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DEPARTMENT OF JUSTICE

28 CFR Part 50

[Docket No. 145; AG Order No. 3486-2015]

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

On February 21, 2014, the Attorney General 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. In response to comments from federal prosecutors and other interested parties, including news media representatives, the Attorney General is issuing this final rule to revise the existing provisions in the Department's regulations at 28 CFR 50.10.

Most of the revisions are intended to ensure both consistent interpretation and application of the policy and the highest level of oversight when members of the Department seek to obtain information from, or records of, a member of the news media. Other substantive revisions are intended to clarify the scope of the policy.

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 13563 - Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866 of September 30, 1993, 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, 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.

Accordingly, for the reasons stated in the preamble, part 50 of title 28 of the Code of Federal Regulations is amended as follows:

PART 50 – STATEMENTS OF POLICY

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

Authority: 5 U.S.C. 301; 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 newsgathering activities. The policy is not intended to extend special protections to members of the news media who are subjects or targets of criminal investigations for conduct not based on, or within the scope of, 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. In particular, subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 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 and appropriate notice to the affected member of the news media has been provided, unless the Attorney General determines that, for compelling reasons, such negotiations or 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.

(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 where there are reasonable grounds to believe that the individual or entity is —

(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 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 to terrorists, as that offense is defined in 18 U.S.C. 2339A; 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 or business records of members of the news media, pursuant to 18 U.S.C. 2703(a) and (b).

(3) *Definitions.* (i)(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 work product and other documentary materials, and records of the activities, including the financial transactions, of a member of the news media related to the coverage, investigation, or reporting of news. Business records are limited to those generated or maintained by a third party with which the member of the news media has a contractual relationship, and which 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 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 be personally 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 this policy to protect freedom of the press, 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 newsgathering activities; or for information or records relating to personnel not involved in 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, newsgathering activities.

(iii) In the circumstances identified in paragraphs (c)(3)(ii)(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) In matters in which a member of the Department determines that 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, the member of the Department requesting Attorney General authorization to issue a subpoena to a member of the news media shall provide all facts necessary for determinations by the Attorney General regarding both whether the member of the news media is a subject or target of the investigation and whether to authorize the issuance of such subpoena. If the Attorney General determines that the 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, the Attorney General's determination regarding the issuance of the proposed subpoena should take into account the principles reflected in paragraph (a) of this section, but need not take into account the considerations identified in paragraphs (c)(4)(ii) through (viii) of this section.

(ii)(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.

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

(iv)(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.

(v) 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.

(vi) In investigations or prosecutions 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 or prosecution, the Attorney General may authorize members of the Department, in such investigations, to issue subpoenas to members of the news media. The certification, which the Attorney General should take into account along with other considerations identified in paragraphs (c)(4)(ii) through (viii) of this section, will be sought not more than 30 days prior to the submission of the approval request to the Attorney General.

(vii) Requests should be treated with care to avoid interference with newsgathering activities and to avoid claims of harassment.

(viii) 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) In matters in which a member of the Department determines that 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, the member of the Department requesting Attorney General authorization to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party the communications records or business records of a member of the news media shall provide all facts necessary for determinations by the Attorney General regarding both whether the member of the news media is a subject or target of the investigation and whether to authorize the use of such subpoena or order. If the Attorney General determines that the 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, the Attorney General's determination regarding the use of the proposed subpoena or order should take into account the principles reflected in paragraph (a) of this section, but need not take into account the considerations identified in paragraphs (c)(5)(ii) through (viii) of this section.

(ii)(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, cumulative, 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.

(iii) 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.

(iv) (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.

(v) In investigations or prosecutions 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 or prosecution, the Attorney General may authorize members of 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, which the Attorney General should take into account along with the

other considerations identified in paragraph (c)(5) of this section, 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 newsgathering activities and to avoid claims of harassment.

(vii) 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.

(viii) 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).

(6) When the Attorney General has authorized the issuance of a subpoena to a member of the news media; or the use of 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, members of the Department must consult with the Criminal Division before moving to compel compliance with any such subpoena or court order.

(d) *Applying for warrants to search the premises, property, communications records, or business 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, communications records, or business 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, communications records, or business records of a member of the news media must be personally 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, communications records, or business 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), when the member of the news media is a subject or target of a criminal investigation for conduct not based on, or within the scope of, 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, communications records, or business 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.

(e) *Notice to affected member of the news media.* (1)(i) In matters in which the Attorney General has both determined that 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, and authorized the use of a subpoena, court order, or warrant to obtain from a third party the communications records or business records of a member of the news media pursuant to paragraph (c)(4)(i), (c)(5)(i), or (d)(1) of this section, members of the Department are not required to provide notice of the Attorney General’s authorization to the affected member of the news media. The Attorney General nevertheless may direct that notice be provided.

(ii) If the Attorney General does not direct that notice be provided, the United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Attorney General every 90 days an update regarding the status of the investigation, which update shall include an assessment of any harm to the investigation that would be caused by providing notice to the affected member of the news media. The Attorney General shall consider such update in determining whether to direct that notice be provided.

(2)(i) Except as set forth in paragraph (e)(1) of this section, 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.

(ii) 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.

(3) 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, pursuant to paragraph (e)(2) of this section, 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.

(4) 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, arresting, or charging 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, newsgathering activities without first providing notice to the Director of the Office of Public Affairs and obtaining 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, newsgathering activities without first providing notice to the Director of the Office of Public Affairs and obtaining 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, newsgathering activities, without first providing notice to the Director of the Office of Public Affairs and obtaining the express authorization of the Attorney General.

(4) In requesting the Attorney General's authorization to question, to seek an arrest warrant for or to arrest, or to present information to a grand jury seeking an indictment or to file an information against, a member of the news media as provided in paragraphs (f)(1) through (3) of this section, members of the Department shall provide all facts necessary for a determination by the Attorney General.

(5) In determining whether to grant a request for authorization to question, to seek an arrest warrant for or to arrest, or to present information to a grand jury seeking an indictment or to file an information against, a member of the news media, the Attorney General should take into account the considerations reflected in the Statement of Principles in paragraph (a) of this section.

(g) *Exigent circumstances.* (1)(i) 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. 5195c(e)).

(ii) 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 the approval by a Deputy Assistant Attorney General for the Criminal Division of 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 provided in a request for prior authorization.

(h) *Safeguarding.* Any information or records obtained from members of the news media or from third parties pursuant to this policy shall be closely held so as to prevent disclosure of the information to unauthorized persons or for improper purposes. Members of the Department should consult the United States Attorneys' Manual for specific guidance regarding the safeguarding of information or records obtained from members of the news media or from third parties pursuant to this policy.

(i) *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.

(j) *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.

Dated: January 14, 2015.

Eric H. Holder, Jr.
Attorney General

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