

**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 2018

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* Justice Manual (JM) 9-13.400(L)(4). This public report, which encompasses authorizations during calendar year 2018, 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)):

- Nothing to report.

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

- Nothing to report.

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)):

- In a wire fraud, mail fraud, stalking, and conspiracy investigation, a Deputy Assistant Attorney General for the Criminal Division authorized a United States Attorney's Office to apply for a warrant to seize and search the email account of a freelance journalist. A subject of the investigation had hired a private investigative firm, which had, in turn, retained an individual who also worked as a freelance journalist, to assist in carrying out the firm's work for the subject. Federal investigators determined that the freelance journalist had used his email for this purpose. As the freelance journalist was a member of the news media, the protections of the Department's News Media Policy were extended to him. *See* 28 C.F.R. § 50.10. However, the freelance journalist's activity on behalf of the investigative firm was undertaken in an effort to further their work on behalf of the subject, and it was not in furtherance of legitimate newsgathering activities. Accordingly, the Department's News Media Policy permitted a Deputy Assistant Attorney General for the Criminal Division to authorize the United States Attorney's Office to apply for a warrant seeking the freelance journalist's email account. *See* 28 C.F.R. 50.10(d).

- In an investigation of attempted bribery of a consular official, a United States Attorney's Office obtained authorization to apply for a warrant to seize and search the contents of a cellular telephone that had been used in furtherance of the bribery scheme. The target of the investigation was a camera operator employed by a news media organization. Unrelated to his employment with the news media organization, the camera operator devised a scheme and used his cellular telephone to text a consular official on several occasions, offering the official money in exchange for favorable adjudication of applications for visas to enter the United States. Given his employment by the news media organization, the protections of the Department's News Media Policy extended to the camera operator. *See* 28 C.F.R. § 50.10. However, as the camera operator's illegal conduct was not based on, or within the scope of, newsgathering activities, Attorney General authorization was not required to apply for the warrant. Rather, a Deputy Assistant Attorney General for the Criminal Division authorized the USAO to apply for the proposed warrant to seize and search the telephone for evidence of the bribery scheme. *See* 28 C.F.R. § 50.10(d). When executing the warrant, the USAO and the investigating agency employed a filter team in an effort to minimize the review of news media-related materials and safeguard any such materials in a manner consistent with Department policy. *See* 28 C.F.R. § 50.10(d)(7).
- Shortly after a United States House of Representatives committee hearing adjourned, a self-described journalist reportedly assaulted a staffer who had accompanied Interior Secretary Ryan Zinke to the hearing. Specifically, as the staffer proceeded toward an exit at the back of the hearing room, the self-described journalist allegedly pushed the staffer, causing the staffer to lose balance, and proceeded to the hallway, where the self-described journalist verbally harassed Secretary Zinke. The self-described journalist was ultimately restrained by U.S. Capitol Police and taken into custody based upon the alleged assault. At the time of the assault, it was not clear whether the self-described journalist was a *bona fide* member of the news media for purposes of the Department's News Media Policy. Nonetheless, the United States Attorney's Office immediately contacted the Criminal Division, provided notice of the arrest, and sought *nunc pro tunc* authorization for the arrest based upon the News Media Policy's exigent circumstances provision. *See* 28 C.F.R. 50.10(g). After being briefed on the incident, the Criminal Division's Office of the Assistant Attorney General concluded that the self-described journalist should be treated as a journalist for purposes of the Department's News Media Policy. Furthermore, the Office of the Assistant Attorney General found that the freelance journalist's arrest was consistent with the Policy, as it was necessary to prevent or mitigate an act reasonably likely to cause substantial bodily harm. *See* 28 C.F.R. 50.10(g)(1)(i). Thereafter, the United States Attorney's Office provided the Office of Public Affairs and the Office of the Attorney General with notice of the arrest, as required by the Department's News Media Policy. *See* 28 C.F.R. 50.10(g)(1)(ii).

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

- Total Number of News Media Consultations conducted by the Office of Enforcement Operations in 2018: **117**.

E. “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: **4**.