

Compelling Disclosure of Electronic Communications

Type of Information Sought	Legal Process Required by Stored Communications Act		Legal Process Required by Fourth Amendment	
Non-Content				
Basic subscriber information	Subpoena, court order, or search warrant		None; no reasonable expectation of privacy under <i>United States v. Miller</i> , 425 U.S. 435 (1976), and <i>Smith v. Maryland</i> , 442 U.S. 735 (1979)	
All non-content records	Court order or search warrant		None; no reasonable expectation of privacy under <i>United States v. Miller</i> , 425 U.S. 435 (1976), and <i>Smith v. Maryland</i> , 442 U.S. 735 (1979)	
Content	Under Ninth Circuit's <i>Theofel</i> Decision	Under USDOJ Interpretation	Under Sixth Circuit's <i>Warshak</i> Decision	Under USDOJ Interpretation
Communications in remote computing service	Subpoena with notice or excuse; court order with notice or excuse; or search warrant	Subpoena with notice or excuse; court order with notice or excuse; or search warrant	Unclear; decision appears to concentrate on electronic communication services	None, either because no reasonable expectation of privacy given typical terms of service, or because subpoenas are not searches or seizures subject to the Fourth Amendment
Opened/retrieved communications in electronic communication service (in electronic storage more than 180 days)	Subpoena with notice or excuse; court order with notice or excuse; or search warrant	Subpoena with notice or excuse; court order with notice or excuse; or search warrant	Search warrant, unless terms of service are exceptionally privacy-destroying	None, either because no reasonable expectation of privacy given typical terms of service, or because subpoenas are not searches or seizures subject to the Fourth Amendment
Opened/retrieved communications in electronic communication service (in electronic storage 180 days or less)	Search warrant	Subpoena with notice or excuse; court order with notice or excuse; or search warrant	Search warrant, unless terms of service are exceptionally privacy-destroying	None, either because no reasonable expectation of privacy given typical terms of service, or because subpoenas are not searches or seizures subject to the Fourth Amendment
Unopened/unretrieved communications in electronic communication service (in electronic storage more than 180 days)	Subpoena with notice or excuse; court order with notice or excuse; or search warrant	Subpoena with notice or excuse; court order with notice or excuse; or search warrant	Search warrant, unless terms of service are exceptionally privacy-destroying	None, either because no reasonable expectation of privacy given typical terms of service, or because subpoenas are not searches or seizures subject to the Fourth Amendment
Unopened/unretrieved communications in electronic communication service (in electronic storage 180 days or less)	Search warrant	Search warrant	Search warrant, unless terms of service are exceptionally privacy-destroying	None, either because no reasonable expectation of privacy given typical terms of service, or because subpoenas are not searches or seizures subject to the Fourth Amendment

Notes

1. Although the title of this chart refers to “electronic communications” for simplicity, it also covers *information about* electronic communications.
2. The rules in this chart apply to all types of electronic communications, whether by telephone, text message, email, or other means.
3. This chart concerns law enforcement and prosecution access to electronic communications, not access by criminal defendants or civil litigants.
4. This chart assumes that information is being sought from an entity that provides services to the general public. Different rules apply to non-public service providers.

