



**Office of the Attorney General
Washington, D. C. 20530**

February 21, 2014

MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

FROM: THE ATTORNEY GENERAL *EJA*

SUBJECT: UPDATED POLICY REGARDING OBTAINING INFORMATION FROM, OR RECORDS OF, MEMBERS OF THE NEWS MEDIA; AND REGARDING QUESTIONING, ARRESTING, OR CHARGING MEMBER OF THE NEWS MEDIA

In May 2013, at the President's direction, I initiated a comprehensive review and evaluation of the Department's policies and practices regarding the use of certain law enforcement tools, including subpoenas, or, in civil matters, other similar compulsory process such as a civil investigative demand, court orders issued pursuant to 18 U.S.C. §§ 2703(d) and 3123, and search warrants, to obtain information from, or records of, members of the news media. To facilitate this process, I convened a series of meetings to solicit input from a wide range of stakeholders, including members of the news media, First Amendment academics and advocates, and Members of Congress. I also assembled a Working Group composed of representatives from various Department components, including the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of Legal Counsel, the Office of Legal Policy, the National Security Division, the Criminal Division, the Federal Bureau of Investigation, and the Executive Office for United States Attorneys. The Working Group was tasked with proposing specific revisions to the Department's policies and practices regarding obtaining information from, or records of, members of the news media. In so doing, the Working Group consulted with other agencies and offices within the Executive Branch.

On July 12, 2013, the Department released a Report on Review of News Media Policies, which highlighted significant changes to the Department's policies and practices. The Report also previewed additional technical revisions to the Department's policies and practices, and noted that formal guidance regarding these changes would be issued.

Following the release of the Report, the Working Group continued its review and evaluation of the Department's policies and practices, and finalized proposed revisions to the applicable Code of Federal Regulations provision, 28 C.F.R. § 50.10. I have endorsed those revisions. The revised regulations, which are attached, will be effective as of the date they are published in the Federal Register.

Overall, the revisions to 28 C.F.R. § 50.10 are intended to ensure that, in determining whether to seek information from, or records of, members of the news media, the Department strikes the proper balance among several vital interests: protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration of justice, and safeguarding the essential role of the free press in fostering government accountability and an open society. The revisions to the Department's policies and practices better achieve this balance by ensuring more robust oversight by senior Department officials; centralizing the internal review and evaluation process; setting out specific standards for the use and handling of information obtained from, or records of, members of the news media; and extending the policies to cover the use of subpoenas, or, in civil matters, other similar compulsory process such as a civil investigative demand (collectively "subpoenas"), court orders issued pursuant to 18 U.S.C. §§ 2703(d) and 3123, and search warrants.

In addition to the revisions to 28 C.F.R. § 50.10, the Department has adopted additional changes to its practices regarding obtaining information from, or records of, members of the news media which will be reflected in revisions to sections 9-13.400 and 9-12.240 of the United States Attorney's Manual. I have highlighted several of those changes below:

News Media Review Committee

A News Media Review Committee will provide recommendations to the Deputy Attorney General and me in certain cases involving a member of the news media, to assist in balancing investigative imperatives with the protection of the public's interest in the freedom of the press. The Committee shall be consulted when Department attorneys request authorization to seek the use of subpoenas, search warrants, § 3123 orders, or § 2703(d) orders to obtain communication or business records of members of the news media, in investigations into the unauthorized disclosure of information; when Department attorneys request authorization to seek the use of subpoenas, search warrants, § 3123 orders, or § 2703(d) orders to obtain communication or business records, without providing prior notice to the relevant member of the media; when Department attorneys request authorization to seek testimony from a member of the news media that would disclose the identity of a confidential source; or when the Attorney General or Deputy Attorney General requests a Committee recommendation.

There are limited exceptions to use of the News Media Review Committee. Members of the Department may issue a subpoena to a member of the news media; or use a subpoena, § 2703(d) order, or warrant to obtain communication or business records of a member of the news media if a Deputy Assistant Attorney General for the Criminal Division determines that the exigent use of such law enforcement tool or technique is necessary to prevent or mitigate an act of terrorism; other acts that are reasonably likely to cause significant and articulable harm to national security; death; kidnapping; substantial bodily harm; conduct that constitutes a criminal offense that is a specified offense against a minor, as defined by 42 U.S.C. § 16911(7); or incapacitation or destruction of critical infrastructure, as defined by 42 U.S.C. § 5195c(e). In addition,

while it is expected that the Attorney General will make use of the Committee for cases that fall within the scope defined in the previous paragraph, the Attorney General may choose to bypass the Committee review process upon a finding that the time required to conduct the review will cause significant harm to the investigation.

The News Media Review Committee shall be composed of senior Department officials, including the Director of the Office of Public Affairs, the Chief Privacy and Civil Liberties Officer, and experienced prosecutors. After reviewing the materials and consulting with attorneys familiar with the investigation as necessary, the News Media Review Committee will communicate to the Attorney General and Deputy Attorney General its recommendation in concise, written form.

Safeguarding/Limited Use of Information

Members of the Department shall ensure that any information or records obtained from members of the news media or from third parties pursuant to 28 C.F.R. § 50.10 shall be closely held so as to prevent disclosure of the information to unauthorized persons or for improper purposes. Specifically, except as provided below,

- Access to information or records obtained from members of the news media or from third parties pursuant to 28 C.F.R. § 50.10 shall be limited to personnel who are working on the investigation or related judicial or administrative proceedings and who have a direct need to know.
- Information or records obtained from members of the news media or from third parties pursuant to 28 C.F.R. § 50.10 shall be used solely in connection with the investigation in which it was obtained, or related judicial or administrative proceedings; or for other purposes with the written consent of the affected member of the news media.
- Information or records obtained from members of the news media or from third parties pursuant to 28 C.F.R. § 50.10 may not be shared with any other organization or individual inside or outside of the federal government, except as part of the investigation or as required in the course of judicial proceedings.
- At the conclusion of all proceedings related to or arising from the investigation, other than information or records disclosed in the course of judicial proceedings, or as required by law, the Department shall retain only one copy of any records obtained from members of the news media or from third parties pursuant to 28 C.F.R. § 50.10, which copy shall be maintained in a secure and segregated repository.

If the Attorney General or Deputy Attorney General finds that specific, identifiable records or information constitute evidence of a separate past or imminent crime involving death; kidnapping; substantial bodily harm; conduct that constitutes a criminal offense that is a specified offense against a minor, as defined by 42 U.S.C. §

16911(7); or incapacitation or destruction of critical infrastructure, as defined by 42 U.S.C. § 5195c(e), the Attorney General or Deputy Attorney General may authorize broader use of the information.

Public Reporting Requirements

By January 31 of each year, all Department Divisions and United States Attorneys' Offices shall report to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations whether a subpoena, court order issued pursuant to 18 U.S.C. § 2703(d) or § 3123, or warrant, authorized by the Attorney General, or by a Deputy Assistant Attorney General for the Criminal Division, during the preceding calendar year was issued, served, or executed, and whether the affected member of the news media or recipient of the subpoena, court order, or warrant complied with or challenged the same, and the outcome of any such challenge. Based on this information, the Department will make public, on an annual basis, statistical data regarding the use of these law enforcement tools.

Questions

Any questions regarding the use of subpoenas, court orders issued pursuant to 18 U.S.C. § 2703(d) or § 3123, or search warrants to obtain information from, or records of, members of the news media should be directed to the Policy and Statutory Enforcement Unit of the Criminal Division's Office of Enforcement Operations at pseu@ or

Attachment