

US rebuts Apple claim on password reset in iPhone case

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This Wednesday, Feb. 17, 2016 file photo shows an iPhone in Washington. A locked iPhone used by one of the San Bernardino killers likely holds evidence of the eventual attack, the Justice Department said in a court filing March 10 in its high-profile encryption dispute with Apple Inc., adding that the community and the public "need to know" what is on the device. (AP Photo/Carolyn Kaster, File)

A decision to reset the password on an iCloud account associated with

one of the San Bernardino attackers did not effectively thwart the investigation into the shooting, FBI officials said in a court filing as part of the Justice Department's ongoing encryption dispute with Apple Inc.

FBI Director James Comey testified before Congress last week that "there was a mistake" made when the FBI asked San Bernardino County, California, which owned the phone, to reset the password for an account tied to Syed Farook, who along with his wife killed 14 people in the December 2 shootings. Authorities were hoping that way to recover at least some of the stored data even while the phone was locked.

In a sworn declaration submitted Thursday, Christopher Pluhar, an FBI agent involved in processing the evidence, said the password reset did not harm the investigation. Farook's iPhone, which was found powered off, had the iCloud backups turned off for his mail, photos and notes, and aren't believed to be complete, Pluhar said. And even with a full set of backups, the Justice Department said, the government would still have needed to search the phone "in order to leave no stone unturned" in the investigation.

The statement is aimed at rebutting earlier claims from Apple that said that if the FBI had not changed the iCloud password, its engineers could have helped investigators use a known—and therefore trusted—wireless connection to trick the iPhone from automatically backing up to iCloud.

The statement was part of a broader Justice Department filing designed to encourage a federal magistrate to affirm her decision last month to force Apple to help the FBI gain access to Farook's phone.

In the filing, federal prosecutors argued that the phone likely holds evidence of the eventual attack, and the government and community "need to know" what is on the device. Apple alone has the ability to help, and doing so is not unduly burdensome, the government said.

The brief, which sets the stage for a March 22 hearing in Southern California, marks a further escalation of rhetoric between the federal government and one of the world's largest technology companies.

"In short, Apple is not some distant, disconnected third party unexpectedly and arbitrarily dragooned into helping solve a problem for which it bears no responsibility," Justice Department lawyers wrote. "Rather, Apple is intimately close to the barriers on Farook's locked iPhone because Apple specifically designed the iPhone to create those barriers."

Apple responded Thursday by saying the Justice Department is "so desperate at this point that it has thrown all decorum to the winds."

"Everybody should beware because it seems like disagreeing with the Department of Justice means you must be evil and anti-American, nothing could be further from the truth," Apple senior vice president and general counsel Bruce Sewell said in a conference call with reporters.

The Justice Department brief contends that as "one of the richest and most tech-savvy" companies in the country, Apple has abundant resources to comply with a judge's February 16 order and create specialized software to help the FBI get into the phone.

And it mocked as sensationalized arguments by Apple and its supporters that abiding by the judge's decree could weaken the security of its products, noting that the software is designed for only one phone and that Apple could retain it during the entire process. Though Apple has suggested that the code could be modified to run on other phones, the Justice Department says Apple devices will only run software that's been electronically "signed" by the company.

"Apple desperately wants—desperately needs_this case not to be 'about

one isolated iPhone," Justice Department lawyers wrote. "But there is probable cause to believe there is evidence of a terrorist attack on that phone, and our legal system gives this Court the authority to see that it can be searched pursuant to a lawful warrant."

The Justice Department pushed back against concerns that Apple could be compelled to provide access to China or other foreign governments, saying the judge's order has no bearing on the company's relationships to other countries.

The government also rejected Apple's arguments that the software—intended to bypass an auto-erase function on the phone so that the FBI can remotely enter different passcodes without losing data—violated Apple's First Amendment rights by forcing it to create new computer code. Federal lawyers say all they're asking Apple to do is remove barriers from the phone—and not create new speech.

"Apple's claim is particularly weak because it does not involve a person being compelled to speak publicly, but a for-profit corporation being asked to modify commercial software that will be seen only by Apple," the brief states.

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