

**Department of Justice Use of Certain Law Enforcement Tools to Obtain
Information from, or Records of, Members of the News Media; and Questioning,
Arresting, or Charging Members of the News Media**

Annual Report: Calendar Year 2017

The Department of Justice (Department) is committed to making public, on an annual basis, data regarding its use of certain law enforcement tools to obtain information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media, pursuant to 28 C.F.R. § 50.10. *See* United States Attorneys' Manual (USAM) 9-13.400(L)(4). This public report, which encompasses authorizations during calendar year 2017, is derived from information provided by Department Divisions and United States Attorneys' Offices (USAO).

A. Subpoenas and applications for court orders or search warrants authorized by the Attorney General (28 C.F.R. §§ 50.10(c) and (d)):

1. In connection with the prosecution of Patricia Adams, a reporter for The Forum, a website focusing on local issues in Queens, New York, for witness tampering in violation of 18 U.S.C. § 1512(b)(1), the Attorney General authorized the USAO for the Eastern District of New York to apply for a warrant to search Adams' smartphone. The USAO prosecuted Adams for her effort to deter the cooperation with law enforcement of the victim of an alleged sexual assault committed by Robert Pisani, an associate of the Bonanno organized crime family. Adams, who was indebted financially to the Bonanno family, met with the father of the victim of Pisani's alleged assault and encouraged him to dissuade his daughter from cooperating with law enforcement authorities against Pisani. During this meeting, Adams threatened to publish an article on The Forum that would embarrass and cause reputational harm to Pisani's victim if she continued to cooperate with law enforcement. The USAO requested authorization to search Adams' smartphone for evidence related to witness tampering and her connections to the Bonanno family, and the Attorney General approved the USAO's request. *See* 28 C.F.R. §§ 50.10(a)(1)-(2), (d)(3), and (c)(5)(i). During the execution of the search warrant, the FBI employed a filter team to conduct the initial review of Adams' smartphone. On June 26, 2018, Adams pleaded guilty to one count of Misprision of a Felony in violation of 18 U.S.C. § 4 and 3551 *et seq.*
2. In connection with an investigation of Twitter-based cyberstalking, and with the consent of the journalist/victim, the Attorney General authorized Department attorneys to apply for a warrant to search the journalist/victim's personal Twitter account records. *See* 28 C.F.R. § 50.10(d). Although the journalist/victim was cooperating with the investigation and expressly permitted law enforcement authorities to access his Twitter account records, the Department's News Media Policy does not contain a "consent exception" that would allow investigators to obtain and execute a search warrant without the authorization of the Attorney General, when a journalist consents to the disclosure of her/his records by a third-party communication service provider. As such, Attorney General authorization was necessary to enable Department attorneys to obtain a warrant and review the

journalist/victim's Twitter records. While a federal cyberstalking charge was initially filed against the target of the investigation, it was later dismissed without prejudice by motion of Department attorneys. The target currently faces state criminal charges related to the underlying criminal activity.

3. In an investigation of a violent protest that occurred in Washington, D.C., the Attorney General authorized Department attorneys to apply for a warrant permitting the search of a freelance journalist's smartphone. *See* 28 C.F.R. § 50.10(d). The Attorney General also authorized Department attorneys to seek an indictment of the freelance journalist. *See* 28 C.F.R. § 50.10(f)(3). Investigators obtained evidence indicating that the freelance journalist was inciting violence and acting in concert with other protesters who were destroying property and menacing bystanders. Law enforcement authorities intervened and arrested the freelance journalist, among others, and seized his smartphone, which investigators believed contained evidence of the freelance journalist's coordination with other protesters. Because the freelance journalist was a member of the news media, and because his criminal conduct was arguably committed in the course of newsgathering activities, Attorney General authorization was required in order to apply for the search warrant of the smartphone and to obtain his indictment. The cases against the journalist and 38 other defendants were later dismissed.
4. In an investigation into unlawful leaks and misuse of government information, the Acting Attorney General authorized Department attorneys to: (1) apply for an order under 18 U.S.C. § 2703(d) for historical, non-content information regarding a telephone number associated with a member of the news media; (2) issue subpoenas to communications providers for non-content business records and subscriber information for a member of the news media; and (3) conduct a voluntary interview of the member of the news media. *See* 28 C.F.R. § 50.10(c)(1) and (f). The member of the news media was contacted but did not agree to be interviewed. In February 2018, the member of the news media was notified of the government's receipt of records through legal process.

B. Questioning, arrests, or charges authorized by the Attorney General (28 C.F.R. § 50.10(f)):

1. As part of its investigation into criminal conduct, the USAO and the FBI sought authorization to interview a journalist who had reported on the conduct. The journalist expressed a willingness to share information about the criminal conduct, and the FBI therefore sought authorization to engage in a voluntary interview. The Department's News Media Policy required investigators to secure the authorization of the Attorney General before proceeding because they suspected the journalist may have committed an offense in the course of newsgathering activities. *See* 28 C.F.R. § 50.10(f). As the proposed interview would not unreasonably impair newsgathering activities, the Attorney General authorized the USAO and FBI to proceed with a voluntary interview of the journalist. *See* 28 C.F.R. § 50.10(f)(5). Thereafter, investigators interviewed the journalist and obtained information relevant to the investigation.

C. Subpoenas, applications for court orders, search warrants, questioning, arrests, or charges authorized by a Deputy Assistant Attorney General for the Criminal Division (28 C.F.R. §§ 50.10(d)(4) and (g)):

1. In a fraud investigation, a Deputy Assistant Attorney General for the Criminal Division authorized a United States Attorney's Office to apply for a warrant to search the premises of a member of the news media. *See* 28 C.F.R. § 50.10(d)(4). Investigators used search protocols intended to minimize intrusion into the target's newsgathering activities and employed safeguards to ensure that information or records related to newsgathering were not retained. *See* 28 C.F.R. § 50.10(d)(7) and USAM 9-13.400(H). No newsgathering-related materials were recovered during the execution of the search warrant.
2. In an investigation of a member of the news media for financial fraud and other offenses, a Deputy Assistant Attorney General for the Criminal Division authorized Department attorneys to apply for search warrants seeking evidence from several locations. As the member of the news media was a subject of the criminal investigation, and the conduct under investigation was not based on, or within the scope of, newsgathering activities, the Department's News Media Policy did not require Attorney General authorization for these search warrants. *See* 28 C.F.R. § 50.10(d)(4). Agents served the search warrants and seized evidence relevant to the investigation.
3. In an investigation of possible campaign finance violations arising out of several congressional campaigns, a USAO sought authorization to apply for a search warrant seeking evidence from a campaign advisor who also happened to be a member of the news media ("advisor/MONM"). To further its investigation of violations of federal campaign finance laws, the USAO sought authority to apply for a warrant to search the advisor/MONM's residence for records and communications evidencing the crimes. The USAO did not seek any records or communications related to newsgathering activities. As the advisor/MONM was a subject of a criminal investigation targeting conduct that was not based on, or within the scope of, newsgathering activities, the Department's News Media Policy obligated the USAO to secure authorization for the search warrant from a Deputy Assistant Attorney General for the Criminal Division. *See* 28 C.F.R. § 50.10(d)(4). A Deputy Assistant Attorney General for the Criminal Division authorized the USAO's request, and investigators executed the search warrant and seized information relevant to the investigation. In so doing, investigators followed protocols designed to minimize intrusion into potentially protected materials. The advisor/MONM was indicted on several campaign finance related charges.
4. In a prostitution and money laundering investigation, the Child Exploitation and Obscenity Section of the Criminal Division and a USAO sought authorization to apply for warrants to search the e-mail communications of two individuals who

were formerly members of the news media. Prosecutors did not suspect that the former members of the news media committed any offense in the course of, or arising out of, newsgathering activities. However, the conduct under investigation did occur when the two individuals were members of the news media. As the former members of the news media were subjects of a criminal investigation for conduct not based on, or within the scope of, newsgathering activities, the Attorney General's authorization to apply for the warrants was not required. Rather, the Department's News Media Policy permitted the prosecutors to apply for the search warrants after they obtained the authorization of a Deputy Assistant Attorney General for the Criminal Division. *See* 28 C.F.R. § 50.10(d). Prosecutors obtained the necessary authorization, served the search warrant on the email communications provider, and obtained evidence relevant to the investigation.

5. News Media Consultations (28 C.F.R. § 50.10(c)(3)(iii) and USAM 9-13.400(M).)

- Total Number of News Media Consultations conducted by the Office of Enforcement Operations in 2017: **113**.

6. "Friendly Subpoenas" (28 C.F.R. § 50.10(c)(3)(i)(A).)

- Number of subpoenas authorized by United States Attorneys and Assistant Attorneys General for documents, video recordings, audio recordings, testimony, or other materials, where the member of the news media expressly agreed to provide the requested information in response to a subpoena: **14**.