

Important Decision on Searches of Computer Files – Government Cannot Hold Non-Responsive Files Indefinitely

The Second Circuit Court of Appeals just issued an important decision that limits the government's ability to retain non-responsive computer files after executing a search warrant. Assume the government obtains a search warrant for a clinic's electronic medical records. On the same computer, the doctor maintains her financial information. Because the government generally creates an image of the entire computer, they will usually need to review the files to separate the former from the latter. Once they've done so, what do they do with the latter? Until now, the government would usually just sit on it and would then have it available in case it wanted to expand the investigation. The Second Circuit now says they can't:

“Because the Government has demonstrated no legal basis for retaining the non-responsive documents, its retention and subsequent search of those documents were unconstitutional. The Fourth Amendment was intended to prevent the Government from entering individuals' homes and indiscriminately seizing all their papers in the hopes of discovering evidence about previously unknown crimes. . . Yet this is exactly what the Government claims it may do when it executes a warrant calling for the seizure of particular electronic data relevant to a different crime. Perhaps the "wholesale removal" of intermingled computer records is permissible where off-site sorting is necessary and reasonable, . . . but this accommodation does not somehow authorize the Government to retain all non-responsive documents indefinitely, for possible use in future criminal investigations.”

Based on this decision, defense counsel should probably make it a practice in each case to formally demand the return of all non-responsive material.

The decision, *United States v. Ganas*, can be found [here](#).