

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 2022

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;¹ and regarding questioning, arresting, or charging members of the news media, pursuant to 28 C.F.R. § 50.10.² See Justice Manual 9-13.400(D). This public report is derived from information provided by Department Divisions and United States Attorney's Offices. Because the Department's News Media Policy was updated on October 26, 2022, and to account for differences in authorization requirements between the current and prior policies, the 2022 report is comprised of two parts. Part A covers matters authorized between January 1 and October 25, 2022, and Part B covers matters authorized between October 26 and December 31, 2022.³

Part A: January 1-October 25, 2022 (Prior Policy)

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 furtherance of a prosecution related to the January 6, 2021 attack on the U.S. Capitol, the Attorney General authorized a U.S. Attorney's Office to issue a trial subpoena to a member of the news media solely for the purpose of authenticating already published information. The U.S. Attorney's Office established that the introduction of the information at trial was critical to the prosecution and not

¹ In some instances, the Department presumed, out of an abundance of caution, that an authorization or consultation subject was a member of the news media solely for purposes of evaluating a proposed investigative measure. All such consultations and authorizations are included in this report.

² On July 19, 2021, the Attorney General issued a memorandum to Department attorneys entitled "Use of Compulsory Process to Obtain Information From, or Records of, Members of the News Media" (interim policy memorandum). The interim policy memorandum further restricted the use of compulsory legal process to obtain information from, or records of, members of the news media beyond the policy that was then reflected in 28 C.F.R. § 50.10 (prior policy). On October 26, 2022, the Attorney General issued revised regulations regarding obtaining information from or records of members of the new media, and regarding questioning, arresting, or charging members of the news media. Those revised regulations supplanted both the prior policy and the interim policy memorandum and are currently reflected in 28 C.F.R. § 50.10. In accordance with the interim policy memorandum, any compulsory legal process authorized between July 19, 2021, and October 25, 2022, was also subject to pre-approval by the Deputy Attorney General. Any compulsory legal process authorized after October 25, 2022, was authorized pursuant to the current Department policy issued on October 26, 2022.

³ Citations and descriptions of policy requirements in this report refer to the version of the C.F.R. in effect at the time of the authorization.

available from any other known source, and that the subpoena was narrowly drawn. Unless an exception applied, the Department's News Media Policy generally required Attorney General authorization to issue any subpoena to a member of the news media for information related to newsgathering activities. *See* 28 C.F.R. § 50.10(c)(1) and (c)(4) (prior policy). The member of the news media complied with the subpoena.

2. In connection with a securities fraud investigation, the Attorney General authorized a U.S. Attorney's Office to issue subpoenas and to apply for court orders for records of a member of the news media, as well as to question the member of the news media on a voluntary basis. The U.S. Attorney's Office established that the information seized pursuant to the proposed court orders and subpoenas would likely include evidence of the member of the news media's criminal conduct. The Department's News Media Policy generally required Attorney General authorization, absent applicable exception, to seek court orders and subpoenas for business and communications records of a member of the news media, as well as questioning of a member of the news media when such questioning relates to an offense that the member of the news media is suspected of having committed in the course of, or arising out of, newsgathering activities. *See* 28 C.F.R. § 50.10(c)(1) and (f) (prior policy). The Attorney General authorized the proposed compulsory legal process, as well as the proposed voluntary questioning, after concluding that the proposed investigative measures were expected to reveal evidence of criminal activity, ensure public trust, and hold the member of the news media accountable for criminal conduct while not adversely impacting the essential role of the free press in fostering government accountability and an open society. *See* 28 C.F.R. § 50.10(c)(4)(i) and (f)(5). The process was ultimately not issued.
3. In connection with a fraud and bribery prosecution, the Attorney General authorized a U.S. Attorney's Office to issue a subpoena to a member of the news media for testimony at trial solely for the purpose of authenticating already published information. The U.S. Attorney's Office established that the introduction of the information at trial was critical to the prosecution and not available from any other known source, and that the subpoena was narrowly drawn. Unless an exception applied, the Department's News Media Policy generally required Attorney General authorization to issue any subpoena to a member of the news media for information related to newsgathering activities. *See* 28 C.F.R. § 50.10(c)(1) and (c)(4) (prior policy). The member of the news media complied with the subpoena after the court denied a motion to quash.

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

1. In connection with the investigation into the January 6, 2021 attack on the U.S. Capitol, the Attorney General authorized the voluntary questioning of multiple members of the news media who were victims of and/or witnesses to serious criminal

conduct, including violent assaults on law enforcement officers and targeted attacks on members of the news media, occurring during the Capitol Breach. *See* 28 C.F.R. § 50.10(f) (prior policy).

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 connection with a child exploitation investigation, a Deputy Assistant Attorney General authorized a U.S. Attorney's Office to apply for warrants to search the residence and electronic devices of a member of the news media. Investigators had established probable cause that the member of the news media had engaged in conduct involving possession, transportation, and receipt of child sexual abuse material. The U.S. Attorney's Office established that the information seized pursuant to the search warrants would likely include evidence of the member of the news media's criminal conduct, which was wholly outside the scope of the member of the news media's newsgathering activities. The Department's News Media Policy generally required Attorney General authorization to seek any application to search the communications records or premises of a member of the news media, *see* 28 C.F.R. § 50.10(d)(1) (prior policy), but here, because the suspected criminal conduct was wholly outside the scope of the member of the news media's newsgathering activities, a Deputy Assistant Attorney General for the Criminal Division authorized the search warrant applications pursuant to the "suspect exception" of the Privacy Protection Act (PPA), *see* 28 C.F.R. § 50.10(d)(4) (prior policy).
2. In connection with a fraud and money laundering investigation involving employees of a news media entity, a Deputy Assistant Attorney General authorized a U.S. Attorney's Office to apply for warrants to search stored electronic content of email and cloud storage accounts maintained by a member of the news media, who is a target of the investigation. The Department's News Media Policy generally required Attorney General authorization to seek any application to search the communications records of a member of the news media, *see* 28 C.F.R. § 50.10(d)(1) (prior policy), but here, because the suspected criminal conduct was wholly outside the scope of the employee's newsgathering activities, a Deputy Assistant Attorney General for the Criminal Division authorized the search warrant applications pursuant to the "suspect exception" of the PPA, *see* 28 C.F.R. § 50.10(d)(4) (prior policy).
3. In connection with a child exploitation investigation, a Deputy Assistant Attorney General authorized a U.S. Attorney's Office to apply for multiple warrants to search the residence, electronic devices, and accounts of a member of the news media. Investigators had established probable cause that the member of the news media had engaged in conduct involving the exploitation of a child. The U.S. Attorney's Office established that the information seized pursuant to the search warrants would likely

include evidence of the member of the news media's criminal conduct, which was wholly outside the scope of the member of the news media's newsgathering activities. The Department's News Media Policy generally required Attorney General authorization to seek any application to search the communications records or premises of a member of the news media, *see* 28 C.F.R. § 50.10(d)(1) (prior policy), but here, because the suspected criminal conduct was wholly outside the scope of the member of the new media's newsgathering activities, a Deputy Assistant Attorney General for the Criminal Division authorized the search warrant applications pursuant to the "suspect exception" of the PPA, *see* 28 C.F.R. § 50.10(d)(4) (prior policy).

D. Subpoenas and applications for court orders authorized by Assistant Attorneys General or United States Attorneys (28 C.F.R. §50.10(c)(3))

1. In connection with a child exploitation investigation, a United States Attorney authorized the issuance of multiple subpoenas to obtain communications records of, and third-party business records related to, a member of the news media suspected of committing child exploitation offenses. Because the member of the news media's status as a perpetrator was not based on, or within the scope of, newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(C) (prior policy). The third parties complied with the subpoenas.
2. In connection with a child exploitation investigation, a United States Attorney authorized the issuance of subpoenas and an application for a court order pursuant to 18 U.S.C. § 2703(d) to third-party service providers to obtain records related to accounts used by a member of the news media suspected of committing child exploitation offenses. Because the member of the news media's status as a perpetrator was not based on, or within the scope of, newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(C) (prior policy). The third parties complied with the subpoenas and court order.
3. In connection with a fraud and money laundering investigation involving employees of a news media entity, a United States Attorney authorized the issuance of multiple subpoenas to third-party service providers and financial institutions for purely administrative and financial records related to accounts maintained by a member of the news media. Because the information sought was not related to newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(A) (prior policy). The third parties complied with the subpoenas.
4. In connection with a civil rights investigation, an Assistant Attorney General authorized the issuance of a subpoena to a news media entity for advertisements and related documents. Because the information sought was not related to newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(A) (prior policy). The member of the news media partially complied with the subpoena prior to a resolution of the case.

5. In connection with an arson investigation, a United States Attorney authorized the issuance of subpoenas to a news media entity for video footage of interviews that were conducted at the scene of the arson. Because the member of the news media expressly agreed to comply with the subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A) (prior policy).
6. In connection with a fraud investigation, an Assistant Attorney General authorized the issuance of court orders pursuant to 18 U.S.C. § 2703(d) for a member of the news media's email and phone records. Because the information sought, which related to suspected criminal conduct occurring when the member of the news media was working in a non-media capacity, was not related to newsgathering activities, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(ii)(A) (prior policy). The Assistant Attorney General conditioned this authorization upon limiting the review of any responsive materials to the time period during which the member of the news media worked in a non-news-media capacity. The recipients of the court orders complied.
7. In connection with a hate crime investigation arising from a deadly mass shooting, a United States Attorney authorized the issuance of subpoenas to a news media entity for materials that were allegedly sent to the news media entity by the target of the investigation. Because the news media entity expressly agreed to comply with the subpoena, Attorney General authorization was not required. *See* 28 C.F.R. § 50.10(c)(3)(i)(A) (prior policy).
8. In connection with an investigation of a news media entity and its employees, a United States Attorney authorized the issuance of subpoenas for records of members of the news media who were suspected of committing fraud or other offenses, or witnesses to crimes, not within the scope of their newsgathering activities. *See* 28 C.F.R. § 50.10(c)(3)(ii)(C) (prior policy). All third parties complied with the subpoenas, as did nearly all of the entity's current and former employees. One employee and the news media entity complied in part and the court ordered these parties to comply in full. After being directed by the court to do so, the employee and news media entity provided additional responsive material.

E. News Media Consultations

Total Number of News Media Consultations conducted by the Office of Enforcement Operations, including mandatory consultations (January 1-October 25, 2022): 272

Part B: October 26-December 31, 2022 (Current Policy)

A. Compulsory legal process authorized by the Attorney General (28 C.F.R. §§ 50.10(c)(3), and (d)(1) and (2)(ii))

1. None

B. Compulsory legal process, arrests, or charges authorized by the Deputy Attorney General (28 C.F.R. §§ 50.10(f)(1) and (m)(1))

1. None

C. Compulsory legal process, questioning, arrests, or charges authorized by Deputy Assistant Attorneys General for the Criminal Division (28 C.F.R. §§ 50.10(c)(1), (d)(1) and (2), (f)(2), (i)(2), (l)(1), and (m)(2))

1. In connection with a child exploitation investigation, a Deputy Assistant Attorney General for the Criminal Division authorized the issuance of subpoenas to third-party service providers for subscriber information for accounts used by a member of the news media, and applications for search warrants permitting the seizure and search of the contents of several electronic accounts used by the member of the news media. The member of the news media was the target of an investigation and suspected of having committed an offense and was not acting within the scope of newsgathering. Some of the subpoenas sought only information described in 18 U.S.C. § 2703(c)(2)(A), (B), (D), (E), and (F). *See* 28 C.F.R. § 50.10(d)(1)(i) and (vi). The third parties complied with the subpoenas and court orders.
2. In connection with a criminal tax investigation, a Deputy Assistant Attorney General for the Criminal Division authorized the issuance of subpoenas to a news media entity for financial and tax-related records. The news media entity was a target of an investigation and suspected of having committed an offense and was not acting within the scope of newsgathering. *See* 28 C.F.R. § 50.10(d)(1)(i). The news media entity complied with the subpoenas.

D. Compulsory legal process authorized by Assistant Attorneys General or United States Attorneys (28 C.F.R. §§ 50.10(i)(1))

1. In furtherance of a prosecution related to the January 6, 2021 attack on the U.S. Capitol, a United States Attorney authorized the issuance of a grand jury subpoena to a member of the news media for video footage of the events that transpired at the U.S. Capitol on January 6, 2021. The member of the news media was not the subject or target of any investigation or suspected of having committed any offense. Because the member of the news media expressly agreed to comply with the subpoena, no other authorization was required. *See* 28 C.F.R. § 50.10(i)(1). The member of the news media complied with the subpoena.

E. News Media Consultations

1. Total number of consultations regarding questioning of a member of the news media on a voluntary basis (28 C.F.R. § 50.10(i)(1)): 27
2. Total number of other news media consultations conducted by the Office of Enforcement Operations, including mandatory consultations (October 26-December 31, 2022): 31