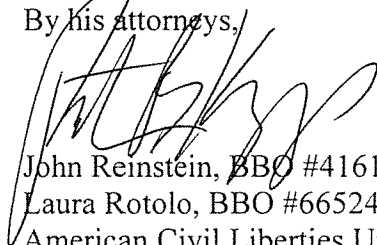
For these reasons, Doe moves the Court to grant him access to (1) the complete docket sheet in this docket; (2) all papers filed in this docket after February 13, 2012, except papers filed *ex parte* by the District Attorney's Office that disclose the substance of a pending investigation;

² Doe does not know the contents of the Commonwealth's apparent February 15, 2012 *ex parte* filing or the resulting *ex parte* Court order. To the extent those documents do not disclose the substance of the pending criminal investigation, there is no basis for continued sealing of those documents.

and (3) the transcript of all proceedings in this docket after February 13, 2012, except any portion of a hearing held *ex parte* in which the District Attorney disclosed the substance of a pending investigation. Doe also moves the Court to vacate the order of impoundment and to unseal all documents, except the portions of any document that disclose the content of *ex parte* presentations concerning the substance of a pending investigation by the Commonwealth.

JOHN DOE, a/k/a GUIDO FAWKES

By his attorneys,



John Reinstein, BBO #416120

Laura Rotolo, BBO #665247

American Civil Liberties Union of
Massachusetts

211 Congress Street, 3rd Floor

Boston, MA 02110

Tel: (617) 482-3170

Peter B. Krupp, BBO #548112

Lurie & Krupp, LLP

One McKinley Square

Boston, MA 02109

Tel: (617) 367-1970

Dated: March 1, 2012

Of Counsel

Aden Fine
Speech, Privacy and Technology Project
American Civil Liberties Union
125 Broad Street, 17th floor
New York, New York 10004
Tel: (212) 549-2500

Goldberger, Benjamin (SUF)

From: Goldberger, Benjamin (SUF)
Sent: Tuesday, February 21, 2012 11:13 AM
To: blee@twitter.com
Cc: 'Dahlbeck, Joseph'
Subject: RE: Suffolk County DA's Office Administrative Subpoena Dated 12/14/2011

Ben,

I have not received a response to the email I sent last week. As there is no stay in effect, the subpoena remains in force and requires a response.

Please let me know whether Twitter is going to provide the remaining information responsive to the subpoena.

Thank you.

Ben

From: Goldberger, Benjamin (SUF)
Sent: Wednesday, February 15, 2012 10:29 AM
To: blee@twitter.com
Cc: 'Dahlbeck, Joseph'
Subject: Suffolk County DA's Office Administrative Subpoena Dated 12/14/2011

Ben,

Following our telephone conversation on January 17, 2012, additional legal proceedings relating to the administrative subpoena were instituted. Based on our conversation, my understanding was that Twitter was planning on not responding to the subpoena while any legal proceedings were pending, so I have waited to reach out to you until that proceeding ended. On Monday, the proceeding ended in the Commonwealth's favor. This new proceeding was impounded as well.

To ensure that we have a clear and common understanding of the current status of the legal proceedings, yesterday I sought and received permission from the Court to share case status information with Twitter. An Ex Parte Order issued by the Court is attached. Please note that the Order is impounded, and is not to be shared with third parties, including John Doe (a/k/a Gulde Fawkes) or John Doe's legal representatives.

I trust that with receipt of this Order, Twitter will provide the Suffolk County District Attorney's Office with the remaining information responsive to the subpoena. As the legal proceedings have introduced a significant delay in our investigation, your efforts to expedite the subpoena response would be most appreciated.

Thank you for your attention to this matter, and please feel free to call me with any questions.

Ben

Benjamin A. Goldberger
Suffolk County District Attorney's Office
Special Prosecutions Unit
One Bulfinch Place

22

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
NO. 11-11308

IN RE: ADMINISTRATIVE SUBPOENA TO TWITTER, INC.
IMPOUNDED CASE

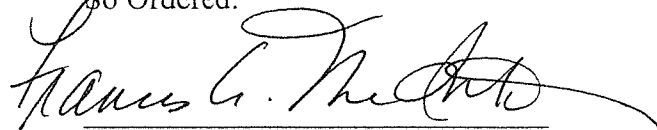
ORDER OF IMPOUNDMENT

For reasons stated in the MEMORANDUM OF DECISION AND ORDER ON JOHN DOE'S MOTION FOR ACCESS TO DOCUMENTS AND TRANSCRIPTS, TO VACATE ORDER OF IMPOUNDMENT, AND TO UNSEAL DOCUMENTS AND TRANSCRIPTS, this file and contents is ordered **impounded**.

The single exception to the impoundment order is the Order of this court which was attached to the administrative subpoena and appears as Paper 14 in this case. That paper was disseminated in order to secure compliance and has lost its impounded status. It is now marked "unimpounded".

The impoundment will terminate on March 1, 2022, or upon application to the Superior Court in the event charges are brought against a subscriber in the case, or other good cause.

So Ordered:



Frances A. McIntyre
Justice, Superior Court

March 2, 2012

3/2/12
Filed