

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNDER SEAL,  
*Petitioner-Appellant,*

UNDER SEAL,  
*Petitioner-Appellant,*

v.

LORETTA LYNCH, Attorney General  
of the United States,  
*Respondent-Appellee.*

Nos. 16-16067,  
16-16081, 16-16082

**NOTICE CONCERNING NATIONAL SECURITY LETTER  
AT ISSUE IN NO. 16-16082**

The government's appellee brief (at 19) informed the Court that the Federal Bureau of Investigation (FBI) had closed its investigation related to one of the National Security Letters (NSL) at issue in appeal No. 16-16082.

The government's brief explained that, pursuant to the termination procedures adopted by the Attorney General as required by the USA FREEDOM Act, the FBI was undertaking a review of the nondisclosure requirement in the referenced NSL associated with the now-closed

investigation. See Br. 15, 19. The FBI completed that review and determined that the recipient of the NSL may now disclose the NSL, as discussed more fully in the attached letter that the FBI sent to the recipient on December 29, 2016.

Respectfully submitted,

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U.S. Department of Justice

Federal Bureau of Investigation

File No. NSL-12-358696

Washington Field Office  
601 Fourth Street NW  
Washington, DC 20535-0002  
December 19, 2016

CloudFlare, Inc. Legal Department  
CloudFlare, Inc.  
101 Townsend Street  
San Francisco, CA 94107  
650-319-8930

Dear CloudFlare, Inc. Legal Department:

Pursuant to Title 18, United States Code (U.S.C.), Section 2709 (Section 201 of the Electronic Communications Privacy Act of 1986), the FBI issued a National Security Letter (NSL) NSL-12-358696 to CloudFlare. The NSL included a nondisclosure requirement that prohibited you, any officer, employee, or agent of your company from disclosing the letter and that the FBI had sought or obtained access to information, other than to those to whom disclosure was necessary to comply with the letter or to an attorney to obtain legal advice or legal assistance with respect to the letter. Consistent with the requirements of the USA FREEDOM Act of 2015 and the Termination Procedures for NSL Nondisclosure Requirement, the FBI has reviewed whether to continue the nondisclosure requirement in the NSL and determined that nondisclosure is no longer necessary with respect to all information contained in the NSL except as set forth below.

Accordingly, and consistent with law, you may exercise your discretion to disclose the following:

- The fact that you received the NSL on a certain date;
- The customer account(s) for which information was sought; and
- Whether or not you provided responsive information to the FBI pursuant to the NSL.

If you choose, you may disclose the NSL itself provided that doing so would be consistent with other legal obligations you may have. However, consistent with the relevant statute, the FBI requests that the

name and telephone number of the FBI Special Agent included on the NSL be redacted because disclosure may result in danger to the life or physical safety of a person. Please note that the name and telephone number of the FBI Special Agent might appear in two places on the NSL and should be redacted accordingly:

- In the paragraph discussing your right to challenge the NSL, in the sentence that reads, "That notice must be mailed or faxed to the FBI Washington Field Office Field Office, attention [redact name and telephone number], with a copy to FBI HQ, attention: General Counsel (fax number: 202-324-5366) and must reference the date of the NSL and the identification number found on the upper left corner of the NSL."
- Near the last page of the NSL, in a sentence that reads, "Any questions you have regarding this letter should be directed to the FBI Washington Field Office Field Office or attention [redact name and telephone number]."

Please direct any questions you have regarding this letter to the Washington Field Office FBI Field Office.

Sincerely,



Timothy Slater  
Special Agent in Charge  
Washington Field Office

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Notice Concerning National Security Letter at Issue in No. 16-16082 with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 6, 2017.

I certify that on the same date, I served the other participants in this case by electronic mail, pursuant to a written agreement.

s/ Lewis S. Yelin