

4law - Court Orders Government to Submit Search Protocol Prior To Examining Seized Computer

In re Search of 3817 W. West End , 321 F. Supp. 2d 953 (D. Ill., 2004)

In a case that involved the seizure of a computer and electronic storage media, the government sought relief from the court's order, which instructed the government to submit a search protocol before it forensically examined the seized items. The original order outlined the search protocol to ensure that irrelevant or privileged data was not examined. The government objected to the court's order, it argued that a court could not regulate the manner in which a computer was searched once probable cause was established. The government analogized the search of a Computer hard drive to the search of a file cabinet concerning papers: the government urged that just as the court could not regulate the manner in which a file cabinet was searched, it could not regulate the search of computer files. The court found the government's argument unpersuasive and distinguished the two based on the existence of certain tools allowing the search of computer information to be more targeted than a search of hard copy documents. The court stated that these tools afforded the government the ability to limit its search by date range, key words, specific files, and specific software programs. Based on this, the court held the search protocol was necessary in order to meet the particularity requirement of a constitutional search warrant.

In the case of *In re Search of 3817 W. West End* , 321 F. Supp. 2d 953 (D. Ill., 2004), investigators had probable cause to believe that a suspect was preparing and retaining fraudulent tax records in her home. Investigators applied for a warrant to search the suspect's home and seize her tax records, whether in paper or electronic form. The magistrate judge agreed that there was probable cause, and also agreed that the computer could be seized. The judge refused to permit investigators to search the computer, however, on the ground that investigators had not agreed to limit their search to a specific set of steps pre-approved by the judge. According to Magistrate Judge Schenkier, approval of a search protocol was necessary before the warrant could be issued:

The purpose of review of warrant applications by "neutral, disinterested magistrates" is to ensure that the requirements of probable cause and particularity are met. When there are concerns about the particularity of a given search, as is the case here, it is both sensible and constitutionally required to address those concerns at the front end of the process, and to resolve them in a way that avoids the later suppression of evidence...[A]s matters now stand, what the government seeks is a license to roam through everything in the computer without limitation and without standards. Such a request fails to satisfy the particularity requirement of the Fourth Amendment' and the Court therefore will not approve it. (Id. At 962).