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## Police blotter: Judge orders Gmail disclosure

By Declan McCullagh

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*"Police blotter" is a weekly News.com report on the intersection of technology and the law.*

**What:** In a lawsuit brought by the Federal Trade Commission, a subpoena is sent to Google for the complete contents of a Gmail account, including deleted e-mail messages. This is unrelated to the Department of Justice's [own subpoena to Google](#) for search terms and excerpts from its search database.

**When:** U.S. Magistrate Judge [Elizabeth Laporte](#) in San Francisco ruled on Jan. 31 and March 13.

**Outcome:** Judge grants subpoena and orders that all e-mail messages, including deleted ones, be divulged.

**What happened, according to the court:** In November 2003, the Federal Trade Commission sued AmeriDebt and founder Andris Pukke on charges that the company deceived customers about credit counseling and failed to use customers' money to actually pay their creditors.

[AmeriDebt settled](#), but the courts are still trying to uncover the location of Pukke's apparently sizeable assets. (A [Washington Post article](#) in September said the IRS is seeking \$300 million from Pukke. His attorney at the venerable firm of Jones Day charges a hefty \$575 an hour.)

Pukke's missing money has been linked to a Belize developer called Dolphin Development, which counts a fellow named Peter Baker as a shareholder. The court-appointed receiver in the FTC case, Robb Evans & Associates ([click here for PDF](#)), sent a subpoena to Google on Nov. 1 asking for the complete contents of Baker's Gmail account.

Baker objected to the subpoena, saying it could disclose confidential information, including attorney-client conversations.

The subpoena asks for not only current e-mail but also deleted e-mail: "All documents concerning all Gmail accounts of Baker...for the period from Jan. 1, 2003, to present, including but not limited to all e-mails and messages stored in all mailboxes, folders, in-boxes, sent items and deleted items, and all links to related Web pages contained in such e-mail messages."

Google's [privacy policy](#) says deleted e-mail messages "may remain in our offline backup systems" in perpetuity. It does not guarantee that backups are ever deleted. Baker estimated he may have tens of thousands of e-mail messages in his Gmail account.

In a Jan. 31 ruling, Laporte rejected Baker's request. She said his attorney could withhold "truly protected" information but must "err on the side" of disclosure.

Baker asked the judge to reconsider. On Monday, Laporte reiterated her decision, saying the argument about confidentiality "is baseless" because her earlier order creates an exception for such e-mail messages.

**Excerpt from Laporte's Jan. 31 opinion:** "Conspicuously absent from Baker's briefs is any denial that he is linked to the (Gmail) account, Pukke and/or Pukke-controlled entities. On the contrary, Baker relies entirely on formalistic objections and never once attacks the substance of the receiver's theories or facts. And, ironically, while he argues that the receiver has not submitted any admissible evidence to support its contentions, the only evidence Baker submitted are declarations by his attorneys that only support his claim that some documents may be protected by the attorney-client privilege but do not address his other claims about privacy interests."

**Excerpt from Laporte's March 13 opinion:** "(Baker) argues that being forced to pay his attorneys to screen these documents and to create a privilege log would 'necessarily involve an exorbitant amount of attorney time, resulting in the incurrence of thousands of dollars of attorneys' fees for which Mr. Baker will not be reimbursed...Within five court days of this order, Baker shall immediately turn over all documents to the receiver, withholding only those documents that are shielded from discovery by the attorney-client privilege, or those which are truly protected by a legitimate privacy interest."

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