

Federal Court Rules People Can't be Compelled to Unlock Their Phones with Biometric Data

January 15, 2019 - It has been a quirk in US law for several years now. If you use a password to lock your phone, computer or other device, the police can't force you to unlock that device even with a search warrant. But if you use biometric data - a fingerprint, iris scan, facial recognition, etcâ€ - to lock that same device, no warrant has been required. Police could compel you to unlock the device. But now a federal judge in Northern California has ruled that biometric data used to lock a digital device has the same protection as a password.

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})();
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The reason for the strange disparity in the law has been due to the way that courts interpret the Constitution. The reason that a password is protected is because it requires the owner of that device to provide written or verbal instructions to the police in order to unlock the device. But the 5th Amendment of the Constitution specifically gives everyone the right to avoid self-incrimination through speechâ€ meaning written or oral.

Even though using biometric data to lock a device is meant to accomplish the same thing as a password, and is (in theory) more secure than a password, it isn't speech. Courts have viewed compelling people to provide biometric data to unlock a device in much the same light as forcing a suspect to provide fingerprints - which are considered physical evidence - at the time of an arrest.

In her ruling, Judge Kandis Westmore said, "If a person cannot be compelled to provide a passcode because it is a testimonial communication, a person cannot be compelled to provide one's finger, thumb, iris, face, or other biometric feature to unlock that same device."

None of this alters the fact that the police may be able to obtain a warrant to search a seized device. They just can't compel you to unlock it. With that in mind, this probably means that using your fingerprint to lock and unlock your phone probably isn't the best idea if you want to keep others from accessing it. That's because we all leave our fingerprints behind on pretty much anything we touch. Someone who is determined wouldn't have too much trouble lifting your fingerprints, photographing them and then using them to unlock your phone. And in the case of the police, if you ever do get arrested, they can legally collect your fingerprints. If they can get a warrant to search your phone then there is no reason for them not to use those collected fingerprints to unlock that phone.

Whether or not Judge Westmore's decision will stand is questionable. This is a the first time that a court has issues such a ruling and other federal courts across the country have issued other decisions that stand in stark disagreement with this decision. It is highly likely that the government will appeal the ruling. And because various courts now disagree with each other, the final decision is likely to be up the US Supreme Court.
We'll keep you posted.

byJim Malmberg

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