

# Stored Wire & Electronic Communications Quick Reference Guide



	<b>Definition of category</b>	<b>Compel disclosure with</b>
<b>Subscriber &amp; certain transactional information</b>	The information listed in § 2703(c)(2): <ul style="list-style-type: none"> <li>Subscriber’s name, address, telephone number, and other identifying information</li> <li>Means and source of payment for the service (including credit card/bank account numbers)</li> <li>Basic session connection records (e.g., IP address assigned for particular session)</li> <li>Records of phone calls made and received</li> </ul>	Subpoena § 2703(d) order Search warrant
<b>Records &amp; other non-content information</b>	“[R]ecord[s] or other information pertaining to a subscriber to or customer of such service (not including the contents of communications).” § 2703(c)(1)  <i>Examples:</i> <ul style="list-style-type: none"> <li>Email addresses of others with whom the subscriber has corresponded</li> <li>Logs showing cell towers used during cellular telephone calls</li> </ul>	§ 2703(d) order Search warrant
<b>Retrieved communications &amp; content of other stored files</b>	“[T]he contents of any wire or electronic communication” stored with the provider by a subscriber. § 2703(b)(1)(B)(i), (b)(2)  <i>Examples:</i> <ul style="list-style-type: none"> <li>Files uploaded to a web server</li> <li>Retrieved email*</li> <li>Retrieved voicemail*</li> </ul>	<i>If provider does not offer its service to the public:</i> Subpoena  <i>In all other cases:</i> Subpoena with notice <sup>‡</sup> § 2703(d) order with notice <sup>‡</sup> Search warrant
<b>Unretrieved communications (181+ days old)</b>	“[T]he contents of any wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days.” § 2703(a)  <i>Examples:</i> <ul style="list-style-type: none"> <li>Unretrieved email (at least 181 days old)*</li> <li>Unretrieved voicemail (at least 181 days old)*</li> </ul>	Subpoena with notice <sup>‡</sup> § 2703(d) order with notice <sup>‡</sup> Search warrant
<b>Unretrieved communications (0–180 days old)</b>	“[T]he contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less.” § 2703(a)  <i>Examples:</i> <ul style="list-style-type: none"> <li>Unretrieved email*</li> <li>Unretrieved voicemail*</li> </ul>	Search warrant

\* The Ninth Circuit has held that email and text messages might be considered unretrieved for purposes of the SCA even when the message has been opened and read. *See Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004) (email); *Quon v. Arch Wireless Operating Co.*, 529 F.3d 892 (9th Cir. June 18, 2008), *rev’d on other grounds*, *Ontario v. Quon*, 130 S.Ct. 2619 (Jun. 17, 2010) (text messages).

‡ The obligation to notify the subscriber can be delayed. *See* 18 U.S.C. § 2705. The Sixth Circuit has held that that the “government may not compel a commercial ISP to turn over the contents of a subscriber’s emails without first obtaining a warrant based on probable cause.” *United States v. Warshak*, 2010 WL 5071766 (6<sup>th</sup> Cir. Dec. 14, 2010).