

# United States Senate

WASHINGTON, DC 20510

March 13, 2018

The Honorable John P. Cronan  
Acting Assistant Attorney General  
Criminal Division  
U.S. Department of Justice  
950 Pennsylvania Avenue Northwest  
Washington, D.C. 20530

Dear Mr. Cronan:

We are writing to ask that you clarify whether the Department of Justice believes the content of emails and information stored in the cloud are protected by the Fourth Amendment.

At the November oral argument before the Supreme Court in *Carpenter v. United States*, the government appeared to concede that the Fourth Amendment protects the contents of an individual's email communications even when a third-party communications provider can access those contents as part of providing its service. This apparent concession echoes the 2010 decision by the Sixth Circuit in *United States v. Warshak*, where the court held that individuals have a reasonable expectation of privacy in emails stored by a third party provider.

We have fought for years to ensure that Americans' emails and other private data receive the same Fourth Amendment protections whether they are stored on a computer, cell phone, or in the cloud. Clearly, the Fourth Amendment protects the content of emails. We therefore request that you clarify several positions of the Department:

1. Is it now the policy of the Department of Justice that email content is protected by the Fourth Amendment even when an internet service provider or email provider would be able to access that content while providing communications service? If that is not the policy of the Department, do you intend to correct the record for the Supreme Court?
2. If the Department takes the position that the Fourth Amendment protects the content of emails, does it also believe this protection extends to other data stored in the cloud, such as photographs, personal documents, and other records? If not, why?

Please provide answers to these questions by April 13, 2018.

Sincerely,

  
\_\_\_\_\_  
Ron Wyden  
United States Senator

  
\_\_\_\_\_  
Rand Paul  
United States Senator