



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

January 14, 2015

MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

FROM:  THE ATTORNEY GENERAL

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

On February 21, 2014, I issued revisions to the Department's policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media. Based on comments from federal prosecutors and other interested parties, including news media representatives through their participation in the News Media Dialogue Group, I determined that additional revisions were necessary.

This final rule revises the existing provisions in the Department's regulations at 28 C.F.R. § 50.10. The revisions are intended to ensure consistent interpretation and application of the policy; clarify and expand the scope of the policy; and ensure the highest level of oversight when members of the Department seek to obtain information from, or records of, a member of the news media.

The most significant change is the elimination of the phrase "ordinary newsgathering activities," which has been replaced throughout with "newsgathering activities." The change mandates that, unless one of the exceptions identified in paragraphs (c)(3) or (d)(4) is applicable, when the investigative or prosecutorial need for information or records relates to newsgathering activities, the Attorney General must authorize the issuance of all subpoenas to members of the news media; the use of all subpoenas or court orders issued pursuant to 18 U.S.C. §§ 2703(d) or 3123 to obtain communications records or business records as defined by paragraphs (b)(3)(i) and (b)(3)(iii); and all applications for warrants to search the premises or property, or to obtain from third-party communication service providers the communications records or business records of members of the news media.

Given the elimination of the phrase "ordinary newsgathering activities," the policy reflects additional revisions that are necessary to strike the proper balance between law enforcement and free press interests. For example, the changes ensure the highest level of Department oversight by providing that the Attorney General must both determine that the affected member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, and authorize the use of the requested law enforcement tool. *See* 28 C.F.R. §§ 50.10(c)(1), (c)(4)(i), and (c)(5)(i). The revised policy does not, however, require the Attorney General to take into account the considerations identified in paragraphs (c)(4)(ii) – (viii) or (c)(5)(ii) – (viii). The changes also permit, but do not require, that notice be provided to the affected member of the news media. *See* 28 C.F.R. § 50.10(e)(1).

Mandatory Consultation with the Criminal Division

The Department currently is in the process of revising the USAM to provide further guidance regarding the application of the policy. In the meantime, *before* (1) issuing a subpoena to a member of the news media; (2) using a subpoena or court order to obtain from a third party communications records or business records of a member of the news media; (3) applying for a warrant to search the premises, property, communications records, or business records of a member of the news media; or (4) questioning, arresting, or charging a member of the news media as to any offense that he or she is suspected of having committed in the course of, or arising out of, newsgathering activities, members of the Department are required to consult with the Policy and Statutory Enforcement Unit of the Criminal Division's Office of Enforcement Operations (PSEU), at pseu@usdoj.gov or (202) 305-4023. In particular, members of the Department must consult with PSEU in the following circumstances, or regarding the following determinations:

- When there is a question regarding whether an individual or entity is a "member of the news media."
- Whether an individual or entity is not covered by, and therefore not entitled to the protections of, the policy, pursuant to 28 C.F.R. § 50.10(b)(1)(ii), which expressly provides that the protections of the policy do not extend to any individual or entity in certain circumstances (*e.g.*, where there are reasonable grounds to believe that the individual or entity is a foreign power or an agent of a foreign power).
- Whether the conduct at issue of the affected member of the news media constitutes or relates to "newsgathering activities."
- Whether records sought constitute "communications records" or "business records" as defined by the policy. *See* 28 C.F.R. § 50.10(b)(3).
- Whether a proposed subpoena or court order falls within one of the exceptions to the Attorney General authorization requirement and, therefore, may be authorized by the United States Attorney or Assistant Attorney General responsible for the matter. *See* 28 C.F.R. § 50.10(c)(3)(ii).
- Whether a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, *see* 28 C.F.R. §§ 50.10(c)(4)(i), (c)(5)(i), and (e); or suspected having committed an offense in the course of, or arising out of, newsgathering activities, *see* 28 C.F.R. § 50.10(f).

To satisfy the consultation requirement, *before* employing the use of a law enforcement tool covered by the Department's policy, members of the Department shall submit to PSEU a written request for consultation, and shall not employ the use of the tool until the Criminal Division has provided a written response.

Enforcement of Subpoenas Issued By Other Executive Branch Departments or Agencies

Although not expressly covered by 28 C.F.R. § 50.10, members of the Department must consult with PSEU before taking steps to enforce subpoenas issued to members of the news media, or to compel compliance with subpoenas or court orders issued to third parties for communications records or business records of members of the news media, which subpoenas or court orders were issued in the first instance by other Executive Branch departments or agencies.

Questions

Any questions regarding this policy should be directed to PSEU at pseu@usdoj.gov or (202) 305-4023.

Attachment