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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

In Re: Grand Jury Subpoena  
Issued to Glassdoor, Inc.

Case No.  
(Grand Jury Subpoena No. 16-03-217)

**ORDER  
(SEALED)**

Currently before the Court is Glassdoor, Inc.’s Motion to Quash Grand Jury Subpoena No. 16-03-217 (“Motion”). The Motion is fully briefed.

**I. Background**

Glassdoor, Inc. (“Glassdoor”) operates the website glassdoor.com, “which provides a forum for current and former employees of companies to anonymously voice opinions regarding those businesses.” (Motion at 3:16-18). These opinions are voiced in the form of reviews which can be viewed by other users of the site. Individuals who anonymously write reviews must provide an e-mail address to Glassdoor, but the e-mail address is not publicly available.

The Government is currently investigating possible fraud involving [REDACTED] [REDACTED] Between September 2008 and March 2017, various Glassdoor users posted 125 employee reviews of [REDACTED] The Government served upon Glassdoor a grand jury subpoena dated March 6, 2017. The subpoena sought:

1 "All 'Company Reviews' for [REDACTED] [REDACTED]  
2 including all reviewer information. Reviewer information requested includes, but  
3 is not limited to, internet protocol addresses and logs associated with all reviews  
4 including date and time of post, username, email address, resume, billing  
5 information such as first name, last name, credit card information, billing address,  
6 payment history and any additional contact information available."

7 Eight examples of Company Reviews were attached to the subpoena. After Glassdoor  
8 contacted the Assistant United States Attorney ("AUSA") and explained its position that  
9 providing the information sought would violate its users' First Amendment right to  
10 anonymous expression, the Government narrowed the subpoena to seek only identities of  
11 the authors of the eight example reviews and "their associated reviewer information."  
12 (Letter from AUSA Restaino to Glassdoor, Ex. E). The Government asserts that its  
13 investigation requires the identities of the eight reviewers because they "offer common  
14 employee insights into [REDACTED] and its administration of [] federal contracts" and because  
15 they are "third party witnesses to potential unlawful conduct." (Response at 3:18-21).  
16 There is no allegation that any of the users engaged in any unlawful conduct.  
17

18 Glassdoor again declined to identify the eight users, and offered "to contact the  
19 authors... to determine whether they would be willing to provide their identifying  
20 information to the government, and provide that information with respect to any  
21 reviewers who gave their consent." (Letter from Glassdoor to AUSA Restaino, Ex. G).  
22 After the Government rejected this proposal, Glassdoor filed the Motion.

## 23 **II. The Parties' Arguments**

24 Glassdoor argues that its users have a First Amendment right to speak  
25 anonymously, and that in order to deprive its users of that right, "the Government must  
26 demonstrate to the Court that (1) it has a compelling interest in obtaining the [REDACTED]  
27 reviewers' identities, and (2) there is a clear nexus between those persons' identities and  
28 the grand jury's investigation." (Motion at 3:2-5 (citing *In re Grand Jury Investigation of*

1 *Possible Violation of 18 U.S.C. §1461 et seq.*, 706 F. Supp. 2d 11, 18 (D.D.C. 2009)).  
2 Glassdoor asserts that the Government has not carried its burden.

3 In its Response, the Government argues that Glassdoor (and not the Government)  
4 bears the burden on this issue. According to the Government, this dispute is governed by  
5 a bad faith test first articulated in *Branzburg v. Hayes*, 408 U.S. 665 (1972). Per this test,  
6 the Government asserts, Glassdoor must comply with the subpoena unless it can  
7 demonstrate that the Government acted in bad faith.

8 In the Reply, Glassdoor argues that this Court should apply the “compelling  
9 interest/substantial connection test” articulated in *Bursey v. United States*, 466 F.2d 1059  
10 (9th Cir. 1972). Glassdoor also asserts, “Glassdoor is not a ‘newsman,’ it is a platform  
11 for anonymous association and expression regarding employment conditions, and it does  
12 not here assert a ‘newsman’s privilege,’ it asserts its users’ First Amendment rights to  
13 associate and speak anonymously about issues of significant public concern.” (Reply at  
14 5:13-17).

15 Glassdoor had not cited to *Bursey* in the Motion, so the Government moved for  
16 leave to file a sur-reply. Such leave was granted. In its sur-reply, the Government argues  
17 that the balancing test of *Bursey* is inapplicable here, and the court should rely on the  
18 holding in *Branzburg*. The Government reiterates its argument that Glassdoor’s  
19 relationship with its users is analogous to a journalist’s relationship with his or her  
20 confidential sources.

### 22 **III. Analysis**

23 As an initial matter, the facts of *Bursey* are distinguishable from this case and the  
24 compelling interest/substantial connection test articulated therein is not applicable here.  
25 Glassdoor’s users have a First Amendment right to speak anonymously. *McIntyre v.*  
26 *Ohio Elections Com’n*, 514 U.S. 334, 342 (1995). This right is distinct from the First  
27 Amendment right discussed at length in *Bursey*: the right to associate with a political  
28 group and anonymously print and distribute critiques of the government. *Bursey*, 466

1 F.2d at 1085 (“Anonymous pamphlets, leaflets, brochures and even books have played an  
2 important role in the progress of mankind. Persecuted groups and sects from time to time  
3 throughout history have been able to criticize oppressive practices and laws either  
4 anonymously or not at all.”). Glassdoor’s users are not a political association, nor are  
5 they engaged in the type of advocacy at issue in *Burse*.<sup>1</sup>

6 The First Amendment generally does not protect reporters, scholars, or  
7 newspapers from responding to subpoenas issued by a grand jury. See *Branzburg*, 404  
8 U.S. 665 at 684; *In re Grand Jury Proceedings*, 5 F.3d 397, 401-02 (9th Cir. 1993).  
9 Glassdoor argues in its Reply that it “does not assert a reporter’s or scholar’s privilege on  
10 its own behalf; it asserts [its users’] First Amendment rights anonymously to associate  
11 and exchange views regarding important public issues.” (Reply at 2:13-15). Glassdoor  
12 further asserts that the speech of its users is not apolitical because its users “have formed  
13 an online forum or community in which they can safely express their views and engage in  
14 advocacy regarding the administration of, and labor conditions at, an important publicly-  
15 funded program.” (Reply at 3:21-24). Glassdoor’s effort to meaningfully distinguish  
16 itself from reporters and scholars fails.<sup>2</sup> Glassdoor provides a forum in which individuals  
17 can anonymously post their opinions about their employers. The fact that the relevant  
18 users in this case work (or worked) for a publicly-funded program does not make this  
19 speech political. Nor does it transform the reviewers from individuals voicing concerns  
20 about fraud into an association engaged in advocacy.

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23 <sup>1</sup> Additionally, the *Burse* court was concerned by the “increasing flow of cases  
24 arising out of grand jury proceedings concerned with the possible punishment of political  
dissidents.” *Id.* at 1089. Glassdoor does not contend that the Government is in any way  
motivated by a desire to punish political dissidents here.

25 <sup>2</sup> Glassdoor asserts that it has standing to assert its users’ rights to speak  
26 anonymously. As support for this assertion, Glassdoor cites to a recent case from the  
27 California Court of Appeals explaining that Glassdoor, as the “acknowledged publisher  
28 of the speech at issue” was “entitled to assert the First Amendment interests of their  
anonymous contributors in maintaining anonymity.” *Glassdoor, Inc. v. Superior Court*, 9  
Cal. App. 5th 623, 629 (Cal. App. 2017). Glassdoor’s assertion that its standing stems  
from its status as a publisher demonstrates that even Glassdoor considers itself similar to  
a newspaper.

