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COMMONWEALTH OF MASSACHUSETTS

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CLERK OF THE COURTS
NORFOLK COUNTY

NORFOLK, SS.

SUPERIOR COURT
NO. 2282-CR-0117

_____)
COMMONWEALTH OF)
MASSACHUSETTS,)
Plaintiff)
)
V.)
)
KAREN READ,)
Defendant)
_____)

DEFENDANT’S EMERGENCY MOTION TO COMPEL PRODUCTION OF REQUESTS FOR PRESERVATION OF GOOGLE GEOFENCE DATA AND CONFIRMATION FROM GOOGLE THAT GEOFENCE DATA WILL BE PRESERVED

Now comes the defendant, Karen Read, and hereby moves this Honorable Court to compel the Commonwealth to produce its requests for preservation of Google Geofence data, as well as confirmation received from Google that it will preserve said data.

As grounds therefore, the defendant states the following:

1. On April 29, 2022, the defendant filed, “Defendant’s Motion to Preservation of Google Geofence Data,” attached to this motion as “Exhibit A,” in the Stoughton District Court, before this case was indicted;
2. On May 9, 2022, Exhibit A was allowed, O’Malley, J., presiding;
3. Thereafter, the Commonwealth provided the defendant with a “Preservation Request for Account Data” to Google Law Enforcement Compliance, allegedly issued by Massachusetts State Police Trooper Michael Proctor, dated May 13, 2022 and attached to this motion as “Exhibit B.”
4. In Exhibit B, Trooper Proctor requested that application history be preserved, but only, “to include all apps downloaded from the Google Play Store to any devices within the set parameter.”

*8/12/22 ALLOWED without objection
[Signature]*

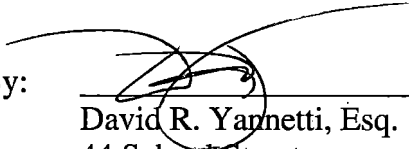
5. On May 18, 2022, defense counsel e-mailed the Commonwealth to request that the preservation request also include apps downloaded from the Apple App Store, so that the data will include iPhones as well as Android devices. That e-mail is attached to this motion as “Exhibit C.”
6. On May 19, 2022, the Commonwealth provided the defendant with a “Preservation Request for Account Data” to Google Law Enforcement Compliance, allegedly issued by Massachusetts State Police Trooper Michael Proctor, dated May 19, 2022 and attached to this motion as “Exhibit D.” This preservation request modified the May 13, 2022 preservation request (Exhibit B) by requesting that application history be preserved, “to include all apps downloaded and or operated by Google to any devices within the set parameter.”
7. On June 8, 2022, the Commonwealth provided an automated response from Google, confirming receipt of the legal request submission. That response is attached to this motion as “Exhibit E.” The date of the automated response, however, was May 16, 2022 – which means that the automated response was confirming receipt of Exhibit B – the faulty preservation request – and not Exhibit D, which was the corrected preservation request.
8. To date, the Commonwealth has provided no documents to evidence that Google received the updated and corrected preservation request.
9. To date, the Commonwealth has provided no documents to evidence that Google has agreed to preserve the requested data.
10. This data is critical to the defense. The Commonwealth has been ordered to request preservation of the data, see Exhibit A, which only the Commonwealth can do pursuant to 18 U.S. Code §2703(f). Yet, there is no evidence that this data has been effectively preserved.
11. It is in the interests of justice for this motion to be allowed and for the Commonwealth to be ordered to produce proof that: (1) it has properly notified Google of the corrected preservation request; and (2) it has received confirmation from Google that the data will be preserved.

Wherefore, the defendant respectfully requests that this motion be allowed.

Respectfully Submitted
For the Defendant,

Karen Read,

By:



David R. Yarnetti, Esq.
44 School Street
Suite 1000A
Boston, MA 02108
(617) 338-6006
BBO#555713

Dated: August 11, 2022

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

DISTRICT COURT DEPARTMENT
STOUGHTON DISTRICT COURT
DOCKET NO. 2255-CR-000066

COMMONWEALTH

V.

KAREN READ

DEFENDANT'S MOTION FOR PRESERVATION OF GOOGLE GEOFENCE DATA

Now comes the defendant, Karen Read ("Ms. Read", or "the Defendant") and hereby moves this Honorable Court to order the Commonwealth to request preservation of "geofence" data stored at Google, corresponding to the location of the charged crimes for the time period of January 28 to January 29, 2022. In support of this motion, the Defendant states:

- 1) 18 U.S. Code § 2703(f) provides that: "A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process." Such preservation requests are routinely issued by the Commonwealth in criminal investigations, by means of transmitting a form document to the provider of wire or electronic communication services.
- 2) The United States District Court, N.D. Illinois, Eastern Division, recently analyzed the constitutionality of search warrants for "geofence" data, noting that "[o]nce novel, applications for warrants for geofence data are now more frequent in criminal

investigations” to determine the locations of cell phone users at specific times. In re Search Warrant Application For Geofence Location Data Stored At Google

Concerning An Arson Investigation, 497 F. Supp. 3d 345, 349 (N.D. Ill. 2020). That

Court explained the investigatory usefulness of defense data as follows (record references omitted):

Cellular devices such as mobile telephones have the capability to connect to wireless Internet (Wi-Fi) access points if a user enables Wi-Fi connectivity. Wi-Fi access points, such as those created through the use of a router and offered in places such as homes, hotels, airports, and coffee shops, are identified by a Service Set Identifier (SSID) that functions as the name of the Wi-Fi network. In general, devices with Wi-Fi capability routinely scan their environment to determine what Wi-Fi access points are within range and will display the names of networks within range under the device's Wi-Fi settings. Many cellular devices also feature Bluetooth functionality. Bluetooth allows for short-range wireless connections between devices, such as between a mobile device and Bluetooth-enabled headphones. Bluetooth uses radio waves to allow the devices to exchange information. When Bluetooth is enabled, a mobile device routinely scans its environment to identify Bluetooth devices, which emit beacons that can be detected by mobile devices within the Bluetooth device's transmission range, to which it might connect.

Many cellular devices, such as mobile telephones, include global positioning system (GPS) technology. Using this technology, the phone can determine its precise geographical coordinates. If permitted by the user, this information is often used by applications (apps) installed on a device as part of the its operation. Google is a company that, among other things, offers an operating system (OS) for mobile devices, including cellular phones, known as Android. Nearly every cellular phone using the Android operating system has an associated Google account, and users are prompted to add a Google account when they first turn on a new Android device. Google also offers numerous online-based services, including email (Gmail), navigation (Google Maps), search engine (Google), online file storage (including Google Drive, Google Photos, and Youtube), messaging (Google Hangouts), and video calling (Google Duo). Some services, such as Gmail, online file storage, and messaging, require the user to sign in to the service using their Google account. An individual can obtain a Google account by registering with Google, and the account identifier typically is in the form of a Gmail address. Other services, such as Google Maps and YouTube, can be used while signed in to a Google

account, although some aspects of these services can be used even without being signed in to a Google account.

Google also offers an Internet browser known as Chrome that can be used on both computers and mobile devices. A user has the ability to sign in to a Google account while using Chrome, which allows the user's bookmarks, browsing history, and other settings to be synced across the various devices on which they may use the Chrome browsing software, although Chrome can also be used without signing into a Google account. Chrome is not limited to mobile devices running the Android operating system and can also be installed and used on Apple devices. In the context of mobile devices, Google's cloud-based services can be accessed either via the device's Internet browser or via apps offered by Google that have been downloaded onto the device. Google apps exist for, and can be downloaded to, phones that do not run the Android operating system, such as Apple devices.

[] Google Geofence Data

When a Google user opts in to a service known as "Location History," that user can keep track of locations visited while in possession of the mobile device. Like a journal or log, Google Location History Information enables a user to record where she has traveled with her phone and when, and the Google User has the ability to review or delete Location History information at will. If the Google user takes additional steps, including enabling a "Location Reporting" feature for at least one mobile device, the resulting data is transmitted to Google for processing and storage on Google's servers. When activated in such a way, Google can calculate the device's estimated latitude and longitude using inputs from (1) nearby cell sites, (2) GPS signals, and (3) signals from nearby Wi-Fi networks and Bluetooth devices. Google records the margin of error for its calculation as to the location of a device as a meter radius, referred to by Google as a "map's display radius," for each latitude and longitude point. Google also retains subscriber information associated with a user's account, which can include the subscriber's full name, address, telephone number, and other identifiers. Thus, a "geofence warrant" provides the government the ability to obtain location data for a Google user for a particular area and, eventually, subscriber information for the account holder using Google-based devices or applications in that area.

Id. at 350-51.

- 3) The Commonwealth possesses the names of persons present at the place and time of the charged crimes, and the cell phone numbers of the cell phones they

possessed. The locations of those persons present, including the decedent, whether they were inside the house at the location of the charged crimes, when they arrived, when and whether they left the property, and the identities and locations of other persons who may have been present constitutes exculpatory evidence that can be revealed by the geofence data.

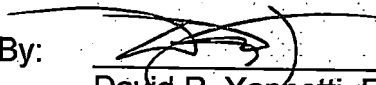
- 4) The Commonwealth is aware that the geofence data exists and has control of the preservation of such data by the issuance by it of a form request for such preservation to Google.
- 5) The Defendant possesses no similar ability or control over the preservation of the exculpatory evidence, and the exculpatory geofence data may be irretrievably lost if the Commonwealth is not ordered to issue a request to preserve the geofence data.

Accordingly, the Defendant requests that her motion be allowed and that the Commonwealth be ordered to request preservation of geofence data stored at Google, corresponding to the location of the charged crimes for the time period of January 28 to January 29, 2022.

Respectfully Submitted,
For the Defendant,

Karen Read

By:




David R. Yannetti, Esq.
44 School Street, Suite 1000A
Boston, MA 02108
(617) 338-6006
BBO#555713

Dated: April 28, 2022

CERTIFICATE OF SERVICE

I, Attorney David R. Yannetti, do hereby certify that today I served the attached "Defendant's Motion For Preservation Of Google Geofence Data" and the affidavit attached to it, upon the Commonwealth by email service this date to the Assistant District Attorney of the Norfolk District Attorney's Office assigned to prosecute this matter.



David R. Yannetti, Esq.
44 School Street, Suite 1000A
Boston, MA 02108
(617) 338-6006
BBO#555713

Dated: April 28, 2022

COMMONWEALTH OF MASSACHUSETTS

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2022 AUG 12 PM 3:35
STAFFORD COUNTY

NORFOLK, SS.

DISTRICT COURT DEPARTMENT
STOUGHTON DISTRICT COURT
DOCKET NO. 2255-CR-000066

COMMONWEALTH

V.

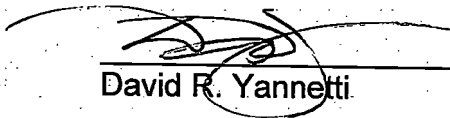
KAREN READ

AFFIDAVIT OF DAVID R. YANNETTI IN SUPPORT OF DEFENDANT'S MOTION FOR
PRESERVATION OF GOOGLE GEOFENCE DATA

Now comes David R. Yannetti, who states as follows:

1. I am an attorney licensed to practice in Massachusetts since December 20, 1989. My office address is: Yannetti Law Firm, 44 School St., Suite 1000A, Boston, MA 02108. I represent Karen Read regarding the above-captioned matter.
2. The requests for preservation of evidence made within this motion are reasonable and would prevent the destruction of potentially exculpatory evidence.
3. I believe that it is in the interests of justice for the Court to allow this motion.

Signed under the pains and penalties of perjury this 28th day of April, 2022.



David R. Yannetti



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LEUTENANT GOVERNOR

TERRENCE M. REIDY
SECRETARY

The Commonwealth of Massachusetts
Department of State Police

Division of Investigative Services
Norfolk State Police Detective Unit
45 Shawmut Road
Canton, MA 02021



CHRISTOPHER S. MASON
COLONEL/SUPERINTENDENT

R. SCOTT WARMINGTON
DEPUTY SUPERINTENDENT

May 13, 2022

To: Google Law Enforcement Compliance
From: Trooper Michael Proctor #3863
Subject: Preservation Request for Account Data.
Case: New Request

1. This document serves as a formal request for the preservation of records and other evidence pursuant to 18 U.S.C. § 2703(f) pending further legal process. You are hereby requested to preserve, for a period of 90 days, the records described below currently in your possession. You also are further requested not to disclose the existence of this request to the subscriber or any other person, other than as necessary to comply with this request. If compliance with this request may result in a permanent or temporary termination of service to the accounts described below, or otherwise alert the subscriber or user of these accounts as to your actions to preserve the referenced files and records, please contact me before taking such actions.

2. The preservation request applies to the following address, 34 Fairview Road, Canton MA, 02021, 42.17428, -71.15365 on January 28, 2022 through and including January 29, 2022. Attached is a map of the residence to include latitude and longitude of four points. Located within those coordinates is 34 Fairview Road, Canton, MA 02021. The request applies to the following records and evidence;

- A. Any location data currently stored in relation to any devices identified within the set parameter.
- B. Account information: To include all account owner/user identification information, to include all information listed in the "your personal info" within the Google My Account Screen.
- C. Application History: To include all apps downloaded from the Google Play Store to any devices within the set parameter.

Respectfully submitted,



Trooper Michael D. Proctor #3863
Massachusetts State Police
Norfolk SPDU

Latitude 42.174580°
Longitude -71.153798°

Latitude 42.174438°
Longitude -71.153350°

34 Fairview Rd

Fairview Rd

Latitude 42.174087°
Longitude -71.154072°

Latitude 42.173944°
Longitude -71.153536°

TRP MILLER #3863

Subject: RE: Read Preservation
Date: Wednesday, May 18, 2022 at 11:12:00 AM Eastern Daylight Time
From: David Yannetti
To: Lally, Adam (DAA)
Attachments: image001.gif

Adam:

Thank you for taking care of that fairly promptly. I do have one concern, though:

The preservation request to Google Law Enforcement Compliance only specifies preservation of data regarding apps available on the "Google Play" store. Google also collects data from iPhones using Google apps. Those apps for iPhones would not be available from the Google Play store, but rather from the Apple App Store. The preservation request should specify that.

Do you have any objection to having the State Police send out a modified request for preservation of all geofence data, so that all of the data from both Android and iPhones within the set parameter is preserved?

Please let me know.

Thanks,
David



DAVID R. YANNETTI
44 School Street, #1000A
Boston, MA 02108
Tel: (617) 338-6006
Fax: (617) 451-2570
www.davidyannetti.com

From: Lally, Adam (DAA) <adam.lally@state.ma.us>
Sent: Tuesday, May 17, 2022 4:38 PM
To: David Yannetti <law@davidyannetti.com>
Subject: FW: Read Preservation

David, please see attached preservation requests for Google and the various cell phone service providers related to the tower dump. Let me know if you have any questions or concerns. Thanks, Adam

From: NFK-CAN-MFP-05@State.ma.us <NFK-CAN-MFP-05@State.ma.us>
Sent: Tuesday, May 17, 2022 4:32 PM
To: Lally, Adam (NFK) <adam.lally@MassMail.State.MA.US>
Subject: Read Preservation



The Commonwealth of Massachusetts
Department of State Police



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

TERRENCE M. REIDY
SECRETARY

Division of Investigative Services
Norfolk State Police Detective Unit

45 Shawmut Road
Canton, MA 02021

CHRISTOPHER S. MASON
COLONEL/SUPERINTENDENT

R. SCOTT WARMINGTON
DEPUTY SUPERINTENDENT

May 19, 2022

To: Google Law Enforcement Compliance
From: Trooper Michael Proctor #3863
Subject: Preservation Request for Account Data.
Case: Amendment to Preservation #18631673

1. This document serves as a formal request for the preservation of records and other evidence pursuant to 18 U.S.C. § 2703(f) pending further legal process. You are hereby requested to preserve, for a period of 90 days, the records described below currently in your possession. You also are further requested not to disclose the existence of this request to the subscriber or any other person, other than as necessary to comply with this request. If compliance with this request may result in a permanent or temporary termination of service to the accounts described below, or otherwise alert the subscriber or user of these accounts as to your actions to preserve the referenced files and records, please contact me before taking such actions.

2. The amended portion of this request is in part C below with adjusted language to include any and all Google based applications, operated and downloaded on any cell phone device in the set coordinates provided.

2. The preservation request applies to the following address, 34 Fairview Road, Canton MA, 02021 within a fifty meter radius of 42.17428 ,-71.15365 on January 28, 2022 through and including January 29, 2022. The request applies to the following records and evidence;

- A. Any location data currently stored in relation to any devices identified within the set parameter.
- B. Account information: To include all account owner/user identification information, to include all information listed in the "your personal info" within the Google My Account Screen.
- C. Application History: To include all apps downloaded and or operated by Google to any devices within the set parameter.

Respectfully submitted,



Trooper Michael D. Proctor #3863
Massachusetts State Police
Norfolk SPDU

Latitude 42.174580°
Longitude -71.153798°

Latitude 42.174438°
Longitude -71.153350°

84 Fairview Rd

Fairview Rd

Latitude 42.174087°
Longitude -71.154072°

Latitude 42.173944°
Longitude -71.153536°

TRP MWA 13863

Proctor, Michael D (POL)

From: lers@google.com
Sent: Monday, May 16, 2022 2:09 PM
To: Proctor, Michael D (POL)
Subject: LERS Submission Confirmation - Google Reference. No. 18631673

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

This is an automated response to advise you that Google Legal Investigations Support has successfully received your legal request submission.

Google receives a very high volume of legal process every day. The team processes legal requests in the order that we receive them. You may monitor the status of your request by logging into your LERS account.

If your request relates to exigent circumstances or if you have further questions, please email USLawEnforcement@google.com and include the Google reference number listed in the subject line. Please include a description of the exigency or your question(s) so that we may assess your request accordingly.

Regards,
Google Legal Investigations Support