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CPA's computer data indefinitely while they sift through the data looking for dirt.

**Ken Berry, JD** • Jun. 27, 2014

In a new case with far-reaching implications, the Second Circuit Court of Appeals has held that federal agents can't hold onto a CPA's computer data indefinitely while they sift through the data looking for dirt. The court ruled that this violates Fourth Amendment protections against unreasonable searches and seizures and prohibits the government from engaging in the practice (*U.S. v. Ganius*, No. 12-240-cr, 2d Cir. 6/17/14).

Here's what happened in the case: Acting on a tip about theft and fraud, the U.S. Army Criminal Investigation Command (CID) obtained a warrant to seize records and documents, including computer hardware and software, from the offices of Mr. Ganius, a CPA. The warrant was limited to activities involving two of Ganius' clients, American Boiler and Industrial Property Management IPM, a military contractor.

However, the CID didn't just take Ganius' computers. Instead, the federal agents mirror-imaged three hard drives, which included a vast amount of data falling outside the scope of the warrant. The investigators eventually isolated the data relevant to American Boiler and IPM, but they failed to extract the other materials, despite their promises to Ganius that they would do so. They also sent over copies of the imaged hard drives to the IRS.

The IRS then shifted the focus to alleged tax evasion by Ganius. Almost two years after the date the computers were seized, it obtained a warrant to search the data that the CID had uncovered under the initial warrant. At trial, the court denied a motion by Ganius to suppress the evidence found on the mirror-imaged hard drives.

The CPA was convicted of two counts of tax evasion and sentenced to 24 months in

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said “the Government clearly violated Ganius’s Fourth Amendment rights by retaining the files for a prolonged period of time and then using them in a future criminal investigation.” Accordingly, the Second Circuit has reversed the suppressed evidence motion and vacated the conviction.

But the Court did stop short of imposing an outright requirement for the government to purge materials falling outside the scope of the warrant. This would compromise the remaining data that was responsive to the warrant and render it unusable in a criminal prosecution based on the chain of custody.

The underlying message from the Second Circuit Court is clear. Although there are significant differences between electronic and paper records, the government doesn’t have carte blanche to spend years looking for crumbs on everyone and anyone. The investigation must be strictly limited to the scope of the warrant.

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