

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART JURY 7

THE PEOPLE OF THE STATE OF NEW YORK

-against-

MALCOLM HARRIS,

Defendant.

AFFIRMATION IN  
SUPPORT OF  
PEOPLE'S RESPONSE  
TO DEFENDANT'S  
MOTION TO QUASH

Docket No.  
2011NY080152

LEE LANGSTON, an attorney admitted to practice before the Courts of this State, affirms the following under penalty of perjury:

1. I am an Assistant District Attorney in the New York County District Attorney's Office and am assigned to the prosecution of the above-captioned case. As such, I have reviewed the People's file and am familiar with the facts of this case.

2. This affirmation is submitted in response to defendant's motion to quash a subpoena *duces tecum* directed at Twitter, Inc. ("Twitter"), dated January 26, 2012 and returnable on February 8, 2012.

3. As discussed more fully below, defendant's motion is meritless and should be summarily denied. As a basic and preliminary matter, defendant lacks standing to contest the release of business records maintained by a third party, Twitter, which has not itself challenged the subpoena. But in any event, the only two categories of

information sought by the subpoena – subscriber information for the account “@destructuremal” and the content of Tweets that defendant himself voluntarily transmitted to the world – are so plainly within the court’s authority to subpoena that this motion does not withstand scrutiny. Indeed, the reason the information sought by this subpoena is necessary is because defendant has put forth a defense in this proceeding that is directly at odds with his public statements. The need to refute this anticipated defense makes this subpoena perfectly proper.

4. For these and other reasons explained further below, defendant’s motion should be denied.

### FACTS

5. On October 1, 2011, defendant was arrested on the roadway of the Brooklyn Bridge in conjunction with a protest march held there by the Occupy Wall Street movement. Although defendant is depicted on video being warned not to enter the roadway of the bridge, the centerpiece of his anticipated defense is that the police either directed or tricked defendant into stepping onto the bridge. As he claimed in his motion to dismiss this prosecution in the interests of justice:

Whether this [arresting] officer saw the defendant being trapped and unable to move, even if she [sic] had heard an order to disperse, is an open question but video evidence tends to support the version of the events, *as related by the defendant*,

that the protesters were led and escorted on to the bridge by the police and *had a reasonable belief that their conduct was authorized*. The evidence of the defendant's intent to violate the law is, at best, questionable.

Affirm. in Support of Def. Mot. to Dism. at p. 3 (emphasis added).

6. Defendant was arraigned on November 16, 2011 on a charge of disorderly conduct, in violation of Penal Law § 240.20(5), requiring the People to prove either an “intent to cause public inconvenience, annoyance, or alarm” or “recklessly creating a risk thereof.” Since that date, the People have filed a motion to consolidate and responded to defendant's motion to dismiss the charges in the interests of justice. At both of defendant's prior court appearances, defendant has declined all offers to resolve the case. Accordingly, the People have begun preparing to meet their burden of proof at trial.

7. On January 26, 2012, as part of trial preparation, the People sent<sup>1</sup> a subpoena to the microblogging service, Twitter, seeking information related to the Twitter account @destructuremal.<sup>2</sup> Twitter hosts both public and private accounts. According to Twitter, “[a]ccounts with public Tweets have profile pages that are visible to everyone.” See Exhibit C. The account in question is a public account that is open for all to see,

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<sup>1</sup> Pursuant to Twitter's “Guidelines for Law Enforcement,” the subpoena was sent via facsimile. See Exhibit A.

<sup>2</sup> Following the issuance of this subpoena, defendant switched the name of his account to @getsworse, in an apparent effort to frustrate the subpoena. See Exhibit B. For the time period in question, defendant's account ID was @destructuremal.

including those who do not have Twitter accounts.<sup>3</sup> All of the Tweets posted on the account can be viewed with a simple internet search for either the account or defendant's name.

8. Prior to creating a Twitter account, all users must accept Twitter's Terms of Service. Those terms expressly provide:

The Content you submit, post, or display will be able to be viewed by other users of the Services and through third party services and websites. What you say on Twitter may be viewed all around the world instantly. You are what you Tweet!

...

This license is you authorizing us to make your Tweets available to the rest of the world and to let others do the same. Exhibit D.

9. As of February 8, 2012, the @destructuremal account had 1602 "followers" and almost seven-thousand Tweets. Because it was a public account, each time defendant authored a Tweet, that message would instantly be broadcast to anyone with an internet connection who wanted to see it. The @destructuremal account was identified as likely belonging to defendant based on defendant's own writing. That writing identified the account<sup>4</sup> and indicated that defendant may have used the account to make statements while on the bridge that were inconsistent with his anticipated trial defense. See Exhibit

E.

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<sup>3</sup> On the day the subpoena was sent, the People confirmed that the account in question was public by doing an internet search for the account and viewing it. The account was accessible to anyone with an internet connection and remains so to this day.

<sup>4</sup> See Malcolm Harris, "I'm the Jerk Who Pranked Occupy Wall Street," Gawker Media, (available at <http://gawker.com/5868073/>) (accessed Feb. 21, 2012).

10. The subpoena at issue requested two things: (1) business records (subscriber information) that would connect the account to defendant at trial; and (2) the @destructuremal account's Tweets for the period September 15, 2011 to December 31, 2011. See Exhibit F. Notably, the subpoena did not request any of defendant's "Direct Messages," which differ from Tweets in that they are sent to a specific audience, are not publically displayed, and cannot be found with a simple internet search. By contrast, as noted above, the account's Tweets – by definition public messages – were broadcast to anyone with an internet connection and the account remains public even now ("You are what you Tweet!").

11. The reason the subpoena requested defendant's Tweets is that defendant has made clear through various public statements<sup>5</sup> that he was well aware of the police instructions that day, and acted with the intent of obstructing traffic on the bridge. The People requested the Tweets to prove beyond a reasonable doubt that the defense he has thus far advanced is false.

12. On January 30, 2012, Twitter's Legal Department contacted the District Attorney's office to inquire whether the subpoena could be disclosed to the account holder. The office consented to the release of the subpoena and defendant was informed that evening that the account had been subpoenaed. On January 31, 2012, defendant notified Twitter of his intent to file a motion to quash the subpoena, and

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<sup>5</sup> See, i.e., Exhibit E.

Twitter stayed action on the subpoena pending defendant's motion to quash. Twitter has not filed a motion or raised any objection to the substance or manner of service of the subpoena, which in any event was served in accordance with Twitter's published guidelines. See Exhibit A.

## ARGUMENT

13. Defendant argues that the subpoena should be quashed for failure to comply with the Stored Communications Act ("SCA");<sup>6</sup> improper service; and overbreadth. The motion should be denied because defendant lacks standing to quash the subpoena (a subject he does not even address), the SCA does not protect publicly available information contained within defendant's Tweets, and the subpoena seeks relevant information that is material to a necessary element of the crime charged.

I. Defendant lacks standing to challenge the subpoena's request for subscriber information.

14. Under New York law, where "[t]he customer has no proprietary or possessory interests in [records] . . . he cannot preclude their production." People v. Doe, 96 A.D.2d 1018, 1019 (1st Dept 1983) (citing United States v. Miller, 425 U.S. 435 (1976); In re Cappetta, 42 N.Y.2d 1066 (1977)). In other words, "a subpoena may only be challenged by the person to whom it is directed or by a person whose *property* rights or privileges may be violated." People v. Owens, 727 N.Y.S.2d 266, 269 (Sup. Ct. Queens Cty 2001) (quoting In re Selesnick, 115 Misc.2d 993, 995 (Sup. Ct. Westchester Cty

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<sup>6</sup> 18 U.S.C. § 2701, et seq. Defendant refers to this section as the Electronic Communications Privacy Act ("ECPA").

1982)) (emphasis added); see also Harris v. Jamaica Auto Repair, Inc., 2009 WL 2242355 at \*2 (E.D.N.Y. 2009).

15. Thus, because he has no property interest in Twitter's servers, defendant plainly has no standing to challenge the subpoena's request for subscriber information. See People v. Lomma, 2012 WL 309327 at \*5-6 (Sup. Ct. N.Y. Cty 2012) (citing People v. Doe, 96 A.D.2d 1018, 1019 (1st Dept 1983) (banking and telephone records); Matter of John Doe Corp. I v. Blumenkopf, 118 A.D.2d 279 (3d Dept 1986); Matter of Norkin v. Hoey, 181 A.D.2d 248 (1st Dept 1992)); see also People v. Crispino, 298 A.D.2d 220, 221 (1st Dept 2002) ("defendant, as a customer, has no proprietary interest" in defendant's bank records); People v. Daniel, 206 A.D.2d 856, 856 (4th Dept 1994) (telephone records, tax returns, and court records); People v. Crawford, 14 Misc.3d 1207(A) at \*4 (Sup. Ct. Monroe Cty 2006) (Yahoo account records).

II. Under New York State law, defendant does not have a privacy or proprietary interest in defendant's Tweets and therefore lacks standing.

16. Defendant similarly lacks standing to challenge the subpoena's request for Tweets because, under his agreement with Twitter, he has no proprietary or privacy interest in Tweets that he broadcast to every person with access to the internet. Twitter's Privacy Policy and Terms of Service make clear that Tweets will not be kept private. Twitter's Privacy Policy reads in relevant part:

Our Services are primarily designed to help you share information with the world. Most of the information you provide to us is information you are asking to make public.

...

Your public information is broadly and instantly disseminated.

...

What you say on Twitter may be viewed all around the world instantly. Exhibit G.

17. As noted above, each user that joins Twitter is informed that Twitter will “make your Tweets available to the rest of the world and [] let others do the same.” Exhibit D. “Users [] logically lack a legitimate expectation of privacy in the materials intended for publication or public posting.” Guest v. Leis, 255 F.3d 325, 333 (6th Cir. 2001). Defendant simply cannot claim a privacy interest in information defendant knowingly and intentionally chose to disseminate to an unrestricted world-wide audience.

18. Nor can defendant claim a proprietary interest in defendant’s Tweets. Twitter’s Terms of Service state:

By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed). Exhibit D.

19. The Tweets, in other words, are not his. The Terms of Service make plain that once defendant decided to post on Twitter, Twitter was free to use his content for any purpose and to distribute defendant’s posts to any person for any reason. Moreover,



through “Re-Tweeting,” *all* subscribers of Twitter are able to redistribute defendant’s Tweets to whomever they choose.

20. Under defendant’s contract with Twitter, Twitter is permitted to “make [defendant’s] Tweets available to the rest of the world and to let others do the same.” Exhibit D. Indeed, as defendant himself concedes, the content of defendant’s Tweets “are not [his] words . . . Part of the Twitter user agreement is that the Tweets belong to the company, not to the user.” Exhibit H. Surely if the “Tweets belong to the company, not to the user” and Twitter is permitted to display or advertise defendant’s Tweets anywhere in the world, in any manner, defendant lacks a proprietary interest in preventing the dissemination of his Tweets and therefore lacks standing to quash the subpoena.

### III. The SCA offers no basis to quash the subpoena.

#### a. The SCA does not provide for suppression or exclusion of evidence.

21. Lacking standing under New York State law, defendant turns to the SCA. It is worth noting initially that the SCA does not provide any remedy to criminal defendants for the exclusion or suppression of evidence that was obtained in violation of its provisions. Instead, “the language of § 2703(c) does not prohibit any governmental conduct, and thus a governmental entity may not violate that subsection by simply accessing information improperly.” Tucker v. Waddell, 83 F.3d 688, 693 (4th Cir. 1996); see also Guest v. Leis, 255 F.3d 325, 339 (6th Cir. 2001) (“§ 2703(c) applies to the

service provider and not to the government.”); 18 U.S.C. § 2708 (“The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.”).

22. Despite these provisions, in this case the People complied with the SCA fully with respect to the subscriber information and the Tweets. With respect to the latter, as explained below, the SCA does not apply to communications that are disseminated to the general public.

b. The SCA’s provisions regarding subscriber information were scrupulously followed.

23. The SCA makes clear in 18 U.S.C. § 2703(c) that subscriber information<sup>7</sup> is available through the use only of a “State grand jury or trial subpoena,” and that “[a] governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.” 18 U.S.C. § 2703(c)(2), (c)(3). Those requirements, not cited or acknowledged in the defendant’s motion, are plainly met here.

c. The SCA does not apply to public communications.

24. Although the subpoenaed Tweets were voluntarily disseminated to the general public by the defendant himself, and he was clearly warned by Twitter that that would be the case, he nevertheless wishes to keep those Tweets from this Court. That curious and

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<sup>7</sup> Such data includes the subscriber’s name; address; local and long distance telephone connection records, or records of session times and durations; length of service (including start date) and types of service utilized; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and the means and source of payment for such service. 18 U.S.C. 2703(2).

novel argument gets no help from the existence of the SCA, which by its nature only protects the contents of *confidential* communications. See Kaufman v. Nest Seekers, L.L.C., 2006 WL 2807177 at \*5 (S.D.N.Y. 2006) (“Only electronic bulletin boards which are not readily accessible to the public are protected under the [SCA].”); Konop v. Hawaiian Airlines, Inc., 302 F.3d 868, 875 (9th Cir. 2002) (“The legislative history of the ECPA suggests that Congress wanted to protect electronic communications that are configured to be private, such as email and private electronic communications.”); Snow v. DirecTV, Inc., 450 F.3d 1314, 1320-21 (11th Cir. 2006) (holding that the SCA does not apply to material that is “readily accessible by the general public”); Crispin v. Christian Audigier, Inc., 717 F.Supp.2d 965, 981 (C.D.Cal. 2010) (distinguishing between public postings and private communications for purposes of SCA protection); United States v. Hart, 2009 WL 2552347 at \*2 (W.D.Ky. 2009) (holding that Yahoo Instant Messages are not private under the SCA because the Yahoo Terms of Service permitted disclosure of account information and messages).

25. Defendant’s reading of the SCA is also directly contrary to the SCA’s legislative history. See S.Rep. No. 99-541, at 35 (1986) (“This provision addresses the growing problem of unauthorized persons deliberately gaining access to . . . electronic or wire communications that are *not intended to be available to the general public.*”) (emphasis added); H.R.Rep. No. 99-647, at 66 (1986) (“a subscriber who places a communication on a computer ‘electronic bulletin board,’ with a reasonable basis for knowing that such

communications are freely made available to the public, should be considered to have given consent to the disclosure or use of the communication”).

26. Here, it is plain that the Tweets at issue are “readily accessible to the general public.” Twitter’s Privacy Policy expressly states that defendant’s “public information is broadly and instantly disseminated” and “[w]hat you say on Twitter may be viewed all around the world instantly.” Exhibit G. Because defendant’s account is public, all of defendant’s Tweets are broadcast world-wide and can be viewed by all users of the internet, even users without Twitter accounts. Thus, although the SCA might apply to some of the private content on Twitter, namely “Direct Messages,” it does not apply to the public content at issue in this case—public content that is equivalent to posting a paper sign outside one’s home for all to see. See i.e. Hart, 2009 WL 2552347 at \*2 (holding that a user, by agreeing to terms of service providing for the release of content, was precluded from claiming his content as private).

27. Applying the SCA to public Tweets would ignore the statutory language and lead to absurd results. Under 18 U.S.C. § 2702(b)(1) Twitter “may divulge the contents of a communication to an addressee or intended recipient of such communication.” Because defendant’s account is public, the intended recipients of defendant’s Tweets encompass all individuals with internet access anywhere, including law enforcement. Under defendant’s interpretation of the SCA, Twitter would be permitted to — and does — voluntarily publish defendant’s Tweets to any member of law enforcement with an

internet connection, but would not be permitted to provide them in authenticated form without a search warrant.

28. Moreover, defendant's interpretation would extend the SCA to cover all postings on the internet anywhere. For example, a posting on the Craigslist website is without a doubt a form of communication. Protecting such a public posting by allowing it to be released only pursuant to a search warrant, however, would plainly lead to a result not intended by the drafters of the SCA.<sup>8</sup> See S.Rep. No. 99-541, at 35 (1986) and H.R.Rep. No. 99-647, at 66 (1986), *supra*. Because defendant's Tweets are "readily accessible to the general public" the SCA does not apply.

IV. The subpoena is targeted to reveal relevant information that is material to defendant's upcoming trial.

29. Defendant's claim that the subpoena is overbroad is meritless. Protection against an overbroad subpoena lies in the Fourth Amendment's protection against unreasonable searches and seizures. See In re Grand Jury Subpoenas for Locals 17, 135, 257 and 608 of United Brotherhood of Carpenters and Joiners of America, 72 N.Y.2d 307, 315-16 (1988). As explained above, defendant does not have a privacy interest in his Tweets

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<sup>8</sup> Similarly, "[t]he prohibition against divulgence of stored subscriber communications set forth in ECPA § 2702(a)(2) applies only 'if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing'" Viacom International Inc. v. Youtube, Inc., 253 F.R.D. 256, 264 n.8 (S.D.N.Y. 2008)(citing 18 U.S.C. § 2702(a)(2)(B)); see also 18 U.S.C. 2511(2)(g)(i) ("It shall not be unlawful under this chapter or chapter 121 of this title [the SCA] for any person to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public") (brackets added). Because Twitter is authorized pursuant to its Terms of Service to access the contents of defendant's communications for any and all purposes, including redistribution and republication to any and all persons, the SCA does not apply to the Tweets at issue in this case.

and, therefore, does not have standing to challenge the breadth of the subpoena. The motion should be denied on that basis alone.

30. But even if the defendant had standing to challenge the breadth of the subpoena, his arguments should nevertheless fail. As an initial matter, it is curious that defendant has both interposed a defense that he had a “reasonable belief that [his] conduct was authorized,” *Affirm. in Support of Def. Mot. to Dism.* at p. 3., and maintains here that the People should not be entitled to obtain evidence that refutes that defense. Indeed, taking defendant’s Clayton motion together with his motion to quash, he implores the Court to find that the People’s case is weak, while at the same time seeking to prevent the People from bringing to Court the very evidence that will prove the opposite. Violations may not be crimes, but they are penal offenses, and therefore afford the defendant the right to be convicted only on proof beyond a reasonable doubt. But with that right comes the People’s ability to compel the requisite evidence by court process. See C.P.L. § 610.20.

31. Motions to quash criminal trial subpoenas are governed by C.P.L.R. 2304. People v. Doe, 170 Misc.2d 454, 456 (Sup. Ct. Monroe Cty 1996). “[T]he person seeking to quash a subpoena bears ‘the burden of establishing that the requested documents and records are utterly irrelevant.’” LeDonne v. Orsid Realty Corp., 83 A.D.3d 598, 599 (1st Dept 2011) (quoting Velez v. Hunts Point Multi-Serv. Ctr., Inc., 29 A.D.3d 104, 108 (1st

Dept 2006)); General Elec. Co. v. Rabin, 184 A.D.2d 391, 392 (1st Dept 1992). Defendant has not met this burden.

32. The central defense raised by defendant and the other protesters on the bridge is that they lacked the intent necessary to commit disorderly conduct because they believed that their obstruction of the Brooklyn Bridge for approximately three hours was in some way authorized or orchestrated by the police. Defendant has also asserted this defense despite defendant's own writing which admits that: (i) defendant heard the warnings not to walk on the bridge, (ii) defendant knew that the use of the roadway was not approved, and (iii) the protesters "took" the bridge from the police. See Malcolm Harris, "A Bridge to Somewhere," The New Inquiry, attached as Exhibit E. In that same writing, defendant confirms that he sent Tweets concerning the events on the bridge on the day in question. Id.

33. The information requested by the People is directly germane to the contested issue of defendant's state of mind at the time he chose to defy police orders and block the Brooklyn Bridge. The requested time-period is appropriate to encompass any statements prior to October 1, 2011, to indicate that this was a planned act as well as to capture any admissions after the day in question. Although the event in question is limited to a single day, a broader scope is necessary to determine defendant's intentions on October 1, 2011, when the events were unfolding.

34. Although the Tweets were broadcast publicly to everyone with an internet connection who sought to read them, it remains important to obtain the evidence from its source, for two reasons. First, the subscriber information will assist in authenticating defendant's statements at trial. Second, because of the heavy volume of defendant's Tweets, a Twitter search no longer reveals them for the entire time period in question.

35. Because defendant cannot demonstrate that the requested information is "utterly irrelevant" to defendant's case, his motion should be denied. Similarly, defendant's arguments that the subpoena was issued for an improper purpose should also be denied because, as noted above, the subpoena is plainly necessary for the purpose of producing evidence at trial.

V. Defendant does not have standing to challenge the method of service of process to a third party and process in this case complied with Twitter's Law Enforcement Guidelines.

36. Defendant argues that the subpoena should be quashed because of the method of service to Twitter. Once again, defendant does not have standing to raise this claim. "[A] court can act only when the rights of the party requesting relief are affected." Society of the Plastics Industry, Inc. v. County of Suffolk, 77 N.Y.2d 761, 772 (1991). Further, courts enforce a "general prohibition on one litigant raising the legal rights of another."

Id.

37. Defendant's arguments with respect to service of process, non-disclosure, and jurisdiction are plainly defendant "raising the legal rights of another." Although Twitter



has agreed to stay action on the subpoena pending this motion to quash, Twitter itself raised no objection to the subpoena before its return date, as is required. See Matter of Santangelo v. People, 38 N.Y.2d 536, 539 (1976). Indeed, as defendant points out, Twitter is well aware of this subpoena and has only agreed not to comply pending the outcome of this motion. By not interposing an objection, they have plainly waived that right.

38. Moreover, Twitter's law enforcement guidelines specifically provide for the receipt of legal process via facsimile. See Exhibit A. Despite the fact that Twitter has not raised the issue of service of process or jurisdiction, defendant has tried to stand in the shoes of Twitter and "raise the legal rights of another." Because defendant does not have standing to do that, his claim should be denied.

39. Defendant's complaints about the non-disclosure provision originally contained within the subpoena should also be denied, because they are moot. The People sent the subpoena to Twitter on January 26, 2011, at approximately 5:00 p.m. Defendant was notified of the subpoena the following Monday, January 30, 2011, *with the consent of the People*, who were clear with Twitter personnel that they were *not* being asked or required to refrain from disclosing the subpoena. See Exhibit I. While defendant attempts to argue that the People's fax to the legal department of a large corporation was an attempt to "intimidate a potential witness," see Affirm. in Support of Def. Mot. to Quash ¶ 25, defendant was, in fact, notified about the existence of the subpoena and has not been

harmd in any way. Accordingly, defendant lacks independent standing necessary to raise this claim. In any event, a trial subpoena to a third party is simply a request for documents. Large corporations such as Twitter routinely receive and fulfill such requests without being “intimidated.”

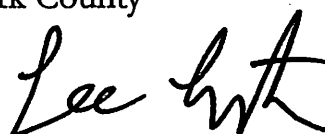
40. Because defendant may not assert the legal rights of another, his objections to jurisdiction, non-disclosure, and service of process must be denied.

### CONCLUSION

41. For all of the reasons stated above, the People respectfully request that defendant’s motion to quash be denied.

Cyrus R. Vance, Jr.  
District Attorney  
New York County

By:



Lee Langston  
Assistant District Attorney  
Of Counsel  
212-335-9206

# EXHIBIT A

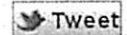


English



Sign in

# Guidelines for Law Enforcement



These guidelines are intended for law enforcement personnel seeking to request information about Twitter users. More general information on Twitter's Rules can be found [here](#).

## Topics Covered:

- What is Twitter?
- What User Information Does Twitter Have?
  - Does Twitter Have Access to User Photos or Videos?
- Data Retention Information
- Private Information Requires a Subpoena or Court Order
- Requests for User Information
  - Emergency Requests
  - Requests from Non-U.S. Law Enforcement
  - Will Twitter Notify Users of Requests for Account Information?
  - What Information Must Be Included?
    - How to Make an Emergency Request
- General Inquiries

## What is Twitter?

Twitter is a real-time information network powered by people all around the world that lets users share and discover what's happening now. Users send 140-character messages through our website and mobile site, client applications, or any variety of third-party applications. For more information, you can also visit <https://twitter.com/about>.

For the latest on Twitter's features and functions please visit our [Help Center](#).

## What User Information Does Twitter Have?

User information is held by Twitter, Inc. in accordance with our [Privacy Policy](#) and [Terms of Service](#). We require a subpoena, court order, or other valid legal process to disclose information about our users.

Most Twitter profile information is public, so anyone can see it. A Twitter profile contains a profile image, background image, and status updates, called Tweets. In addition, the user has the option to fill out location, a URL, and a short "bio" section about themselves for display on their public profile. Please see our [Privacy Policy](#) for more information on the data we collect from users.

## Does Twitter Have Access to User Photos or Videos?

Twitter provides photo hosting for some image uploads as well as a user's profile image and account background image; Twitter does not, however, provide hosting for videos, nor is Twitter the sole photo hosting provider for images that may appear on the Twitter service. More information can be

found on our photo and video sharing pages.

## Data Retention Information

Twitter retains different types of information for different time periods. Given Twitter's real-time nature, some information may only be stored for a very brief period of time. Information on our retention policies can be found in our Privacy Policy.

Preservation requests in accordance with applicable law must be signed, include the username and URL of the Twitter profile in question (e.g., @safety and <https://twitter.com/safety>), a valid return email address, and be sent on law enforcement letterhead. Requests may be sent via the methods described below.

## Private Information Requires a Subpoena or Court Order

In accordance with our Privacy Policy and Terms of Service, non-public information about Twitter users is not released except as lawfully required by appropriate legal process such as a subpoena, court order, or other valid legal process.

Some information we store is automatically collected, while other information is provided at the user's discretion. Though we do store this information, it may not be accurate if the user has created a fake or anonymous profile. Twitter doesn't require email verification or identity authentication.

## Requests for User Information

Twitter, Inc. is located in San Francisco, California and will only respond in compliance with U.S. law to valid legal process. For example, requests for contents of communication require a U.S. search warrant.

## Emergency Requests

Twitter evaluates emergency disclosure requests on a case-by-case basis. If we receive information that gives us a good faith belief that there is an emergency involving the death or serious physical injury to a person, we may provide information necessary to prevent that harm, if we have it.

## Requests From Non-U.S. Law Enforcement

U.S. law authorizes Twitter to respond to requests for user information from foreign law enforcement agencies that are issued via U.S. court either by way of a mutual legal assistance treaty or a letter rogatory. It is our policy to respond to such U.S. court ordered requests.

## Will Twitter Notify Users of Requests for Account Information?

Yes. Twitter's policy is to notify users of requests for their information prior to disclosure unless we are prohibited from doing so by statute or court order (e.g., an order under 18 U.S.C. § 2705(b)).

## What Information Must Be Included?

When requesting user information, your request must include:

- The username and URL of the Twitter profile in question (e.g., @safety and <https://twitter.com/safety>).

- Details about what specific information is requested and its relationship to your investigation,
  - **Note:** Please ensure that the information you seek is not available from our public API. We are unable to process overly broad or vague requests.
- A **VALID EMAIL ADDRESS** so we may get back in touch with you upon receipt of your legal process.

You can fax Twitter, attention Trust & Safety, at: 1-415-222-9958. Or you can mail your request to Twitter:

Twitter, Inc.  
c/o Trust & Safety  
795 Folsom Street  
Suite 600  
San Francisco, CA 94107

Twitter only accepts legal process from law enforcement agencies delivered by mail or fax. Acceptance of legal process by these means is for convenience only and does not waive any objections, including the lack of jurisdiction or proper service. We do not accept legal process via email.

## How To Make an Emergency Request

To make an emergency request, please email [lawenforcement@twitter.com](mailto:lawenforcement@twitter.com), which we continuously monitor; you will receive an automated response that you must reply to in order for us to see your report (**NOTE:** our support system removes all attachments, please include the contents in the body of the message). Alternatively, fax your request to: 1-415-222-9958.

Please be sure to include the Twitter username and URL (e.g., [@safety](https://twitter.com/safety) and <https://twitter.com/safety>) of the subject account, the nature of the emergency, any specific Tweets you would like us to review, and all other available details including how information from us may be necessary to prevent that emergency.

## General Inquiries

Other general inquiries can be sent via email to: [lawenforcement@twitter.com](mailto:lawenforcement@twitter.com); you will receive an automated response that you must reply to in order for us to see your inquiry. **NOTE:** We do not accept legal process via email; our support system will remove all attachments so please include all content in the body of your email.

**Only email from law enforcement domains will be accepted. All others will be disregarded. Non-law enforcement requests should be sent through our regular support methods (<https://support.twitter.com>).**

# EXHIBIT B



**Malcolm Harris** @getsworse  
@johnnymath It's actually not me.  
← In reply to JohnnyMath

11 Feb



**Malcolm Harris** @getsworse  
I claim no responsibility for the new @destructuremal, who is a copy-cat blackbloc holligan cancer

11 Feb



**imp kerr** @impkerr  
i was walking back from lunch one afternoon last month w/ [REDACTED]  
thenewinquiry.com/blogs/shines-l...  
↻ Retweeted by Malcolm Harris

11 Feb



**Malcolm Harris** @getsworse  
And anyone who wants an up-for-grabs DA subpoena, "destructuremal" is totally yours.

11 Feb



**Malcolm Harris** @getsworse  
What's a destructuremal? I ain't never heard of him.

11 Feb



**Malcolm Harris** @getsworse  
Must read: "Defend Arizona Workers, Abolish the Police Unions" from the Phoenix Class War Council  
firesneverextinguished.blogspot.com/2012/02/defend...

11 Feb



**Malcolm Harris** @getsworse  
"Itgetsworse" is already taken though

11 Feb



**Malcolm Harris** @getsworse  
← Reply ↻ Retweet ★ Favorite · Open  
Sooo you can change your username in Twitter? What happens when the DA gets a "user does not exist" message?



# EXHIBIT C

## About Public and Protected Tweets

### Public or protected?

When you sign up for Twitter, you have the option of keeping your Tweets public (the default account setting) or protecting your Tweets.

- **Accounts with public Tweets** have profile pages that are visible to everyone.
- **Accounts with protected Tweets** require manual approval of each and every person who may view that account's Tweets. Only approved followers can view Tweets made on these accounts.

### Why would I protect my Tweets?

If the idea of strangers reading your Twitter updates makes you feel a little weird, try protecting your Tweets at first. You can always change your mind later! When you protect your Tweets, the following restrictions are put in place:

- People will have to request to follow you and each follow request will need approval
- Your Tweets will only be visible to users you've approved, meaning that other users will not be able to retweet your Tweets
- Protected Tweets will not appear in Twitter search
- @replies you send to people who aren't following you will not be seen by those users (because you have not given them permission to see your Tweets)
- You cannot share permanent links to your Tweets with anyone other than your approved followers
- **Please note:** t.co links, even those shared via DM, are neither private nor public. **Anyone with the link will be able to view the content.**

### How do I protect my Tweets?

You can protect your Tweets in your account settings page, following these steps:

1. Log in to your Twitter account.
2. Visit your account settings page by clicking on the person icon at the top right of the page and selecting Settings from the drop-down menu.
3. Scroll down to the Tweet privacy section and check the box next to **Protect my tweets**.
4. Save your changes.

When you navigate to your home page after protecting your Tweets, you'll see a notice reminding you that your Tweets are now protected. Accounts with protected Tweets can always go public by un-checking the box in account settings.

Tweet privacy  Protect my tweets  
Only let people whom I approve follow my Tweets. If this is


# EXHIBIT D

# Terms of Service

These Terms of Service ("Terms") govern your access to and use of the services and Twitter's websites (the "Services"), and any information, text, graphics, photos or other materials uploaded, downloaded or appearing on the Services (collectively referred to as "Content"). Your access to and use of the Services is conditioned on your acceptance of and compliance with these Terms. By accessing or using the Services you agree to be bound by these Terms.

## Basic Terms

You are responsible for your use of the Services, for any Content you post to the Services, and for any consequences thereof. The Content you submit, post, or display will be able to be viewed by other users of the Services and through third party services and websites (go to the account settings page to control who sees your Content). You should only provide Content that you are comfortable sharing with others under these Terms.

 What you say on Twitter may be viewed all around the world instantly. You are what you Tweet!


You may use the Services only if you can form a binding contract with Twitter and are not a person barred from receiving services under the laws of the United States or other applicable jurisdiction. You may use the Services only in compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations.

The Services that Twitter provides are always evolving and the form and nature of the Services that Twitter provides may change from time to time without prior notice to you. In addition, Twitter may stop (permanently or temporarily) providing the Services (or any features within the Services) to you or to users generally and may not be able to provide you with prior notice. We also retain the right to create limits on use and storage at our sole discretion at any time without prior notice to you.

The Services may include advertisements, which may be targeted to the Content or information on the Services, queries made through the Services, or other information. The types and extent of advertising by Twitter on the Services are subject to change. In consideration for Twitter granting you access to and use of the Services, you agree that Twitter and its third party providers and partners may place such advertising on the Services or in connection with the display of Content or information from the Services whether submitted by you or others.

## Privacy

Any information that you provide to Twitter is subject to our Privacy Policy, which governs our collection and use of your information. You understand that through your use of the Services you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States and/or other countries for storage, processing and use by Twitter. As part of providing you the Services, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services and your Twitter account, which you may not be able to opt-out from receiving.

 You can opt-out of most communications from Twitter including our newsletter, new follower emails, etc. Please see the Notifications tab of Settings for more.

## Passwords

You are responsible for safeguarding the password that you use to access the Services and for any activities or actions under your password. We encourage you to use "strong" passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your account. Twitter cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.


## Content on the Services

All Content, whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Services and, we cannot take responsibility for such Content. Any use or reliance on any Content or materials posted via the Services or obtained by you through the Services is at your own risk.


We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any Content or communications posted via the Services or endorse any opinions expressed via the Services. You understand that by using the Services, you may be exposed to Content that might be offensive, harmful, inaccurate or otherwise inappropriate, or in some cases, postings that have been mislabeled or are otherwise deceptive. Under no circumstances will Twitter be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Services or broadcast elsewhere.

## Your Rights

You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).

 This license is you authorizing us to make your Tweets available to the rest of the world and to let others do the same.

You agree that this license includes the right for Twitter to make such Content available to other companies, organizations or individuals who partner with Twitter for the syndication, broadcast, distribution or publication of such Content on other media and services, subject to our terms and conditions for such Content use.

 Twitter has an evolving set of rules for how ecosystem partners can interact with your content. These rules exist to enable an open ecosystem with your rights in mind. But what's yours is yours – you own your Content (and your photos are part of that Content)

Such additional uses by Twitter, or other companies, organizations or individuals who partner with Twitter, may be made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services.

We may modify or adapt your Content in order to transmit, display or distribute it over computer networks and in various media and/or make changes to your Content as are necessary to conform and adapt that Content to any requirements or limitations of any networks, devices, services or media.

You are responsible for your use of the Services, for any Content you provide, and for any consequences thereof, including the use of your Content by other users and our third party partners. You understand that your Content may be rebroadcasted by our partners and if you do not have the right to submit Content for such use, it may subject you to liability. Twitter will not be responsible or liable for any use of your Content by Twitter in accordance with these Terms. You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to any Content that you submit.

Twitter gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software that is provided to you by Twitter as part of the Services. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Twitter, in the manner permitted by these Terms.

## Twitter Rights

All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Twitter and its licensors. The Services are protected by copyright, trademark, and other laws of both the United States and foreign countries. Nothing in the Terms gives you a right to use the Twitter name or any of the Twitter trademarks, logos, domain names, and other distinctive brand features. Any feedback, comments, or suggestions you may provide regarding Twitter, or the Services is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you.

## Restrictions on Content and Use of the Services

We reserve the right at all times (but will not have an obligation) to remove or refuse to distribute any Content on the Services and to terminate users or reclaim usernames. Please review the Twitter Rules (which are part of these Terms) to better understand what is prohibited on the Service. We also

retain the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce the Terms, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Twitter, its users and the public.

 Twitter does not disclose personally identifying information to third parties except in accordance with our Privacy Policy.

Except as permitted through the Services (or these Terms), you have to use the Twitter API if you want to reproduce, modify, create derivative works, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Content or Services.

 We encourage and permit broad re-use of Content. The Twitter API exists to enable this.

You may not do any of the following while accessing or using the Services: (i) access, tamper with, or use non-public areas of the Services, Twitter's computer systems, or the technical delivery systems of Twitter's providers; (ii) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures; (iii) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by Twitter (and only pursuant to those terms and conditions), unless you have been specifically allowed to do so in a separate agreement with Twitter (NOTE: crawling the Services is permissible if done in accordance with the provisions of the robots.txt file, however, scraping the Services without the prior consent of Twitter is expressly prohibited); (iv) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Services to send altered, deceptive or false source-identifying information; or (v) interfere with, or disrupt, (or attempt to do so), the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Services.

## Copyright Policy

Twitter respects the intellectual property rights of others and expects users of the Services to do the same. We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to us. If you believe that your Content has been copied in a way that constitutes copyright infringement, please provide us with the following information: (i) a physical or electronic signature of the copyright owner or a person authorized to act on their behalf; (ii) identification of the copyrighted work claimed to have been infringed; (iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; (iv) your contact information, including your address, telephone number, and an email address; (v) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) a statement that the information in the notification is accurate, and, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

We reserve the right to remove Content alleged to be infringing without prior notice and at our sole discretion. In appropriate circumstances, Twitter will also terminate a user's account if the user is determined to be a repeat infringer. Our designated copyright agent for notice of alleged copyright infringement appearing on the Services is:

Twitter, Inc.  
Attn: Copyright Agent  
795 Folsom Street, Suite 600  
San Francisco, CA 94107  
Email: [copyright@twitter.com](mailto:copyright@twitter.com)

## The Services are Available "AS-IS"

Your access to and use of the Services or any Content is at your own risk. You understand and agree that the Services is provided to you on an "AS IS" and "AS AVAILABLE" basis. Without limiting the foregoing, TWITTER AND ITS PARTNERS DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. We make no warranty and disclaim all responsibility and liability for the completeness, accuracy, availability, timeliness, security or reliability of the Services or any content thereon. Twitter will not be responsible or liable for any harm to your computer system, loss of data, or other harm that results from your access to or use of the Services, or any Content. You also agree that Twitter has no responsibility or liability for the deletion of, or the failure to store or to transmit, any Content and other

communications maintained by the Services. We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. No advice or information, whether oral or written, obtained from Twitter or through the Services, will create any warranty not expressly made herein.

## Links

The Services may contain links to third-party websites or resources. You acknowledge and agree that we are not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by Twitter of such websites or resources or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

## Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TWITTER AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, DATA, USE, GOOD-WILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (i) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICES; (ii) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES; (iii) ANY CONTENT OBTAINED FROM THE SERVICES; AND (iv) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT TWITTER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## Exclusions

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations above may not apply to you.

## Waiver and Severability

The failure of Twitter to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. In the event that any provision of these Terms is held to be invalid or unenforceable, the remaining provisions of these Terms will remain in full force and effect.

## Controlling Law and Jurisdiction

These Terms and any action related thereto will be governed by the laws of the State of California without regard to or application of its conflict of law provisions or your state or country of residence. All claims, legal proceedings or litigation arising in connection with the Services will be brought solely in San Francisco County, California, and you consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum. If you are accepting these Terms on behalf of a United States federal government entity that is legally unable to accept the controlling law, jurisdiction or venue clauses above, then those clauses do not apply to you but instead these Terms and any action related thereto will be governed by the laws of the United States of America (without reference to conflict of laws) and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of California (excluding choice of law).

## Entire Agreement

These Terms, the Twitter Rules and our Privacy Policy are the entire and exclusive agreement between Twitter and you regarding the Services (excluding any services for which you have a separate agreement with Twitter that is explicitly in addition or in place of these Terms), and these Terms supersede and replace any prior agreements between Twitter and you regarding the Services. Other than members of the group of companies of which Twitter is the parent, no other person or company will be third party beneficiaries to the Terms.

We may revise these Terms from time to time, the most current version will always be at [twitter.com/tos](https://twitter.com/tos). If the revision, in our sole discretion, is material we will notify you via an @Twitter update or e-mail to the email associated with your account. By continuing to access or use the Services after those revisions become effective, you agree to be bound by the revised Terms.

these Terms, please contact us.

Effective: June 01, 2011

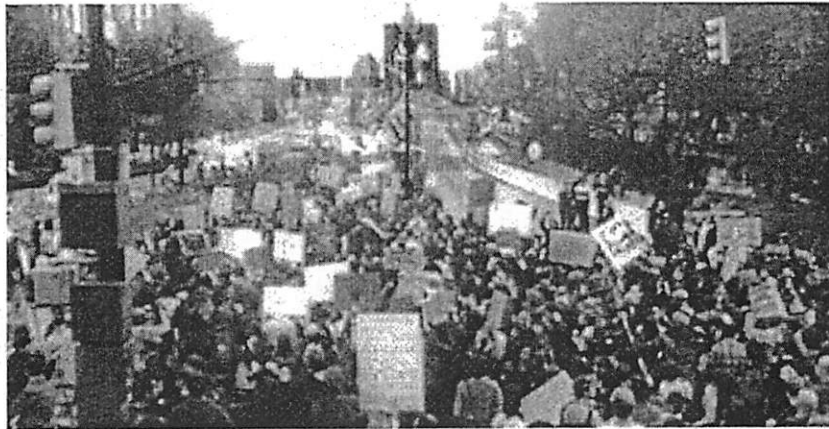
Archive of Previous Terms



# EXHIBIT E

## A Bridge to Somewhere

By MALCOLM HARRIS



### From the Brooklyn Bridge to One Police Plaza and back again

**3:00 pm:** The crowd at Zuccotti Park, larger than any day except the one immediately preceding, starts circling the park in preparation for a march across the Brooklyn Bridge. I've heard that organizers talked to the police and assured them we will be walking peacefully on the sidewalk and the bridge's pedestrian walkway. As it kicks into gear, we lumber down Broadway, a chanting column stretching across blocks. There must be a couple thousand people.

I don't think there's another country in the world where a protest march of thousands of citizens would be expected to confine itself to the sidewalks, where the flow of traffic is so sacrosanct that lines of police scooters guard the gutter like we need an escort. I overhear a couple mustachioed union guys talking about militancy and being gruff and fed up. So far the occupation's direct actions haven't reflected that ambient anger, leaning instead toward the liberal universalist "We are the 99%" rhetoric in which the police and most bankers are on "our side." But dissensus is apparent from the way different clusters are shouting slogans. They both start: "How do we fix the deficit?" but the different answers ("End the wars!/Tax the rich!" and "Start the war!/Eat the rich!") suggest not everyone is feeling as compliant as the organizers may have led the police to believe.

**3:30 pm:** We reach the entrance to the bridge, and the absurdity of the original plan becomes quickly apparent. The crowd is far too big to fit orderly at the entrance to the pedestrian walkway. A large mass of people overflows onto the entrance to the Brooklyn-bound motorway.

*There's been a lot of questions as to what exactly happened at this point; whether the police read warnings or not, whether the police enticed protesters onto the bridge with candy or not, etc. Here's what I saw from the front lines:* The head of the march fractures at the fork onto the pedestrian walkway and the motorway entrance. The rest of the crowd is behind them and undivided, but the motorway is the bigger of the two outlets. There are a handful of police, mostly senior officers, with a megaphone and only a few zip-ties, blocking it. One of the more senior officers tries to read a warning over his megaphone, telling us to walk on the pedestrian bridge to avoid arrest, but he's drowned out by chants of "Take the bridge! Take the bridge!" The march marshals who told the police the route in advance give up trying to wave people back onto the approved path, a few of them shrug and join the chant, others are livid.

*This is the moment it's important to understand in terms of the afternoon's narrative. It's hard to find footage that shows the concurrent actions of both the police and the protesters, the cameras all seem focused one way or the other. But if you were standing at the entrance to the motorway, this is what you saw:* The chanting reaches the back of the crowd, and now it's a thousand plus yelling to seize the bridge. Protesters on the front lines lock arms and, once they're sure the march will follow, start a slow, purposeful advance on the police and onto the bridge. The police, shouting on their radios at this point, turn and walk briskly toward Brooklyn.

As it becomes clear we have taken the bridge, marchers who had already entered the walkway jump over the railing and onto the street. I see two teenagers who must be a couple from the rehearsed but nervous "I want to if you want to" look they share before clambering down. The chants are now all about the bridge: "Whose bridge?/Our bridge!" "Occ-Upyl!/Brooklyn Bridge!" There is more joy than I've seen so far at Occupy Wall Street; no one can quite believe what's happening.

When we reach about halfway across the bridge, we see the police have called reinforcements and set up an orange mesh barrier preventing our advance. I can't see the back of the march, but we hear from whispers that we're enclosed at both ends. Unsure whether we're safer sitting or standing, we try both in rapid alternating succession. A Latino teenager turns to me, shakes his head and says, "Man, I've got priors, I can't get arrested." He sighs and pulls out his phone to call his mom. There are a few tense moments. I hesitate, sigh, and pull the small jar of pot out of my bag and drop in inconspicuously on the ground.

**4:20 pm:** Later at the jail I will see a hand-written sign that informs the buzzing hive of officers to put this as the time of arrest for all of the 700-plus protesters. I wasn't looking at my watch. The police start grabbing people from the center. There's a valiant effort from the front lines to grab them back, but we have nowhere to go. A white-shirted officer extends and collapses his metal baton. One by one the police snatch the protesters, and it dawns upon everyone that they have enough zip-tie cuffs for all of us, that they probably have one for each person in the city. One guy resists and a handful of officers slam him head-first to the asphalt.

As we're cuffed, they line us up on either side of the street facing the middle. We're separated into groups of five and assigned official arresting officers. Mine is a young woman, maybe late 20s or early 30s, named Jimenez. She seems cheerful and distracted. The tied rows cheer and whistle for the new arrestees, who in turn smile and strut like they're on a catwalk. Each shouts his or her name to legal observers taking notes on the walkway above. Spirits are surprisingly high, everyone is aware that we're still occupying the bridge in one way or another. Transport vehicles appear on the other side of the mesh, large prison buses, paddy wagons with their sealed trunks, and even city buses driven by our union allies. I'm loaded into one of the aforementioned wagons with 14 others. We fill the benches and are forced to take turns standing in the middle.

**5:00 pm:** As soon as the officers shut the heavy metal doors, I slip my right hand out of the plastic cuffs. As it gets incredibly hot, sweat lubricates wrists and 10-12 of us are out of our constraints. I have a few bottles of water in my bag and we pass them around, pouring it into the mouths of those of us still cuffed. We do about five minutes of ideological infighting before laughing it off and sharing names. I've never seen a collection of mostly strangers so gracious in doling out and accepting help. Less than an inch of plastic separates the freer from the bound; it only took a few minutes for care to become a collective responsibility.

After about an hour, a trip into Brooklyn and back into Manhattan, we can tell that we have arrived at One Police Plaza and were being stored in the wagon awaiting processing. Fifteen people in an unventilated metal box for hours get really hot, and a few started to get faint. We shifted them to the cooler floor, and tried to conserve water. It wasn't until later that I thought about what it would have been like had our restraints been tighter. I use my phone to Tweet: "We're considering calling 911: 'Help, me and 14 other people have been kidnapped and put into a van by a gang of armed men! Send help!'" Our escorting officers enter and exit the car but won't answer any of our calls. We

all distinctly hear one on a radio say, "But I still have 15 bodies in the trunk..." I scream back, "We're not bodies yet!"

But it isn't all bad. A college student pulls out her phone and plays the classic Against Me! sing-along "Baby I'm An Anarchist":

*Through the best of times,  
Through the worst of times,  
Through Nixon and through Bush,  
Do you remember '36?  
We went our separate ways.  
You fought for Stalin.  
I fought for freedom.  
You believe in authority.  
I believe in myself.  
I'm a Molotov cocktail.  
You're Dom Perignon.*

We talk about Occupy Wall Street and tactics and who we know in common. It's like some kind of experimental sauna party.

**7:00 pm:** We're out of the wagon and into a courtyard where we're lined up against a wall and our zip-ties (which we've slipped back on) are cut. We go one by one in new groups of five, and we take Polaroids with our new official arresting officers. Mine is named Po Manning, and he's not much older than the majority of us. His uniform doesn't have any of the adornments that come with time served, and his cop haircut seems like it could only be the result of a hazing ritual. Officer Manning smirks when he realizes I had leaned in to faux-kiss his cheek in the photo: "That's fucking cute." They take our cigarettes, keys, phones, and such, put them in our bags, and throw them in a big pile unsearched. I start to regret ditching my weed on the bridge.

Processing is a slow shuffle from space to space, and the station is packed. We're drenched with sweat and enjoying the relatively open air. When an officer sneers at my group of 15, "What's with you people and not showering?" I could have punched him in the face. They have us sign receipts saying they didn't steal the cash in our pockets, which must have been a frequent problem before this practice. An officer pats my legs for a concealed shotgun and leads me and four others to a cell in the back. I start to regret not sticking my phone in my underwear.

**7:40 pm:** My cell mates are my two friends and roommates and two guys we don't know. One is a recent transplant to New York, a structural architect in his mid twenties who works restoring historical buildings; the other is a buff and

the first time. None of us has been in a cell before, but no one is regretful. During the whole trip through processing, I didn't hear one person complain that they were tricked or arrested unjustly.

We use my roommate Max's unintentionally smuggled pen to write out playing cards on the back of our receipt slips. It turns out crazy eights is no more fun behind bars, so we quit without finishing a game. The cell is the classic 8X10 with a non-functional sink, a bench with a pad, and a plain toilet bowl. Fitting five guys in this space is a little tricky, especially since we're all antsy. An officer comes by with sealed peanut butter or cheese sandwiches and milk cartons for each of us, although the former (from the famous "Rikers Island Bakery") strain the definition of "sandwich" to its breaking point. From a cell over we hear laughing suggestions that we should reject the 1% milk in solidarity with "the 99%."

We had heard from our DJ friend in the wagon that a call went out for jail support on the email list for New York Slut Walk, which had happened earlier that day. Apparently the news had gotten around, and the cell on the other side of us is developing an out-loud collective fantasy involving walking out of jail to a crowd of cheering, self-described sluts. For a while we attempt to entertain and exercise ourselves; four of us sit on the bench counting while the fifth does 20 push-ups. Then we rotate. Everyone but the Canadian quits after three cycles. We stop counting.

Officer Manning comes by and takes our IDs, and our push-up champion nervously confesses that he's a Palestinian, born in Saudi Arabia. We look at each other and hope that there are too many of us arrested for the police to bother causing more hassle, which ends up being largely the case. The engineer didn't bring his license, which Manning explains will necessitate holding him overnight. He gives us his brother's number and we promise to call as soon as we get out.

**1:00 am:** Manning comes by and tells us that we're almost out, maybe another 30 minutes.

The hour from 1:30 to 2:30 is the worst part of the day.

**2:30 am:** Manning comes by and tells us it will be a little longer. The police have to share computers.

It's getting late and we try and put ourselves to sleep. Our tallest member (roommate Will) stretches out on the unpadded bench, while the rest of us scrunch horizontally, our heads on the pad stuffed under the bench. Max suggests

that from an aerial view we look like a sow and her piglets. Sleeping curled up in the literal corner of a packed cell right next to the toilet is actually easier than I would have thought, and for a second I almost pull it off.

**3:00 am:** Our officer finally returns with the key, and lets four of us out. We give our man-left-behind salutes and promise again to get in touch with his people. Shuffling into a line near the door, our backs once again to the wall, we wait. Manning is standing with us, and knowing we're about to be released more or less without long-term consequences, asks us, "Was it worth it?" We don't even look at each other, everyone agrees. "Good," he says, "good work then. And I guess we'll see you again next week. It works so smooth it makes you wonder why we arrest you in the first place." I do wonder that.

We move like penguins into a small anteroom before the courtyard where sergeants sign our summonses. One by one we sign forms saying we will appear in front of a judge before a date in mid-November. Our Canadian friend turns to Manning, panicked: "I'm going back to Canada tomorrow. What should I do?" "Are you coming back to New York any time soon?" "Hell no!" "Then just don't show up. What're we going to do—get you extradited for a ticket?"

**3:30 am:** We finally exit the building, grab our bags from the pile, and head for the street. I smoke the best cigarette of my life. Will texts the brother as promised. Across the street we're met by fellow occupiers who tell us to call the National Lawyers Guild so they won't be searching the prisons for us, and point us to a corner store where we can grab free coffee and fruit. Instantly all the anxiety peels away and the whole ordeal becomes retrospectively romantic. We chatter back and forth about everything, still incredulous about the bridge—*The Brooklyn Bridge!* A tall clean-cut guy walking home from a party interrupts, "I couldn't help but overhear..." and asks us all about the day's events and the occupation, which he's been hearing so much about. He walks with us and listens, asking questions, but mostly just enjoying our now boundless energy.

Walking back toward occupied Zuccotti Park, the four of us run into the rest of the Canadian delegation. Our cell mate joins his friends and starts telling our stories; we say our goodbyes and promise to stay in touch. As we reach the park, we see that even with over 700 arrests, the encampment is still going strong. We drop off our new pre-dawn friend at the occupation, and catch a cab back to Brooklyn. As we pass the entrance to the bridge, I see that to my surprise the lanes out of Manhattan are still closed.

# EXHIBIT F



**SUBPOENA (DUCES TECUM)****FOR A WITNESS TO ATTEND THE  
CRIMINAL COURT OF THE CITY OF NEW YORK**

In the Name of the People of the State of New York

To: Twitter, Inc.  
c/o Trust & Safety  
795 Folsom Street  
Suite 600  
San Francisco, CA 94107

**YOU ARE COMMANDED** to appear before the **CRIMINAL COURT** of the County of New York, **PART JURY 7**, at the Criminal Court Building, 346 Broadway, between Hogan Place and White Street, in the Borough of Manhattan, of the City of New York, on February 8, 2012 at 9:00 AM, as a witness in a criminal action prosecuted by the People of the State of New York against:

**MALCOLM HARRIS**

and to bring with you and produce the following items:


Any and all user information, including email address, as well as any and all tweets posted for the period of 9/15/2011-12/31/2011 for the following twitter account:

@destructuremal  
<http://twitter.com/destructuremal>

**IF YOU FAIL TO ATTEND AND PRODUCE SAID ITEMS**, you may be adjudged guilty of a Criminal Contempt of Court, and liable to a fine of one thousand dollars and imprisonment for one year.

Dated in the County of New York,  
January 26, 2012

CYRUS R. VANCE, JR.  
District Attorney, New York County

By:   
Lee Langston  
Assistant District Attorney  
212 335-9206

Case #: 2011NY080152

**TWITTER IS DIRECTED** not to disclose the existence of this subpoena to any party. Such disclosure would impede the investigation being conducted and interfere with the enforcement of law.

# EXHIBIT G

# Twitter Privacy Policy

This Privacy Policy describes Twitter's policies and procedures on the collection, use and disclosure of your information. Twitter receives your information through our various web sites, SMS, APIs, applications, services and third-parties ("Services"). For example, you send us information when you use Twitter from our web site, post or receive Tweets via SMS, add a Twitter widget to your website, or access Twitter from an application such as Twitter for Mac, Twitter for Android or TweetDeck. When using any of our Services you consent to the collection, transfer, manipulation, storage, disclosure and other uses of your information as described in this Privacy Policy. Irrespective of which country that you reside in or create information from, your information may be used by Twitter in the United States or any other country where Twitter operates.

If you have any questions or comments about this Privacy Policy, please contact us at [privacy@twitter.com](mailto:privacy@twitter.com).

## Information Collection and Use

**TP** We collect and use your information to provide and measure use of our Services and improve them over time.

**Information Collected Upon Registration:** When you create or reconfigure a Twitter account, you provide some personal information, such as your name, username, password, and email address. Some of this information, for example, your name and username, is listed publicly on our Services, including on your profile page and in search results. Some Services, such as search, public user profiles and viewing lists, do not require registration.

**Additional Information:** You may provide us with additional information to make public, such as a short biography, your location, or a picture. You may customize your account with information such as a cell phone number for the delivery of SMS messages or your address book so that we can help you find Twitter users you know. We may use your contact information to send you information about our Services or to market to you. You may unsubscribe from these messages by following the instructions contained within the messages or the instructions on our web site. If you email us, we may keep your message, email address and contact information to respond to your request. Providing the additional information described in this section is entirely optional.

**Tweets, Following, Lists and other Public Information:** Our Services are primarily designed to help you share information with the world. Most of the information you provide to us is information you are asking us to make public. This includes not only the messages you Tweet and the metadata provided with Tweets, such as when you Tweeted, but also the lists you create, the people you follow, the Tweets you mark as favorites or Retweet and many other bits of information. Our default is almost always to make the information you provide public but we generally give you settings (<http://twitter.com/account/settings>) to make the information more private if you want. Your public information is broadly and instantly disseminated. For example, your public Tweets are searchable by many search engines and are immediately delivered via SMS and our APIs ([http://dev.twitter.com/pages/api\\_faq](http://dev.twitter.com/pages/api_faq)) to a wide range of users and services. You should be careful about all information that will be made public by Twitter, not just your Tweets.

**TP** What you say on Twitter may be viewed all around the world instantly.

**Location Information:** You may choose to note your location in your Tweets and in your Twitter profile. If you turn on Tweeting with your location, we may also save exact coordinates to help improve our service. You can control your location information settings in your account settings (<http://twitter.com/account/settings>).

**Log Data:** Our servers automatically record information ("Log Data") created by your use of the Services. Log Data may include information such as your IP address, browser type, the referring domain, pages visited, your mobile carrier, device and application IDs, and search terms. Other actions, such as interactions with our website, applications and advertisements, may also be included in Log Data. If we haven't already deleted the Log Data earlier, we will either delete it or remove any common account identifiers, such as your username, full IP address, or email address, after 18 months.

**Links:** Twitter may keep track of how you interact with links in Tweets across our Services including third party services and clients by redirecting clicks or through other means. We do this to help improve our Services, including advertising, and to be able to share aggregate click statistics such as how many times a particular link was clicked on.

**Cookies:** Like many websites, we use "cookie" technology to collect additional website usage data and to improve our Services, but we do not require

cookies for many parts of our Services such as searching and looking at public user profiles or lists. A cookie is a small data file that is transferred to your computer's hard disk. Twitter may use both session cookies and persistent cookies to better understand how you interact with our Services, to monitor aggregate usage by our users and web traffic routing on our Services, and to improve our Services. Most Internet browsers automatically accept cookies. You can instruct your browser, by editing its options, to stop accepting cookies or to prompt you before accepting a cookie from the websites you visit.

**Third Party Services:** Twitter uses a variety of services hosted by third parties to help provide our Services, such as hosting our various blogs and wikis, and to help us understand the use of our Services, such as Google Analytics. These services may collect information sent by your browser as part of a web page request, such as cookies or your IP request.

## Information Sharing and Disclosure

**We do not disclose your private information except in the limited circumstances described here.**

**Your Consent:** We may share or disclose your information with your consent, such as when you use a third party web client or application to access your Twitter account.

**Service Providers:** We engage certain trusted third parties to perform functions and provide services to us. We may share your personal information with these third parties, but only to the extent necessary to perform these functions and provide such services, and only pursuant to obligations mirroring the protections of this privacy policy.

**Law and Harm:** We may preserve or disclose your information if we believe that it is reasonably necessary to comply with a law, regulation or legal request; to protect the safety of any person; to address fraud, security or technical issues; or to protect Twitter's rights or property.

**Business Transfers:** In the event that Twitter is involved in a bankruptcy, merger, acquisition, reorganization or sale of assets, your information may be sold or transferred as part of that transaction. The promises in this privacy policy will apply to your information as transferred to the new entity.

**Non-Private or Non-Personal Information:** We may share or disclose your non-private, aggregated or otherwise non-personal information, such as your public Tweets or the number of users who clicked on a particular link (even if only one did).

## Modifying Your Personal Information

If you are a registered user of our Services, we provide you with tools to access or modify the personal information you provided to us and associated with your account.

You can also permanently delete your Twitter account. If you follow the instructions here (<https://support.twitter.com/articles/15358-how-to-deactivate-your-account>), your account will be deactivated and then deleted. When your account is deactivated, it is not viewable on Twitter.com. For up to 30 days it is still possible to restore your account if it was accidentally or wrongfully deactivated. After 30 days, we begin the process of deleting your account from our systems, which can take up to a week.

## Our Policy Towards Children

Our Services are not directed to people under 13. If you become aware that your child has provided us with personal information without your consent, please contact us at [privacy@twitter.com](mailto:privacy@twitter.com). We do not knowingly collect personal information from children under 13. If we become aware that a child under 13 has provided us with personal information, we take steps to remove such information and terminate the child's account.

## Changes to this Policy

We may revise this Privacy Policy from time to time. The most current version of the policy will govern our use of your information and will always be at <http://twitter.com/privacy>. If we make a change to this policy that, in our sole discretion, is material, we will notify you via an @Twitter update or e-mail to the email associated with your account. By continuing to access or use the Services after those changes become effective, you agree to be bound by the



# EXHIBIT H

# Twitter Labor



By **Malcolm Harris**

02.07.12, 1:12pm

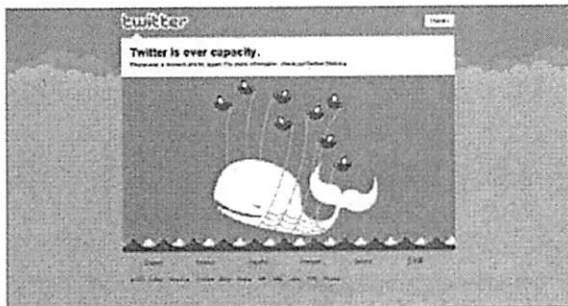
Comments (2)

Like 8

Tweet 4

Share 2

+1 1



Last week, I got a notice from Twitter saying the Manhattan District Attorney's office had subpoenaed my account activity for a three-month period between September and December of last year. On October 1, I was arrested along with 700 or so other people marching across the Brooklyn Bridge as part of an early Occupy Wall Street demonstration, and charged with one count of disorderly conduct - about the same legal severity as a traffic ticket. In fact, it's precisely a ticket for blocking traffic. I pled not-guilty, and the DA's office subpoenaed my Tweets and account info.

Luckily I have a crack team of lawyers who are fighting the overbroad and procedurally inept subpoena, and am not in any real legal danger. After all, it's nothing more than a politically motivated traffic violation I'm accused of. But the whole process still raises some important concerns. The only reason I found out about the request was that Twitter decided to ignore the DA's warning not to disclose its existence to outside parties. Why was it Twitter who got subpoenaed even though they're my words the DA wants to see?

The short answer is: they're not my words. Not in the legal sense at least. Part of the Twitter user agreement is that the Tweets belong to the company, not to the user. As far as the law is concerned, my online self is an informational aspect of a legal entity named Twitter, not me. That means if someone wants to use my statements against me in court, it's not me they have to call, it's that little blue birdie. In this context the term "microblogging" gets some new meaning: Twitter's users really are unpaid content producers for a giant microblog hosting site.

People read the site - and the profit generating advertisements - because other users are providing free content there. Think of all the comedians doing stand-up sets for Twitter, the writers and thinkers having full debates, writing full essays in 140-character spurts, happy to donate the advertising revenue to the hosting site. For some people, that's professional work that's often paid.

Does this mean Twitter users should strike for our slice of the pie? Probably not. I like using Twitter, and I'm happy to give my writing on the site away on the site considering all I get to read for the same price. But social media companies are largely based on this crowdsourcing of value production, and I think it's only a matter of time, only a matter of a few legal inquiries like this one, a few cringe-inducing IPOs, before someone produces a next round of decentered social networks. That way, when the DA's office wants my words, they'll have to come to the source, not the aggregator.

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# EXHIBIT I



## Langston, Lee

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**From:** Hedwig [notifications-support@twitter.zendesk.com]  
**Sent:** Monday, January 30, 2012 5:28 PM  
**To:** Langston, Lee  
**Subject:** #4594930 Twitter Support: update on "Twitter Receipt of Legal Process"

##- Please type your reply above this line -##



---

Hedwig, Jan 30 02:28 pm (PST):

Dear ADA Langston:

Thanks for your confirmation. We will process your request per our stated procedure.

Best,

Lauren Markward  
Legal Policy | Twitter, Inc.

---

Langstonl, Jan 30 01:14 pm (PST):

I acknowledge the policy and am not seeking to keep our request confidential.

Thank you for your prompt response.

Sincerely,

Lee Langston

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Hedwig, Jan 30 12:51 pm (PST):

Dear ADA Langston:

We have received your legal process, dated January 26, 2012, requesting information regarding user @destructuremal ("Subject User").

It is Twitter's policy to promptly notify users of government requests for their account information prior to disclosure unless we are prohibited from doing so by statute or court order. In order for us to continue processing your request and waive our objections as to jurisdiction and/or service of process, you must respond directly to this email within 48 hours of receipt with an acknowledgement of the following policy and procedures:

Upon receipt of your confirmation, we will process your request by sending the Subject User a notice, including a copy of your request. If the Subject User does not notify us of his or her intent to file a motion to quash or amend the process within 7 days, we will respond to your request with reasonably accessible records in our possession as required by law. This procedure will allow more expeditious processing of your request and help minimize or avoid required cost recovery for any production. More information is available in our Guidelines for Law Enforcement: <https://support.twitter.com/articles/41949/>

Please notify us if we should formally object to your request or if you do not consent to any necessary extensions of time for response. You must let us know if you require additional time to seek an order for non-disclosure under 18 U.S.C. § 2705(b) or if you wish to withdraw your request.

Please also note that contents of electronic communications (including Tweets, direct messages, and other user generated content) will not be disclosed without a warrant or other process sufficient under the Stored Communications Act, 18 U.S.C. § 2701, et seq.

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**CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK**

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**THE PEOPLE OF THE STATE OF NEW YORK**

**-against-**

**MALCOLM HARRIS,**

**Defendant.**

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**AFFIRMATION IN SUPPORT OF PEOPLE'S RESPONSE TO  
DEFENDANT'S MOTION TO QUASH**

**Docket NO. 2011NY080152**

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**Cyrus R. Vance, Jr.  
District Attorney  
New York County  
One Hogan Place  
New York, New York 10013  
(212) 335-9000**

**Lee Langston  
Assistant District Attorney  
Of Counsel**