

[redacted] (OGC) (FBI)

b6 -1
b7C

From: [redacted] (OGC)(FBI)
Sent: Tuesday, July 28, 2015 10:17 AM
To: [redacted] (OGC) (FBI)
Subject: RE: Revised Media Guidelines --- UNCLASSIFIED//~~FOUO~~

Classification: UNCLASSIFIED//~~FOUO~~
=====

Hi [redacted]

b6 -1
b7C

The letter looks good to me, and stresses the negative effect the broad reading of the guidelines is having on our investigations.

The only comment I would have is regarding the phrase: [redacted]

b5 -1

[redacted]

b6 -1
b7C

From: [redacted] (OGC) (FBI)
Sent: Friday, July 24, 2015 3:55 PM
To: [redacted] (OGC)(FBI); [redacted] (NY) (FBI); [redacted] (OGC)(FBI);
[redacted] (OGC)(FBI); [redacted] (OGC)(FBI); [redacted] (OGC) (FBI); [redacted]
(OGC)(FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC)(FBI);
[redacted] (OGC)(FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted]
[redacted] (LA)(FBI)
Cc: [redacted] (OGC)(FBI); [redacted] (OGC) (FBI)
Subject: FW: Revised Media Guidelines --- UNCLASSIFIED//~~FOUO~~

b6 -1
b7C

Classification: UNCLASSIFIED//~~FOUO~~
=====

FYI

From: [redacted] (OGC) (FBI)
Sent: Friday, July 24, 2015 3:25 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC)(FBI); [redacted] (OGC)(FBI); [redacted]
[redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (WF)(FBI); [redacted] (OGC) (FBI); [redacted] (OGC)(FBI); [redacted]
[redacted] (OGC)(FBI)
Subject: Revised Media Guidelines --- UNCLASSIFIED//~~FOUO~~

b6 -1
b7C

Classification: UNCLASSIFIED//~~FOUO~~
=====

All –

As you know, DOJ revised their media guidelines last year and issued a final rule on January 14, 2015. In promulgating that rule, the Attorney General signed the attached memorandum to all DOJ employees which requires mandatory consultation with the Criminal Division (OEO) on almost all decisions relating to the media –whether or not we believe that the proposed action falls clearly outside the actual terms of the regulation (28 CFR 50.10).

b5 -2
b6 -1
b7C

Please review the attached letter. We welcome any feedback, comments or suggestions. Please send responses by **Wednesday, July 29**. Sorry for the tight turnaround, but it's really short – probably shorter than this email explaining it! Let me know if anyone would like to discuss further in person.

Thanks,

<< File: Revised Media Guidelines - AG Memo.pdf >> << File: letter.docx >>

b6 -1
b7C

Assistant General Counsel
National Security Law Branch

Confidentiality Statement:

This message is transmitted to you by the Office of the General Counsel of the Federal Bureau of Investigation. The message, along with any attachments, may be confidential and legally privileged. If you are not the intended recipient of this message, please destroy it promptly without further retention or dissemination (unless otherwise required by law). Please notify the sender of the error by a separate e-mail or by calling

b6 -1
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Classification: UNCLASSIFIED//~~FOUO~~

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Classification: UNCLASSIFIED//~~FOUO~~

=====
Classification: UNCLASSIFIED//~~FOUO~~

[REDACTED] (OGC) (FBI)

From: [REDACTED] (DO)(FBI) b6 -1
Sent: Friday, April 25, 2014 5:03 PM b7C
To: [REDACTED] (OGC) (FBI); [REDACTED] (OGC)(FBI); [REDACTED] (OGC)
(FBI); [REDACTED] (OGC) (FBI)
Cc: [REDACTED] (OGC) (FBI); [REDACTED] (DO)(FBI); [REDACTED]
[REDACTED] (DO) (OGA)
Subject: FW: Update DIOG Classified Annex - NSLs --- ~~SECRET//NOFORN~~
Attachments: [Untitled].pdf; NSL Media Policy Options DOJ (March 2014).pdf; Update DIOG Classified
Annex - NSLs.docx
SentinelCaseId: TRANSITORY RECORD

~~Classification: SECRET//NOFORN~~

~~Classified By: F55M85K85~~

~~Derived From: FBI NSIC, dated 20120629~~

~~Declassify On: 20391231~~

[REDACTED] b6 -1
b7C

The AG's office is going to set a briefing for the AG/DAG for the first full week of May to discuss [REDACTED] b5 -1

We plan to present the proposals to the D and DD later next week. [REDACTED] b5 -2

[REDACTED] Please provide OGC
and NSB signoff on the proposals by COB on Tuesday, 4/29 so we can tee up for the D and DD.

Thanks, b6 -1
[REDACTED] b7C

FISAs

[REDACTED] b5 -1

NSLs

[REDACTED] drafted the attached proposal to update the classified annex of the DIOG (Section G-12) which
covers procedures on the issuance of NSLs to members of the news media or news organizations.

b6 -1
b7C

[REDACTED] b5 -1

[Redacted]

b5 -1

From: [Redacted] (DO)(OGA)
Sent: Tuesday, March 11, 2014 3:51 PM
To: [Redacted] (OGC) (FBI)
Cc: [Redacted] (OGC)(FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI);
[Redacted] (DO)(FBI); [Redacted] (CTD) (OGA)
Subject: Update DIOG Classified Annex - NSLs --- ~~SECRET//NOFORN~~

b6 -1
b7C

~~Classification: SECRET//NOFORN~~

~~Classified By: F55M85K85~~

~~Derived From: FBI NSIC, dated 20120629~~

~~Declassify On: 20391231~~

=====

TRANSITORY RECORD

[Redacted]

b5 -1
b6 -1

Per our discussion, attached is the revision to the classified annex of the DIOG relating to media NSLs. [Redacted] had the lead on revising based on our last meeting with the AG and DAG. The bottom line: [Redacted]
[Redacted] The revision to the DIOG does the following:

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[Redacted]

b5 -1

[Redacted]

b5 -1

Please advise if [Redacted] is ok with the NSL portion and more broadly, the FISA portion.

b6 -1
b7C

We would like to present to the DD, and possibly the D, tomorrow.

Thanks,

b6 -1
b7C

[Redacted]

=====

~~Classification: SECRET//NOFORN~~

=====
Classification: ~~SECRET//NOFORN~~

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC)(FBI)
Sent: Tuesday, February 10, 2015 10:22 AM
To: [REDACTED] (OGC)(FBI)
Subject: RE: Media interviews --- UNCLASSIFIED

b6 -1
b7C

SentinelCaseId: NON-RECORD

Classification: UNCLASSIFIED
=====

[REDACTED] b6 -1
b7C

You may want to share this with the client as well (GMU/GOU) so that they know the advice you are giving out on this issue.

Thanks.

[REDACTED]
[REDACTED]
Assistant General Counsel
National Security Law Branch
Office of the General Counsel
[REDACTED]

b6 -1
b7C
b7E -3

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b6 -1
b7C

From: [REDACTED] (OGC)(FBI)
Sent: Tuesday, February 10, 2015 10:06 AM
To: [REDACTED] (OGC)(FBI); [REDACTED] (NO) (FBI)
Subject: RE: Media interviews --- UNCLASSIFIED

b6 -1
b7C

Classification: UNCLASSIFIED
=====

Thank you [REDACTED] as [REDACTED] noted, the AG recently issued revised media guidelines which replace the guidelines codified at 28 CFR 50.10.

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b7C

b5 -1

Below are excerpts from the DIOG and a white paper issued following the updated guidelines

18.5.6.4.8 (U) MEMBERS OF THE NEWS MEDIA

18.5.6.4.8.1 (U) APPROVAL REQUIREMENTS

18.5.6.4.8.1.1 (U) GENERAL REQUIREMENTS

(U//~~FOUO~~) Attorney General approval must be obtained prior to conducting an interview of a member of the news media for any offense which the member of the news media is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his/her official duties as a member of the news media. [REDACTED]

b7E -1

[REDACTED] The EC must contain the necessary facts and investigative justification for the interview consistent with the DOJ guidelines set forth in 28 C.F.R. § 50.10.

I. Questioning, Arresting, Charging Members of the News Media

(U) Attorney General authorization is also required prior to questioning, arresting, or charging a member of the news media regarding criminal conduct he/she is suspected of having committed in the course of, or arising out of, the coverage or investigation of the news or while engaged in the performance of official duties.

II. Safeguarding Information Obtained

b7E -1

[Redacted]

b7E -1

In addition to the above

[Redacted]

b7E -1

[Redacted]

[Redacted]

[Redacted]

b7E -1

I hope this answers your questions. Please let me know if you would like any additional information.

Thanks,

[Redacted]

[Redacted] FBI OGC | NATIONAL SECURITY LAW BRANCH | [Redacted]
[Redacted]

b6 -1
b7C
b7E -3

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From: [Redacted] (OGC)(FBI)
Sent: Monday, February 09, 2015 5:04 PM
To: [Redacted] (NO) (FBI)
Cc: [Redacted] (OGC)(FBI)
Subject: RE: Media interviews --- UNCLASSIFIED

b6 -1
b7C

Classification: UNCLASSIFIED

Hi [Redacted]

b6 -1
b7C

Thanks for your email. Unfortunately, I am no longer the legal rep to GMU. I have copied [Redacted] here, who is currently assigned this role. She will be able to provide the most up to date guidance with regard to the mandatory baseline collection policy (which incorporates the interview requirement) and the AG memo re: contact with media members. Thanks!

[redacted]

[redacted]

Assistant General Counsel
National Security Law Branch
Office of the General Counsel

[redacted]

b6 -1
b7C
b7E -3

Confidentiality Statement:

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From: [redacted] (NO) (FBI)
Sent: Monday, February 09, 2015 4:51 PM b6 -1
To: [redacted] (OGC)(FBI) b7C
Subject: Media interviews --- UNCLASSIFIED

Classification: UNCLASSIFIED

b5 -1
b6 -1, -3
b7C
b7E -1, -2

Hi [redacted] I have a question that I'm hoping you can answer or refer me to the person who can. [redacted]

[redacted]

SSA [redacted]
Associate Division Counsel
New Orleans

[redacted]

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED

[REDACTED] (OGC) (FBI)

b6 -1
b7C

From: BAKER, JAMES A (OGC)(FBI)
Sent: Thursday, January 08, 2015 4:49 PM
To: FBI_SAC_ADIC_SECRETARIES; FBI_SAC_ADIC_SECRETARIES_FIELDOFFICES;
FBI_ALL CDCs; FBI_ADs and EADs; HQ-DIV09-ALL EMPLOYEES
Subject: Revised Media Guidelines --- ~~SECRET~~
SentinelCaseId: TRANSITORY RECORD

~~Classification: SECRET~~

~~Classified By: V69J19G92
Derived From: FBI NSIC, dated 20120629
Declassify On: 20401231~~

=====

TRANSITORY RECORD

All:

(U) Please find attached DOJ's **Updated Policy Regarding Obtaining Information from, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media**. This policy was signed by the Attorney General on 02/21/2014 and replaces the current guidelines codified at 28 CFR 50.10. The media guidelines now apply to an expanded list of law enforcement tools and require Attorney General approval prior to using subpoenas, 2703(d) orders, pen register/trap and trace orders, and search warrants seeking information from, or records of, non-consenting members of the news media. The guidelines continue to require Attorney General approval prior to questioning, arresting, or charging a member of the news media. Note that the policy signed by the Attorney General also has rules for safeguarding the information – specifically, at the conclusion of the investigation, the Department will retain only one copy of any records obtained pursuant to these guidelines.

(U) Significant changes:

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b7E -1

(U) ~~(S)~~ Finally, the new media guidelines as codified in 28 CFR 50.10 only apply to law enforcement tools, not national security tools [REDACTED]

b7E -1

(U//~~FOUO~~) With the increased focus on media issues, FBI and DOJ will continue to review the DIOG and other internal policy guides to determine if additional changes or requirements are necessary. Please be mindful of these media issues and consult with your CDC and/or OGC prior to implementing any techniques targeting the news media.



DOJ Media SAC White Paper
uidelines 50.10.pdf - Media Guidel...

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Classification: ~~SECRET~~

b6 -1

b7c

(OGC) (FBI)

From: (OGC)(FBI)

Sent: Tuesday, January 13, 2015 1:39 PM

To: _____ (CTD) (FBI)

CTD(FBI):

[CTD](FBI); [REDACTED]

[redacted] (CTD) (FBI): [redacted]

| | |
|--------|-------|
| (FBI); | (CTD) |
|--------|-------|

| | | |
|--|-------------|--|
| | (CTD)(FBI); | |
|--|-------------|--|

Subject: FW: Revised Media Guidelines --- ~~SECRET~~

SentinelCaseId: TRANSITORY RECORD

~~Classification: SECRET~~

Classified By: F87M13K71

Derived From: FBI NSIC, dated 20120629

~~Declassify On: 20401231~~

TRANSITORY RECORD

Please see below...

From: BAKER, JAMES A (OGC)(FBI)

Sent: Thursday, January 08, 2015 4:49 PM

To: FBI_SAC_ADIC_SECRETARIES; FBI_SAC_ADIC_SECRETARIES_FIELDOFFICES; FBI_ALL CDCs; FBI_ADs and EADs;
HO-DIV09-ALL EMPLOYEES

Subject: Revised Media Guidelines --- ~~SECRET~~

~~Classification: SECRET~~

Classified By: ~~V69J19G92~~

~~Derived From: FBI NSIC, dated 20120629~~

~~Declassify On: 20401231~~

TRANSITORY RECORD

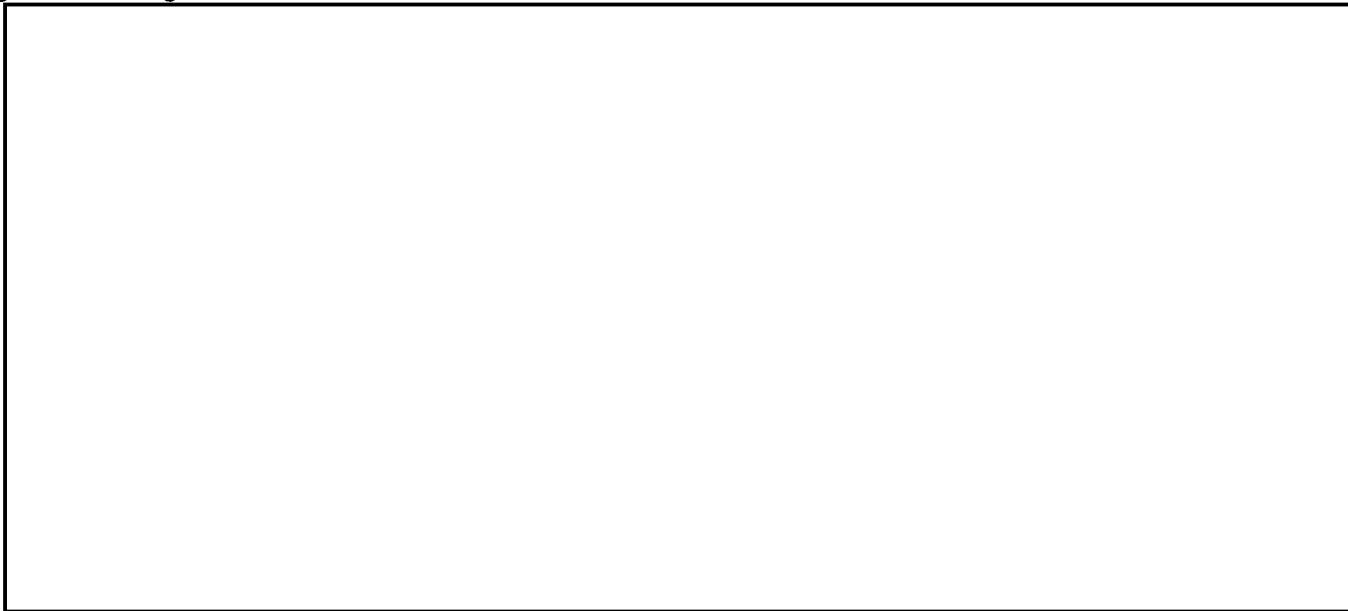
Al:-

(U) Please find attached DOJ's ***Updated Policy Regarding Obtaining Information from, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media***. This policy was signed by the Attorney General on 02/21/2014 and replaces the current guidelines codified at 28 CFR 50.10. The media guidelines now apply to an expanded list of law enforcement tools and require Attorney General approval prior to using subpoenas, 2703(d) orders, pen register/trap and trace orders, and search warrants seeking information from, or records of, non-consenting members of the news media. The guidelines continue to require Attorney General approval prior to questioning, arresting, or charging a member of the news media. Note that the policy signed by the Attorney General also has rules for safeguarding the information – specifically, at the conclusion of the investigation, the Department will retain only one copy of any records obtained pursuant to these guidelines.

(U) Significant changes:

b7E -1

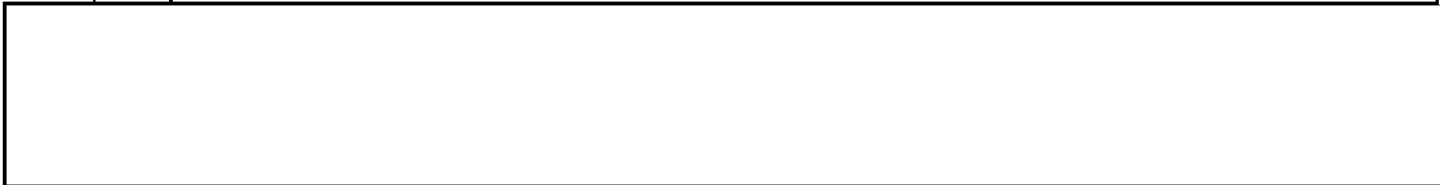
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(U)

~~(S)~~ Finally, the new media guidelines as codified in 28 CFR 50.10 only apply to law enforcement tools, not national security tools

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(U//~~FOUO~~) With the increased focus on media issues, FBI and DOJ will continue to review the DIOG and other internal policy guides to determine if additional changes or requirements are necessary. Please be mindful of these media issues and consult with your CDC and/or OGC prior to implementing any techniques targeting the news media.



DOJ Media SAC White Paper
uidelines 50.10.pdf - Media Guidel...

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Classification: ~~SECRET~~

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Classification: ~~SECRET~~

[REDACTED] (OGC) (FBI)

b6 -1
b7C

From: [REDACTED] (OGC) (FBI)
Sent: Tuesday, February 10, 2015 12:55 PM
To: [REDACTED] (OGC)(FBI); [REDACTED] (OGC) (FBI)
Subject: FW: Revised Media Guidelines --- ~~SECRET~~

SentinelCaseId: TRANSITORY RECORD

~~Classification: SECRET~~

~~Classified By: C22W42B83
Derived From: FBI NSIC, dated 20120629
Declassify On: 20401231~~

=====

TRANSITORY RECORD

From: BAKER, JAMES A (OGC)(FBI)
Sent: Thursday, January 08, 2015 4:49 PM
To: FBI_SAC_ADIC_SECRETARIES; FBI_SAC_ADIC_SECRETARIES_FIELDOFFICES; FBI_ALL CDCs; FBI_ADs and EADs;
HQ-DIV09-ALL EMPLOYEES
Subject: Revised Media Guidelines --- ~~SECRET~~

~~Classification: SECRET~~

~~Classified By: V69J19G92
Derived From: FBI NSIC, dated 20120629
Declassify On: 20401231~~

=====

TRANSITORY RECORD

All:

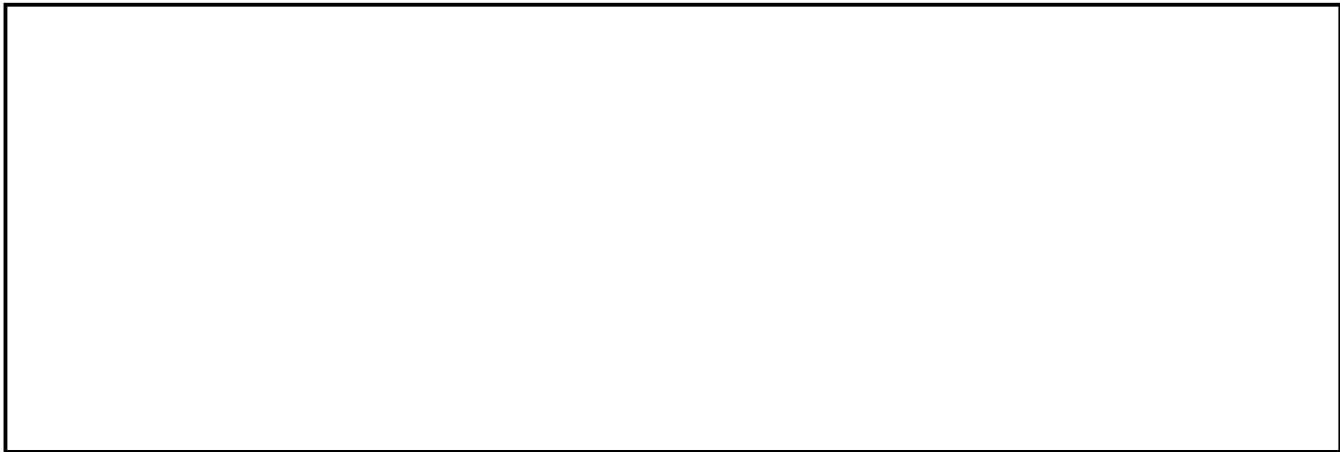
(U) Please find attached DOJ's **Updated Policy Regarding Obtaining Information from, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media**. This policy was signed by the Attorney General on 02/21/2014 and replaces the current guidelines codified at 28 CFR 50.10. The media guidelines now apply to an expanded list of law enforcement tools and require Attorney General approval prior to using subpoenas, 2703(d) orders, pen register/trap and trace orders, and search warrants seeking information from, or records of, non-consenting members of the news media. The guidelines continue to require Attorney General approval prior to questioning, arresting, or charging a member of the news media. Note that the policy signed by the Attorney General also has rules for safeguarding the information – specifically, at the conclusion of the investigation, the Department will retain only one copy of any records obtained pursuant to these guidelines.

(U) Significant changes:

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b7E -1

(U) ~~(S)~~ Finally, the new media guidelines as codified in 28 CFR 50.10 only apply to law enforcement tools, not national security tools

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DOJ Media SAC White Paper
uidelines 50.10.pdf - Media Guidel...

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Classification: ~~SECRET~~

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Classification: ~~SECRET~~

[REDACTED] (OGC) (FBI)

b6 -1
b7C

From: [REDACTED] (OGC)(FBI)
Sent: Tuesday, February 10, 2015 1:03 PM
To: [REDACTED] (WF)(FBI)
Subject: FW: Revised Media Guidelines --- ~~SECRET~~

SentinelCaseId: TRANSITORY RECORD

~~Classification: SECRET~~

~~Classified By: F55M96K20
Derived From: FBI NSIC, dated 20120629
Declassify On: 20401231~~

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TRANSITORY RECORD

FYI. This is the soft copy.

[REDACTED]

[REDACTED]
Assistant General Counsel b6 -1
National Security Law Branch b7C
Office of the General Counsel b7E -3

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b6 -1
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From: [REDACTED] (OGC) (FBI)
Sent: Tuesday, February 10, 2015 12:55 PM
To: [REDACTED] (OGC)(FBI); [REDACTED] (OGC) (FBI)
Subject: FW: Revised Media Guidelines --- ~~SECRET~~

~~Classification: SECRET~~

~~Classified By: C22W42B83
Derived From: FBI NSIC, dated 20120629
Declassify On: 20401231~~

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From: BAKER, JAMES A (OGC)(FBI)

Sent: Thursday, January 08, 2015 4:49 PM

To: FBI_SAC_ADIC_SECRETARIES; FBI_SAC_ADIC_SECRETARIES_FIELDOFFICES; FBI_ALL CDCs; FBI_ADs and EADs; HQ-DIV09-ALL EMPLOYEES

Subject: Revised Media Guidelines --- ~~SECRET~~

~~Classification: SECRET~~

~~Classified By: V69J19G92~~

~~Derived From: FBI NSIC, dated 20120629~~

~~Declassify On: 20401231~~

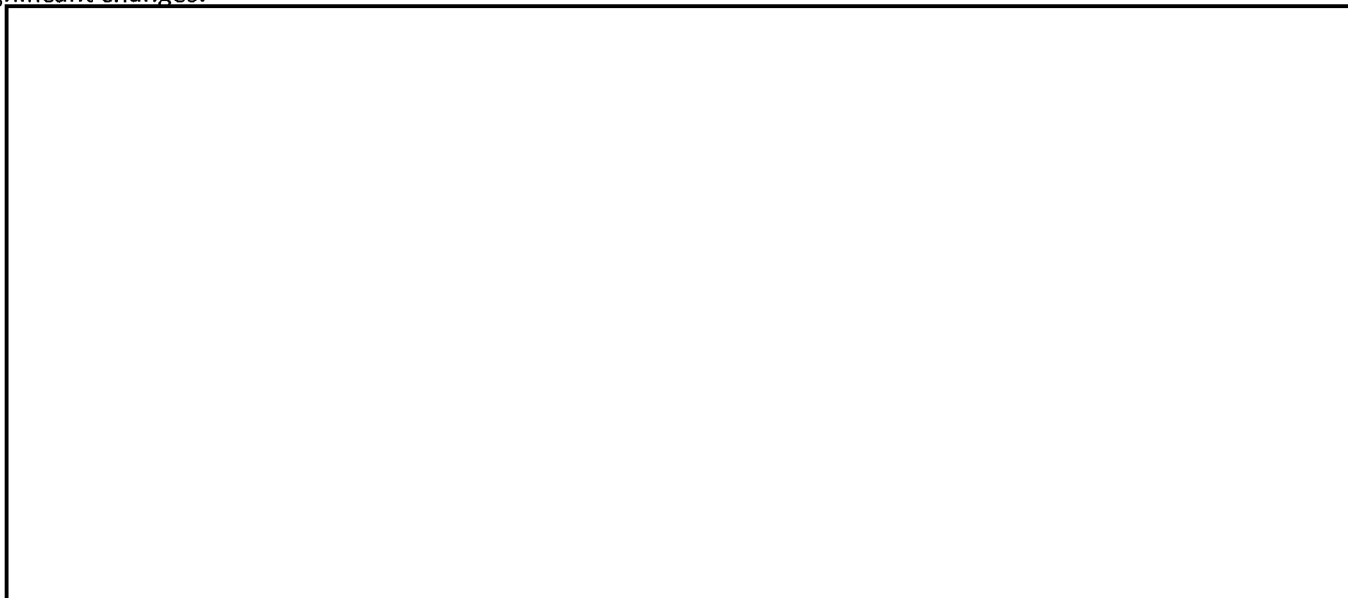
=====
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All:

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(U) Significant changes:

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(U) (S) Finally, the new media guidelines as codified in 28 CFR 50.10 only apply to law enforcement tools, not national security tools

b7E -1

(U//~~FOUO~~) With the increased focus on media issues, FBI and DOJ will continue to review the DIOG and other internal policy guides to determine if additional changes or requirements are necessary. Please be mindful of these media issues and consult with your CDC and/or OGC prior to implementing any techniques targeting the news media.



DOJ Media SAC White Paper
uidelines 50.10.pdf - Media Guidel...

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Classification: ~~SECRET~~

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Classification: ~~SECRET~~

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Classification: ~~SECRET~~

[REDACTED] (OGC) (FBI)

b6 -1
b7C

From: [REDACTED] (OGC) (FBI)
Sent: Monday, August 18, 2014 11:53 AM
To: [REDACTED] (OGC)(FBI); [REDACTED] (OGC)(FBI)
Subject: FW: PROPOSED Email - DOJ Media Guidelines --- ~~SECRET//NOFORN~~

SentinelCaseId: NON-RECORD

~~Classification: SECRET//NOFORN~~

~~Classified By: J23J28T90
Derived From: FBI NSIC, dated 20120629
Declassify On: 20391231~~

From: [REDACTED] (OGC) (FBI)
Sent: Monday, August 18, 2014 11:39 AM
To: [REDACTED] (OGC) (FBI)
Subject: FW: PROPOSED Email - DOJ Media Guidelines --- ~~SECRET//NOFORN~~

b6 -1
b7C

~~Classification: SECRET//NOFORN~~

~~Classified By: F82M32K21
Derived From: FBI NSIC, dated 20120629
Declassify On: 20391231~~

From: [REDACTED] (OGC) (FBI)
Sent: Thursday, July 17, 2014 4:23 PM
To: [REDACTED] (OGC) (FBI)
Subject: RE: PROPOSED Email - DOJ Media Guidelines --- ~~SECRET//NOFORN~~

b6 -1
b7C

~~Classification: SECRET//NOFORN~~

~~Classified By: F82M32K21
Derived From: FBI NSIC, dated 20120629
Declassify On: 20391231~~

Looks good to me, but I was the one who wrote it. I've attached the docs.

From: [redacted] (OGC) (FBI)
Sent: Thursday, July 17, 2014 3:15 PM
To: [redacted] (OGC) (FBI)
Subject: FW: PROPOSED Email - DOJ Media Guidelines --- ~~SECRET//NOFORN~~

b6 -1
b7C

~~Classification: ~~SECRET//NOFORN~~~~

~~Classified By: J58J46T52
Derived From: FBI NSIC, dated 20120629
Declassify On: 20391231~~

Hey, Please read this one more time and make sure we aren't embarrassing ourselves. Also, can you attach the referenced SAC memo.

From: [redacted] (OGC) (FBI)
Sent: Thursday, July 03, 2014 1:55 PM
To: [redacted] (OGC) (FBI)
Cc: MCNALLY, RICHARD (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: FW: PROPOSED Email - DOJ Media Guidelines --- ~~SECRET//NOFORN~~

b6 -1
b7C

~~Classification: ~~SECRET//NOFORN~~~~

~~Classified By: J58J46T52
Derived From: FBI NSIC, dated 20120629
Declassify On: 20391231~~

[redacted] What follows is the Proposed Email regarding the "new" DOJ Media Guidelines that I mentioned at Monday's NSLB's issues mtg in your office. The email has been vetted by [redacted] and Rick. We believe it should be sent to the AD's of: CTD, CD, Cyber, CID, and WMD. Additionally it should be sent to all CDCs and all of OGC. We seek your guidance and wisdom regarding the appropriate audience. While DOJ would prefer it go to all FBI employees, we were thinking ADs, DADs, SACs, CDCs, and all of OGC? You will note that at the conclusion we have attached the SAC memo as further explanation/background.

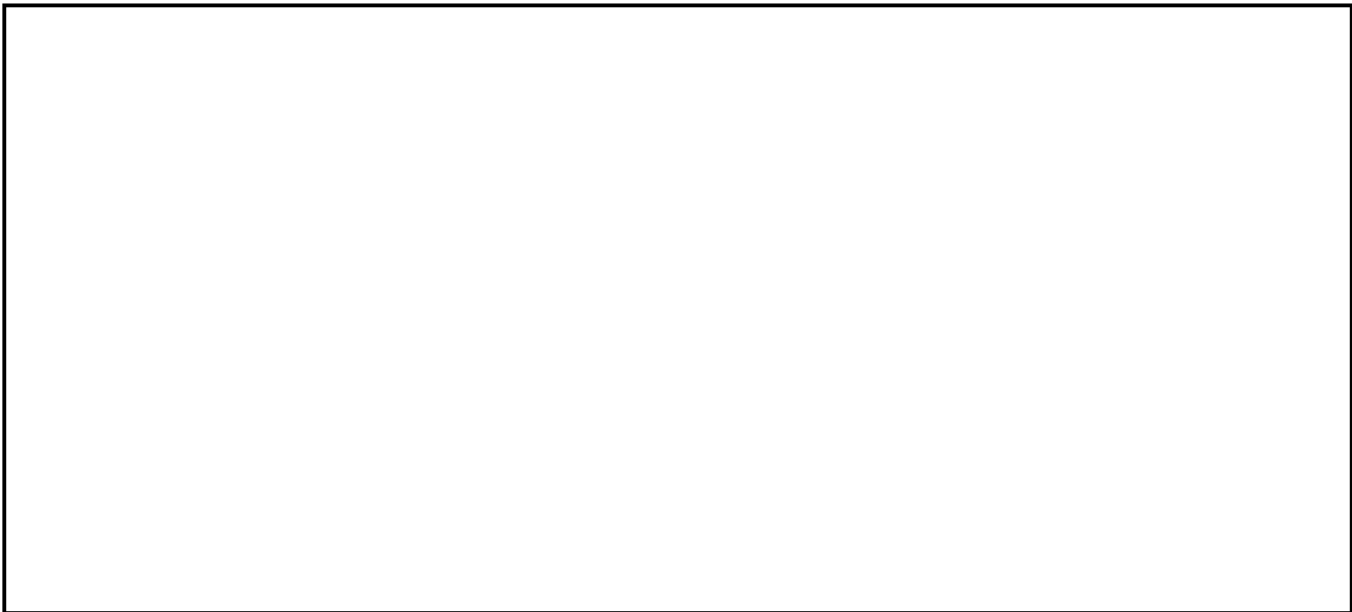
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Thanks.

(U) Please find attached DOJ's **Updated Policy Regarding Obtaining Information from, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media**. This policy was signed by the Attorney General on 02/21/2014 and replaces the current guidelines codified at 28 CFR 50.10. The media guidelines now apply to an expanded list of law enforcement tools and require Attorney General approval prior to using subpoenas, 2703(d) orders, pen register/trap and trace orders, and search warrants seeking information from, or records of, non-consenting members of the news media. The guidelines continue to require Attorney General approval prior to questioning, arresting, or charging a member of the news media. Note that the policy signed by the Attorney General also has rules for safeguarding the information – specifically, at the conclusion of the investigation, the Department will retain only one copy of any records obtained pursuant to these guidelines.

(U) Significant changes:

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(U//~~FOUO~~) Finally, the new media guidelines only apply to law enforcement tools, not national security tools, such as



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(U//~~FOUO~~) With the increased focus on media issues, FBI and DOJ will continue to review the DIOG and other internal policy guides to determine if additional changes or requirements are necessary. Please be mindful of these media issues and consult with your CDC and/or OGC prior to implementing any techniques targeting the news media.




DOJ Media SAC White Paper
uidelines 50.10.pdf - Media Guidel...


Assistant General Counsel
National Security Law Branch


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Confidentiality Statement:

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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@usdoj.gov or (202) 305-4023.

Attachment

BILLING CODE: 4410-14

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 50 and 59

Docket No. 145; AG Order No.

Policy Regarding Obtaining Information From, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the policy of the Department of Justice regarding the use of subpoenas, certain court orders, and search warrants, to obtain information from, or records of, members of the news media. The rule also amends the Department's policy regarding questioning, arresting, or charging members of the news media.

DATES: This rule is effective on [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION, CONTACT: Monique Roth, Director, Office of Enforcement Operations, Criminal Division, (202) 514-6809.

SUPPLEMENTARY INFORMATION:

Discussion

In May of 2013, the Department initiated a comprehensive evaluation of its practices and policies regarding the use of subpoenas, court orders, and search warrants to obtain information from, or records of, members of the news media. As part of this process, the Department convened a series of meetings to solicit input from a wide range of news media stakeholders, First Amendment academics and advocates, and Members of Congress. Based on this review,

the Department issued a report on July 12, 2013, announcing changes to the Department's policies.

This final rule revises the existing provisions in the Department's regulations at 28 CFR 50.10. The revisions 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: (1) protecting national security, (2) ensuring public safety, (3) promoting effective law enforcement and the fair administration of justice, and (4) safeguarding the essential role of the free press in fostering government accountability and an open society.

The revisions also ensure more robust oversight by senior Department officials; centralize the internal review and evaluation process; set out specific standards for the use and handling of information obtained from, or records of, members of the news media; and extend the policies to cover the use of subpoenas, court orders issued pursuant to 18 U.S.C. 2703(d) and 3123, and search warrants.

The changes to the policy also strengthen the presumption that Department attorneys will negotiate with, and provide advance notice to, affected members of the news media when investigators seek to obtain from third parties communications records or business records related to ordinary newsgathering activities.

A cross-reference to the new policy has been added to part 59, pertaining to documentary materials held by third parties.

Regulatory Certifications

Administrative Procedure Act, 5 U.S.C. 553

Because, for purposes of the Administrative Procedure Act, this regulation concerns general statements of policy, or rules of agency organization, procedure, or practice, notice and

comment and a delayed effective date are not required. See 5 U.S.C. 553(b)(A).

Regulatory Flexibility Act

Because this final rule is not promulgated as a final rule under 5 U.S.C. 553 and was not required under that section to be published as a proposed rule, the requirements for the preparation of a regulatory flexibility analysis under 5 U.S.C. 604(a) do not apply. In any event, the Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to administrative matters affecting the Department.

Executive Orders 12866 and 13163 - Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management, or personnel matters as described by section 3(d)(3) of Executive Order 12866 of September 30, 1993, and therefore is not a "regulation" as defined by that Executive Order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988 - Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 of February 5, 1996.

Executive Order 13132 - Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132

of August 4, 1999, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104-4.

Congressional Review Act

This action pertains to agency management and does not substantially affect the rights or obligations of non-agency parties; accordingly, this action is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure, Crime, News, Media, Subpoena, Search warrants.

List of Subjects in 28 CFR Part 59

Administrative practice and procedure, Privacy, Search warrants.

Accordingly, for the reasons stated in the preamble, parts 50 and 59 of title 28 of the Code of Federal Regulations are amended as follows:

PART 50 — STATEMENTS OF POLICY

1. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 30 ; 18 U.S.C. 1162; 28 U.S.C. 509, 510, 516, and 519; 42 U.S.C. 1921 *et seq.*, 1973c; and Pub. L. 107-273, 116 Stat. 1758, 1824.

2. Section 50.10 is revised to read as follows:

§ 50.10 Policy Regarding Obtaining Information From, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media.

(a) Statement of Principles.

(1) Because freedom of the press can be no broader than the freedom of members of the news media to investigate and report the news, the Department's policy is intended to provide protection to members of the news media from certain law enforcement tools, whether criminal or civil, that might unreasonably impair ordinary newsgathering activities. The policy is not intended to extend special protections to members of the news media who are the focus of criminal investigations for conduct not based on, or within the scope of, ordinary newsgathering activities.

(2) In determining whether to seek information from, or records of, members of the news media, the approach in every instance must be to strike 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.

(3) The Department views the use of certain law enforcement tools, including subpoenas, court orders issued pursuant to 18 U.S.C. 2703(d) or 3123, and search warrants to seek information from, or records of, non-consenting members of the news media as extraordinary measures, not standard investigatory practices. Subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123, in particular, may be used, after authorization by the Attorney General, or by another senior official in accordance with the exceptions set forth in paragraph (c)(3) of this section, only to obtain information from, or records of, members of the news media when the

information sought is essential to a successful investigation, prosecution, or litigation; after all reasonable alternative attempts have been made to obtain the information from alternative sources; and after negotiations with the affected member of the news media have been pursued, unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(4) When the Attorney General has authorized the use of a subpoena, court order issued pursuant to 18 U.S.C. 2703(d) or 3123, or warrant to obtain from a third party communications records or business records of a member of the news media, the affected member of the news media shall be given reasonable and timely notice of the Attorney General's determination before the use of the subpoena, court order, or warrant, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(b) Scope.

(1) Covered individuals and entities.

(i) The policy governs the use of certain law enforcement tools to obtain information from, or records of, members of the news media.

(ii) The protections of the policy do not extend to any individual or entity who is or is reasonably likely to be—

(A) A foreign power or agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(B) A member or affiliate of a foreign terrorist organization designated under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));

(C) Designated as a Specially Designated Global Terrorist by the Department of the Treasury under Executive Order No. 13224 of September 23, 2001 (66 FR 49079);

(D) A specially designated terrorist as that term is defined in 31 CFR 595.311 (or any successor thereto);

(E) A terrorist organization as that term is defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi));

(F) Committing or attempting to commit a crime of terrorism, as that offense is described in 18 U.S.C. 2331(5) or 2332b(g)(5);

(G) Committing or attempting the crime of providing material support or resources, as that term is defined in 18 U.S.C. 2389A(b)(1), to a terrorist organization; or

(H) Aiding, abetting, or conspiring in illegal activity with a person or organization described in paragraphs (b)(1)(ii)(A) through (G) of this section.

(2) *Covered law enforcement tools and records.*

(i) The policy governs the use by law enforcement authorities of subpoenas or, in civil matters, other similar compulsory process such as a civil investigative demand (collectively “subpoenas”) to obtain information from members of the news media, including documents, testimony, and other materials; and the use by law enforcement authorities of subpoenas, or court orders issued pursuant to 18 U.S.C. 2703(d) (“2703(d) order”) or 18 U.S.C. 3123 (“3123 order”), to obtain from third parties “communications records” or “business records” of members of the news media.

(ii) The policy also governs applications for warrants to search the premises or property of members of the news media, pursuant to Federal Rule of Criminal Procedure 41; or to obtain from third-party “communication service providers” the communications records of members of the news media, pursuant to 18 U.S.C. 2703(a) and (b).

(3) *Definitions.*

(1)(A) “Communications records” include the contents of electronic communications as well as source and destination information associated with communications, such as email transaction logs and local and long distance telephone connection records, stored or transmitted by a third-party communication service provider with which the member of the news media has a contractual relationship.

(B) Communications records do not include information described in 18 U.S.C. 2703(c)(2)(A), (B), (D), (E), and (F).

(ii) A “communication service provider” is a provider of an electronic communication service or remote computing service as defined, respectively, in 18 U.S.C. 2510(15) and 18 U.S.C. 2711(2).

(iii)(A) “Business records” include records of the activities, including the financial transactions, of a member of the news media related to the coverage, investigation, or reporting of news, which records are generated or maintained by a third party with which the member of the news media has a contractual relationship. Business records are limited to those that could provide information about the newsgathering techniques or sources of a member of the news media.

(B) Business records do not include records unrelated to ordinary newsgathering activities, such as those related to the purely commercial, financial, administrative, or technical, operations of a news media entity.

(C) Business records do not include records that are created or maintained either by the government or by a contractor on behalf of the government.

(c) Issuing subpoenas to members of the news media, or using subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 to obtain from third parties communications records or business records of a member of the news media.

(1) Except as set forth in paragraph (c)(3) of this section, members of the Department must obtain the authorization of the Attorney General to issue a subpoena to a member of the news media; or to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party communications records or business records of a member of the news media.

(2) Requests for the authorization of the Attorney General for the issuance of a subpoena to a member of the news media, or to use a subpoena, 2703(d) order, or 3123 order to obtain communications records or business records of a member of the news media, must personally be endorsed by the United States Attorney or Assistant Attorney General responsible for the matter.

(3) Exceptions to the Attorney General authorization requirement

(i)(A) A United States Attorney or Assistant Attorney General responsible for the matter may authorize the issuance of a subpoena to a member of the news media (e.g., for documents, video or audio recordings, testimony, or other materials) if the member of the news media expressly agrees to provide the requested information in response to a subpoena. This exception applies, but is not limited, to both published and unpublished materials and aired and unaired recordings.

(B) In the case of an authorization under paragraph (c)(3)(i)(A) of this section, the United States Attorney or Assistant Attorney General responsible for the matter shall provide notice to the Director of the Criminal Division's Office of Enforcement Operations within 10 business days of the authorization of the issuance of the subpoena.

(ii) In light of the intent of the policy to protect freedom of the press, ordinary newsgathering activities, and confidential news media sources, authorization of the Attorney General will not be required of members of the Department in the following circumstances:

(A) To issue subpoenas to news media entities for purely commercial, financial, administrative, technical, or other information unrelated to ordinary newsgathering activities; or for information or records relating to personnel not involved in ordinary newsgathering activities.

(B) To issue subpoenas to members of the news media for information related to public comments, messages, or postings by readers, viewers, customers, or subscribers, over which the member of the news media does not exercise editorial control prior to publication.

(C) To use subpoenas to obtain information from, or to use subpoenas, 2703(d) orders, or 3123 orders to obtain communications records or business records of, members of the news media who may be perpetrators or victims of, or witnesses to, crimes or other events, when such status (as a perpetrator, victim, or witness) is not based on, or within the scope of, ordinary newsgathering activities.

(iii) In the circumstances identified in paragraphs (c)(3)(i)(A) through (C) of this section, the United States Attorney or Assistant Attorney General responsible for the matter must—

(A) Authorize the use of the subpoena or court order;

(B) Consult with the Criminal Division regarding appropriate review and safeguarding protocols; and

(C) Provide a copy of the subpoena or court order to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations within 10 business days of the authorization.

(4) Considerations for the Attorney General in determining whether to authorize the issuance of a subpoena to a member of the news media.

(i)(A) In criminal matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that a crime has occurred, and that the information sought is essential to a successful investigation or prosecution. The subpoena should not be used to obtain peripheral, nonessential, or speculative information.

(B) In civil matters, there should be reasonable grounds to believe, based on public information or information from non-media sources, that the information sought is essential to the successful completion of the investigation or litigation in a case of substantial importance. The subpoena should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(ii) The government should have made all reasonable attempts to obtain the information from alternative, non-media sources.

(iii)(A) The government should have pursued negotiations with the affected member of the news media, unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. Where the nature of the investigation permits, the government should have explained to the

member of the news media the government's needs in a particular investigation or prosecution, as well as its willingness to address the concerns of the member of the news media.

(B) The obligation to pursue negotiations with the affected member of the news media, unless excused by the Attorney General, is not intended to conflict with the requirement that members of the Department secure authorization from the Attorney General to question a member of the news media as required in paragraph (f)(1) of this section. Accordingly, members of the Department do not need to secure authorization from the Attorney General to pursue negotiations.

(iv) The proposed subpoena generally should be limited to the verification of published information and to such surrounding circumstances as relate to the accuracy of the published information.

(v) In investigations of unauthorized disclosures of national defense information or of classified information, where the Director of National Intelligence, after consultation with the relevant Department or agency head(s), certifies to the Attorney General the significance of the harm raised by the unauthorized disclosure and that the information disclosed was properly classified and reaffirms the intelligence community's continued support for the investigation and prosecution, the Attorney General may authorize the Department, in such investigations, to issue subpoenas to members of the news media. The certification will be sought not more than 30 days prior to the submission of the approval request to the Attorney General.

(vi) Requests should be treated with care to avoid interference with ordinary newsgathering activities or claims of harassment.

(vii) The proposed subpoena should be narrowly drawn. It should be directed at material and relevant information regarding a limited subject matter, should cover a reasonably limited period

of time, should avoid requiring production of a large volume of material, and should give reasonable and timely notice of the demand.

(5) Considerations for the Attorney General in determining whether to authorize the use of a subpoena, 2703(d) order, or 3123 order to obtain from third parties the communications records or business records of a member of the news media:

(i)(A) In criminal matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that a crime has been committed, and that the information sought is essential to the successful investigation or prosecution of that crime. The subpoena or court order should not be used to obtain peripheral, nonessential, or speculative information.

(B) In civil matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that the information sought is essential to the successful completion of the investigation or litigation in a case of substantial importance. The subpoena should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(ii) The use of a subpoena or court order to obtain from a third party communications records or business records of a member of the news media should be pursued only after the government has made all reasonable attempts to obtain the information from alternative sources.

(iii)(A) The government should have pursued negotiations with the affected member of the news media, unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(B) The obligation to pursue negotiations with the affected member of the news media, unless excused by the Attorney General, is not intended to conflict with the requirement that members of the Department secure authorization from the Attorney General to question a member of the news media as set forth in paragraph (f)(1) of this section. Accordingly, members of the Department do not need to secure authorization from the Attorney General to pursue negotiations.

(iv) In investigations of unauthorized disclosures of national defense information or of classified information, where the Director of National Intelligence, after consultation with the relevant Department or agency head(s), certifies to the Attorney General the significance of the harm raised by the unauthorized disclosure and that the information disclosed was properly classified and reaffirms the intelligence community's continued support for the investigation and prosecution, the Attorney General may authorize the Department, in such investigations, to use subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 to obtain communications records or business records of a member of the news media. The certification will be sought not more than 30 days prior to the submission of the approval request to the Attorney General.

(v) The proposed subpoena or court order should be narrowly drawn. It should be directed at material and relevant information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume of material.

(vi) If appropriate, investigators should propose to use search protocols designed to minimize intrusion into potentially protected materials or newsgathering activities unrelated to the investigation, including but not limited to keyword searches (for electronic searches) and filter teams (reviewing teams separate from the prosecution and investigative teams).

(d) Applying for warrants to search the premises, property, or communications records of members of the news media.

(1) Except as set forth in paragraph (d)(4) of this section, members of the Department must obtain the authorization of the Attorney General to apply for a warrant to search the premises, property, or communications records of a member of the news media.

(2) All requests for authorization of the Attorney General to apply for a warrant to search the premises, property, or communications records of a member of the news media must personally be endorsed by the United States Attorney or Assistant Attorney General responsible for the matter.

(3) In determining whether to authorize an application for a warrant to search the premises, property, or contents of communications records of a member of the news media, the Attorney General should take into account the considerations identified in paragraph (c)(5) of this section.

(4) Members of the Department may apply for a warrant to obtain work product materials or other documentary materials of a member of the news media pursuant to the “suspect exception” of the Privacy Protection Act (“PPA suspect exception”), 42 U.S.C. 2000aa(a)(1) & (b)(1), only when the member of the news media is a focus of a criminal investigation for conduct not based on, or within the scope of, ordinary newsgathering activities. In such instances, members of the Department must secure authorization from a Deputy Assistant Attorney General for the Criminal Division.

(5) Members of the Department should not be authorized to apply for a warrant to obtain work product materials or other documentary materials of a member of the news media under the PPA suspect exception, 42 U.S.C. 2000aa(a)(1) & (b)(1), if the sole purpose is to further the investigation of a person other than the member of the news media.

(6) A Deputy Assistant Attorney General for the Criminal Division may authorize, under an applicable PPA exception, an application for a warrant to search the premises, property, or communications records of an individual other than a member of the news media, but who is reasonably believed to have “a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication.” 42 U.S.C. 2000aa(a) & (b).

(7) In executing a warrant authorized by the Attorney General or by a Deputy Assistant Attorney General for the Criminal Division investigators should use search protocols designed to minimize intrusion into potentially protected materials or newsgathering activities unrelated to the investigation, including but not limited to keyword searches (for electronic searches) and filter teams (reviewing teams separate from the prosecution and investigative teams).

(e) Notice to affected member of the news media.

(1)(A) When the Attorney General has authorized the use of a subpoena, court order, or warrant to obtain from a third party communications records or business records of a member of the news media, the affected member of the news media shall be given reasonable and timely notice of the Attorney General’s determination before the use of the subpoena, court order, or warrant, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(B) The mere possibility that notice to the affected member of the news media, and potential judicial review, might delay the investigation is not, on its own, a compelling reason to delay notice.

(2) When the Attorney General has authorized the use of a subpoena, court order, or warrant to obtain communications records or business records of a member of the news media, and the

affected member of the news media has not been given notice of the Attorney General's determination before the use of the subpoena, court order, or warrant, the United States Attorney or Assistant Attorney General responsible for the matter shall provide to the affected member of the news media notice of the order or warrant as soon as it is determined that such notice will no longer pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. In any event, such notice shall occur within 45 days of the government's receipt of any return made pursuant to the subpoena, court order, or warrant, except that the Attorney General may authorize delay of notice for an additional 45 days if he or she determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. No further delays may be sought beyond the 90-day period.

(3) The United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations a copy of any notice to be provided to a member of the news media whose communications records or business records were sought or obtained at least 10 business days before such notice is provided to the affected member of the news media, and immediately after such notice is, in fact, provided to the affected member of the news media.

(f) Questioning members of the news media about, arresting members of the news media for, or charging members of the news media with, criminal conduct they are suspected of having committed in the course of, or arising out of, the coverage or investigation of news, or while engaged in the performance of duties undertaken as members of the news media.

(1) No member of the Department shall subject a member of the news media to questioning as to any offense that he or she is suspected of having committed in the course of, or arising out of, the coverage or investigation of news, or while engaged in the performance of duties undertaken as a member of the news media, without notice to the Director of the Office of Public Affairs and the express authorization of the Attorney General. The government need not view the member of the news media as a subject or target of an investigation, or have the intent to prosecute the member of the news media, to trigger the requirement that the Attorney General must authorize such questioning.

(2) No member of the Department shall seek a warrant for an arrest, or conduct an arrest, of a member of the news media for any offense that he or she is suspected of having committed in the course of, or arising out of, the coverage or investigation of news, or while engaged in the performance of duties undertaken as a member of the news media, without notice to the Director of the Office of Public Affairs and the express authorization of the Attorney General.

(3) No member of the Department shall present information to a grand jury seeking a bill of indictment, or file an information, against a member of the news media for any offense that he or she is suspected of having committed in the course of, or arising out of, the coverage or investigation of news, or while engaged in the performance of duties undertaken as a member of the news media, without notice to the Director of the Office of Public Affairs and the express authorization of the Attorney General.

(4) In requesting the Attorney General's authorization to question, to arrest or to seek an arrest warrant for, or to present information to a grand jury seeking an indictment or to file an information against, a member of the news media for an offense that he or she is suspected of having committed during the course of, or arising out of, the coverage or investigation of news,

or while engaged in the performance of duties undertaken as a member of the news media, a member of the Department shall state all facts necessary for a determination by the Attorney General.

(g) Exigent circumstances.

(1)(A) A Deputy Assistant Attorney General for the Criminal Division may authorize the use of a subpoena or court order, as described in paragraph (c) of this section, or the questioning, arrest, or charging of a member of the news media, as described in paragraph (f) of this section, if he or she 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 specified offense against a minor (for example, as those terms are defined in section 111 of the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. 16911), or an attempt or conspiracy to commit such a criminal offense; or incapacitation or destruction of critical infrastructure (for example, as defined in section 1016(e) of the USA PATRIOT Act, 42 U.S.C. 5195(e)).

(B) A Deputy Assistant Attorney General for the Criminal Division may authorize an application for a warrant, as described in paragraph (d) of this section, if there is reason to believe that the immediate seizure of the materials at issue is necessary to prevent the death of, or serious bodily injury to, a human being, as provided in 42 U.S.C. 2000aa(a)(2) and (b)(2).

(2) Within 10 business days of a Deputy Assistant Attorney General for the Criminal Division approving a request under paragraph (g) of this section, the United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Attorney General and

to the Director of the Office of Public Affairs a statement containing the information that would have been given in requesting prior authorization.

(h) Failure to comply with policy. Failure to obtain the prior approval of the Attorney General, as required by this policy, may constitute grounds for an administrative reprimand or other appropriate disciplinary action.

(i) General Provision. This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

PART 59 — GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

3. The authority citation for part 59 continues to read as follows:

Authority: Sec. 201, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-11).

4. Section 59.3 is revised by adding a new sentence at the end of paragraph (d) to read as follows:

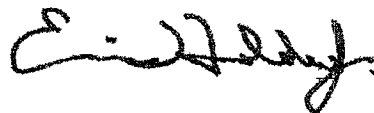
§ 59.3 Applicability.

* * * * *

(d) * * * For the use of a warrant to obtain information from, or records of, members of the news media, see the Department's statement of policy set forth in § 50.10 of this part.

February 21, 2014

Date



Eric H. Holder, Jr.
Attorney General

FEDERAL BUREAU OF INVESTIGATION



SAC Conference White Paper

April 2014

DOJ Media Guidelines

DOJ Media Guidelines

(U) On 02/21/2014, the Attorney General promulgated the **Updated Policy Regarding Obtaining Information from, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media** which replaces the current guidelines codified at 28 CFR 50.10. The media guidelines now apply to an expanded list of law enforcement tools and require Attorney General approval prior to using subpoenas, 2703(d) orders, pen register/trap and trace orders, and search warrants seeking information from, or records of, non-consenting members of the news media. The guidelines continue to require Attorney General approval prior to questioning, arresting, or charging a member of the news media. Note that the policy signed by the Attorney General also has rules for safeguarding the information – specifically, at the conclusion of the investigation, the Department will retain only one copy of any records obtained pursuant to these guidelines.

(U) Significant changes:

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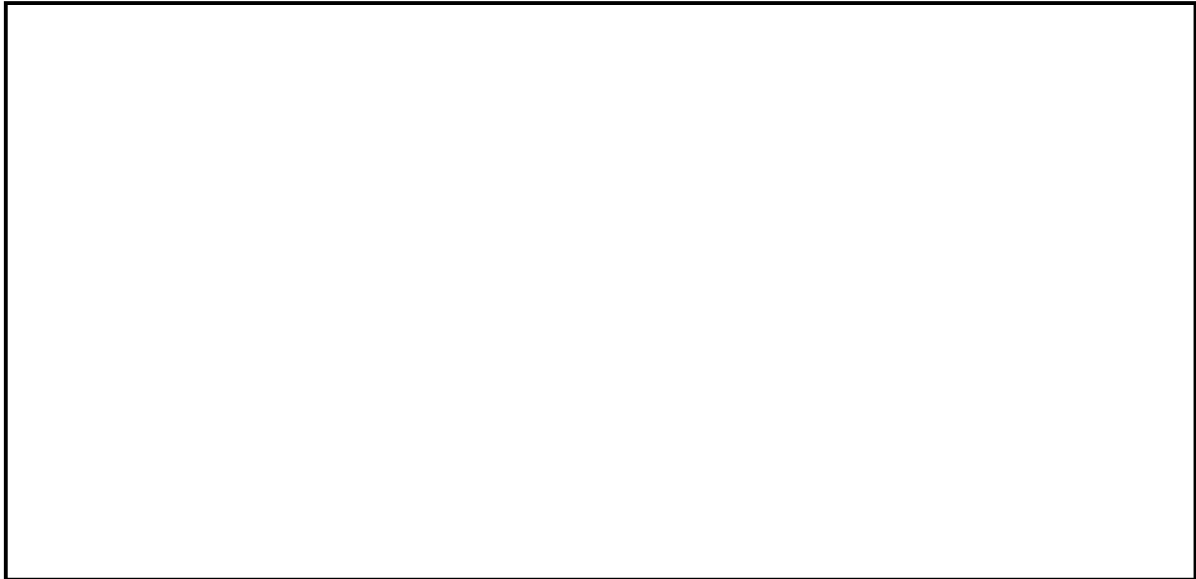
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I. Definition of Member of the News Media

(U) The DOJ Media Guidelines do not define the term “member of the news media.” They do, however, exclude any individual or entity who is reasonably likely to be a foreign power or an agent of a foreign power.

(U) The Department may consider the following factors when evaluating whether or not an individual/entity is a member of the news media:

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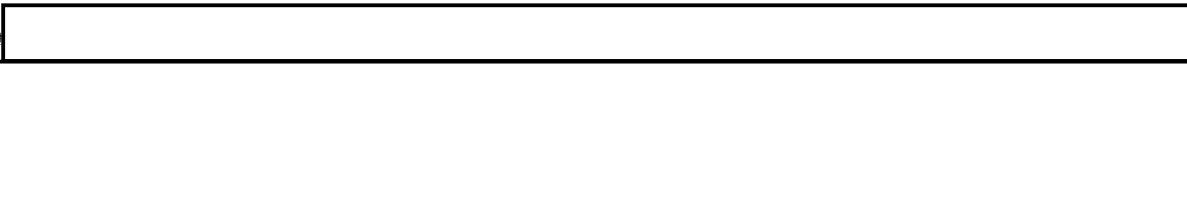


II. Scope

(U) The Guidelines govern the use of certain law enforcement tools to obtain information from, or communications/business records of, a member of the news media. Specifically, the Guidelines cover the use of:

1. subpoenas (or similar compulsory process in civil matters)
2. 2703(d) orders, 18 U.S.C. § 2703(d)
3. PR/TT orders, 18 U.S.C. § 3123
4. search warrants

(U)



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(U//~~FOUO~~) The Guidelines do not apply to national security tools,

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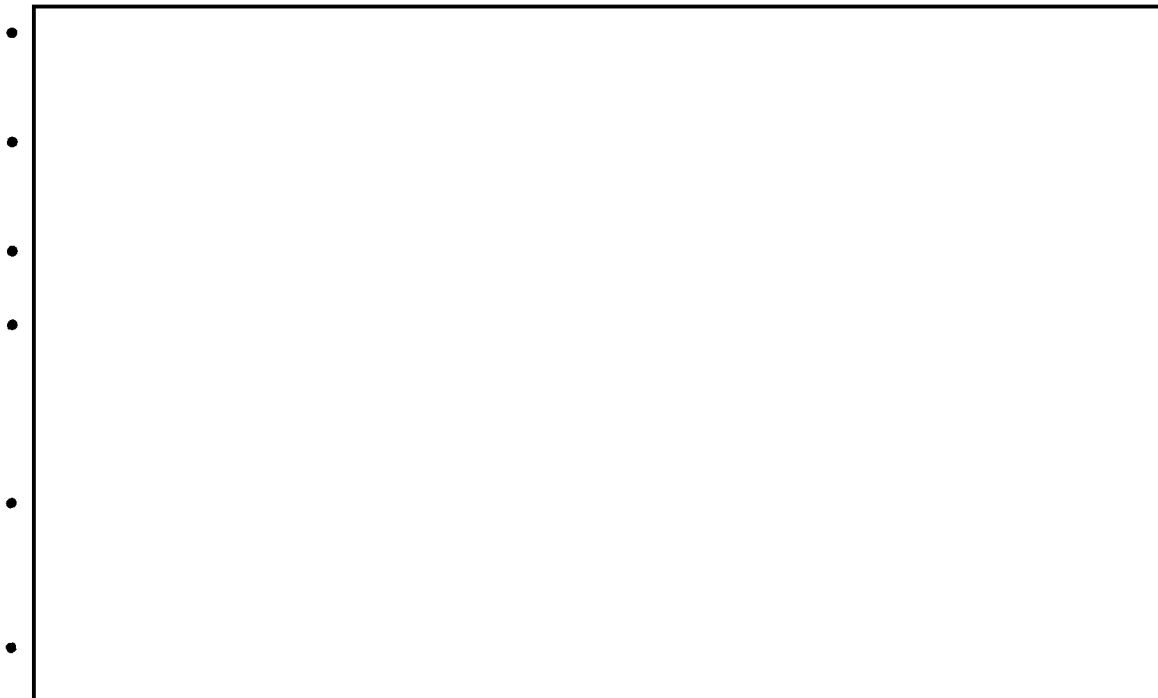


III. Process and Procedures



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In determining whether or not to authorize the use of a subpoena, 2703(d) order, or PR/TT order, the Attorney General considers the following factors:



(U) The Attorney General also established a News Media Review Committee to advise on requests (a) directed at media records related to investigations of unauthorized leaks; (b) seeking delayed notice; or (c) seeking testimony of members of the news media regarding their confidential sources.

(U) **Notice.** When the Attorney General authorizes the use of a subpoena, court order, or warrant to obtain communications/business records from a third party, the affected member of the news media should be given reasonable and timely notice, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to the national security, or present an imminent risk of death or serious bodily harm. In any event, notice must occur within 45 days of the government receiving any return pursuant to the subpoena, court order, or warrant, except that the Attorney General may authorize an additional 45-day delay. No further delays may be sought beyond the 90-day period.

(U) **Exceptions.** There are several exceptions to the Attorney General authorization. In the following instances, a United States Attorney or Assistant Attorney General may authorize the use of subpoenas, 2703(d) orders, and PR/TT orders.

1. To issue subpoenas if the member of the news media has expressly agreed to providing the requested information in response to a subpoena.

2. To issue subpoenas to news media entities for purely commercial, financial, administrative, technical, or other information unrelated to ordinary newsgathering activities or information/records relating to personnel not involved in ordinary newsgathering.

3. To issue subpoenas to members of the news media for information related to public comments, messages, or posting by readers, viewers, customers, or subscribers.

4. To issue subpoenas, 2703(d) orders, or PR/TT orders to obtain communications/business records of members of the news media who may be the perpetrator, victim, or witness to a crime not based on ordinary newsgathering activities.

IV. Search Warrants

(U) The Privacy Protection Act generally prohibits searches for work product and documentary materials held by persons involved in First Amendment-protected activities. However, the PPA has an exception if there is probable cause to believe that the person possessing the material has committed or is committing an enumerated criminal offense [REDACTED]

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V. Questioning, Arresting, Charging Members of the News Media

(U) Attorney General authorization is also required prior to questioning, arresting, or charging a member of the news media regarding criminal conduct he/she is suspected of having committed in the course of, or arising out of, the coverage or investigation of the news or while engaged in the performance of official duties.

VI. Exigent Circumstances

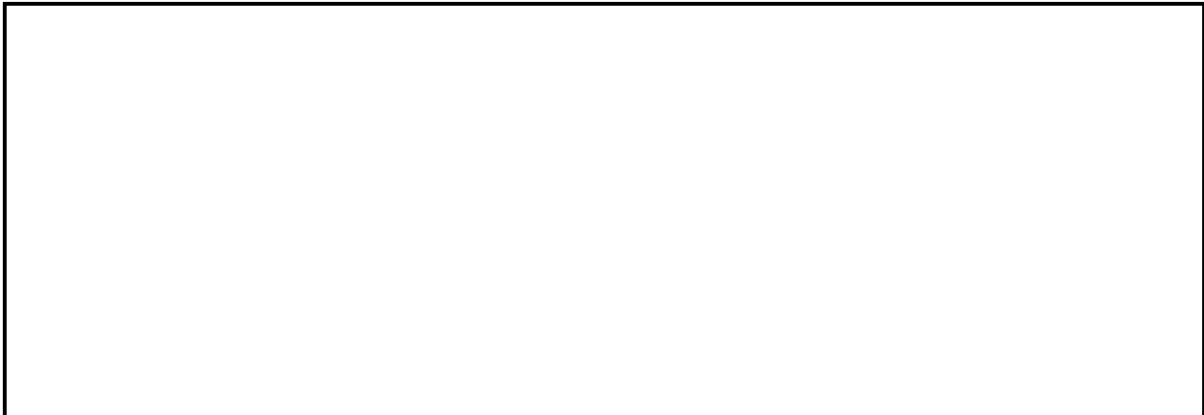
(U) A DAAG for the Criminal Division may authorize the use of a subpoena or court order, or the questioning, arrest or charging of a member of the news media if he/she determines that exigent use of such a technique is necessary to prevent or mitigate (i) an act of terrorism; (ii) other acts reasonably likely to cause significant and articulable harm to the national security; (iii) death; (iv) kidnapping; (v) substantial bodily harm; (vi) specified offenses against a minor; or (vii) incapacitation or destruction of critical infrastructure.

(U) A DAAG for the Criminal Division may authorize the use of a search warrant if he/she determines that there is reason to believe that the immediate seizure of the materials is necessary to prevent death or serious bodily injury.

VII. Safeguarding Information Obtained

(U) The Attorney General has also established specific rules to ensuring that the information/records obtained pursuant to the DOJ Media Guidelines are closely held.

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(U) The records may be used for other purposes if the Attorney General or Deputy Attorney General determine that there are exigent circumstances.