

Media Organizations Face New Risks from DOJ

Client Alerts

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In April 2025, Attorney General Pam Bondi signaled the Department of Justice’s (the “Department” or “DOJ”) heightened interest in pursuing “improper leaks” of “protected” government information and, to do so, relaxed DOJ’s self-imposed policy constraints on conducting media investigations.^[1] In January 2026, the Federal Bureau of Investigation (FBI) executed a search warrant at the home of *Washington Post* reporter Hannah Natanson, seeking information related to an alleged disclosure of classified information by a government contractor, and also issued a subpoena to the newspaper.^[2] The ultimate outcome of that search and seizure remains unclear, as it is currently the subject of litigation in the Eastern District of Virginia.^[3]

As DOJ continues to prioritize leak investigations and scrutinize press activities, this client alert provides background on the rights of the news media and DOJ’s obligations under law and policy when conducting investigations that involve the press. In particular, while the Department’s use of compulsory legal process to seize information from the news media remains limited by the Privacy Protection Act, there are significant exceptions to that law. In addition, constraints established under DOJ policy are not legally enforceable, and a recent report issued by the DOJ’s Office of Inspector General indicates that between 2017 and 2020, DOJ did not consistently follow its internal procedures to obtain news media communications records.^[4]

The Privacy Protection Act

The Privacy Protection Act (“PPA” or “Act”)^[5] establishes important statutory protections for the news media with respect to law enforcement investigations. Enacted in 1980, the Act responded to the Supreme Court’s decision in *Zurcher v. Stanford Daily*, which held that the use of a search warrant to search the office of a student newspaper did not violate the paper’s rights under the First and Fourth Amendments.^[6] In the absence of those constitutional protections, the Act established new rules for law enforcement when it seeks to obtain (by subpoena or search warrant) journalistic “work product” or “documentary material,” and it provides a civil remedy if the government violates those statutory requirements.^[7]

Under the PPA, “work product”—defined as material prepared in anticipation of publication, including the “mental impressions, conclusions, opinions, or theories” of a person who prepared them for communication to the public, such as a draft of a news article^[8]—cannot be seized pursuant to a warrant unless a statutory exception applies.^[9] Similarly, other “documentary materials”—written, printed or other materials “upon which information is recorded,” such as a photograph or audio recording^[10]—are also protected from seizure.^[11] In both cases, law enforcement must first seek these materials via subpoena.^[12] Solely with respect to documentary materials other than work product, the use of a warrant is also permitted if a subpoena “would result in the destruction, alteration, or concealment” of those materials.^[13]

The most important exception to these constraints allows law enforcement to obtain a search warrant if there is probable cause to believe the materials relate to a criminal offense *committed by their possessor*.^[14] This provision is known as the “suspect exception,” and it applies to both work product and documentary materials. That is, if a media organization or journalist is suspected to have committed a criminal offense, and the materials sought relate to that offense, a search warrant or subpoena for those materials is not subject to the PPA—with one critical caveat. The suspect exception does not apply if the crime in question is just the “receipt, possession, communication, or withholding” of the materials, *unless* the offense at issue concerns national security information or child exploitation material, as specifically enumerated in the PPA, or the seizure is necessary to prevent death or serious injury. Put simply, notwithstanding the PPA, law enforcement can use compulsory process if there is probable cause to believe that the materials relate to a crime committed by the possessor, including the possession of national security information or child exploitation material, but not including other possessory offenses.

While the Act protects against the government’s disregard of these requirements through a civil remedy for actual damages not less than \$1,000 in liquidated damages,^[15] it does not provide for a suppression remedy. Nor does the Act apply to otherwise lawful searches and seizures at the border, which are subject to the Fourth Amendment’s border search exception.^[16]

That said, the FBI’s affidavit in support of its recent application to search a *Washington Post* reporter’s home notably failed to mention the PPA at all, or explain which, if any, of the Act’s exceptions applied.^[17]

DOJ Policy

As a matter of policy, DOJ has historically imposed voluntary restrictions on its use of legal process to compel journalists to divulge information, as codified at 50 C.F.R. § 50.10. These restrictions, which go beyond the PPA, have varied over time. While there is no private right of action to enforce this policy, the policy provides important additional procedural protections. Media organizations

should review them carefully, as key recent updates have narrowed the scope of the policy and relaxed restrictions on (and approvals necessary for) investigations involving the press.

The current policy was issued by Attorney General Pam Bondi last year in an April 25, 2025 memorandum. That memorandum rescinded existing constraints on DOJ's use of legal process to obtain information from and about journalists, on the grounds that those constraints had "unduly hindered" the Department's efforts to "subpoena journalists who have coordinated with Federal employees to leak protected materials" and to "identify and punish the source of improper leaks."^[18]

The prior policy—issued by then-Attorney General Merrick Garland in 2021—established a bright-line rule barring the use of subpoenas, search warrants, and other compulsory processes to seek information from the news media, as well as related information from third-party service providers, subject to a few limited exceptions. That policy extended protections to any information gathered by the news media for purposes of public dissemination, including the receipt or possession of classified government material from anonymous or confidential sources.

The new DOJ policy rescinds that bright-line rule and returns to a balancing test approach, like that employed by the DOJ prior to the Biden Administration's reforms, to guide investigations involving members of the news media. It also narrowed the scope of newsgathering activities that are subject to that balancing test.

Specifically, the Department's decision of whether and when to use legal tools to obtain information from journalists is guided by a balancing of four considerations: (1) protecting national security, (2) ensuring public safety, (3) promoting effective law enforcement and the fair administration of justice, and (4) safeguarding the essential role of the free press in fostering government accountability.^[19]

This test applies when the Department seeks to compel a journalist to divulge records or information with a subpoena, warrant, or other compulsory legal process, or when it seeks to search a journalist's premises or property. It also applies when DOJ seeks to compel information from third parties who hold communications records of journalists or business records pertaining to newsgathering.^[20]

The new policy acknowledges the importance of freedom of the press and that the use of compulsory legal processes can impair this freedom. It nonetheless narrows the scope of newsgathering activities that receive this protection. First, it omits from the definition of "newsgathering" the receipt, possession, or publication of classified documents. Second, it qualifies the protections it extends through the balancing test and through a limitation on the policy's protection only to "lawful" newsgathering.

“Lawful newsgathering” is not defined, and the policy does not explain how DOJ will distinguish between “lawful” and “unlawful” newsgathering during an investigation. However, DOJ has signaled its intent to pursue leaks involving not only classified information, but also leaks which are “sensitive,” “protected,” or merely detrimental to the Administration’s policies.^[21] News media organizations should therefore anticipate that, under this new policy, DOJ will apply a lower standard of procedural protection when either classified information or other material harmful to the Administration is involved.

With respect to “lawful newsgathering” activities, the new policy retains three key procedural protections before compulsory legal process may be used, and it provides that the use of such compulsory tools should be an “extraordinary” measure.

- First, the Attorney General must personally approve requests to issue a subpoena or seek a court order, unless the affected organization or journalist agrees in advance to comply or the records or testimony sought are unrelated to newsgathering.^[22] The Attorney General also must give approval before a journalist may be questioned, arrested, or charged, unless there are exigent circumstances.^[23]
- Second, the government must make “all reasonable efforts” to obtain the relevant information from other sources.^[24] In other words, the government must exhaust other avenues before resorting to a subpoena or other compulsory process, including pursuing negotiations with the affected journalist.^[25]
- And third, if permission to seek a subpoena has been obtained from the Attorney General, the government “shall” provide prior notice to the affected journalist, media organization, or third-party organization, unless the Attorney General determines for “compelling reasons” that the prior notice would pose a “substantial threat” to the integrity of the DOJ’s investigation, risk “grave harm” to national security, or present an imminent risk of death or serious bodily harm. If no prior notice is given, notice must be provided to the journalist or media organization as soon as the threat has passed, or at the very latest 90 days after the government has received the results of any subpoena, court order, or warrant.^[26]

The new policy also removes key language relating to the Department’s interpretation of the PPA’s suspect exception. Prior policies provided that the exception only applied when the alleged crime was “not based on, or within the scope of, newsgathering activities.”^[27] They also included language specifying that the suspect exception did not apply when the “sole purpose” of a search was to further the investigation of a third party.^[28] The new DOJ policy omits these provisions,^[29] which allows DOJ further latitude in using the PPA’s exceptions to obtain material from journalists.^[30]

Key Takeaways

As recent investigative developments have illustrated, news media organizations and journalists should take care to review and understand the law and policy applicable to their work. Availing itself of its relaxed policies in this area, DOJ has flexed its willingness to investigate apparent leaks of government information—including by compelling journalists to divulge confidential government sources or materials obtained from them, or searching their devices.

Jenner & Block will continue to monitor developments, including whether and how the Department of Justice implements the new policy, and is available to advise individuals or organizations being investigated in connection with newsgathering activities.

Footnotes

[1] Mem., *Updated Policy Regarding Obtaining Information from, or Records of, Members of the News Media*, Att’y Gen. Pamela Bondi (April 26, 2025), *available at* <https://www.documentcloud.org/documents/25919716-attorney-general-bondi-memorandum-updated-policy-regarding-obtaining-information-from-or-records-of-members-of-the-news-media/>.

[2] Benjamin Mullin et al., *F.B.I. Searches Home of Washington Post Journalist in a Leak Investigation*, N.Y. Times (Jan. 14, 2026), <https://www.nytimes.com/2026/01/14/us/politics/fbi-washington-post-journalist.html>.

[3] *See in re the Matter of Search of the Real Property and Premises of Hannah Natanson*, No. 26-sw-00045 (E.D.V.A.).

[4] Press Release. *DOJ Releases Report on DOJ Obtaining Records of Members of Congress, Congressional Staffers, and Members of the News Media using Compulsory Process*, Office of Inspector Gen., U.S. Dep’t of Justice (Dec. 10, 2024), *available at* <https://oig.justice.gov/news/doj-oig-releases-report-doj-obtaining-records-members-congress-congressional-staffers-and>.

[5] 42 U.S.C. § 2000aa.

[6] 436 U.S. 547 (1978). Importantly, in *Zurcher*, no materials were removed from the student paper’s office. *Id.* at 552. The Supreme Court therefore held that that there was no threat of a prior restraint on the paper’s speech. *Id.* at 567. The same may not be true where a search is accompanied by a seizure, as will normally be the case.

[7] 42 U.S.C. §§ 2000aa-5–2000aa-7.

[8] *Id.* § 2000aa-7(b).

[9] *Id.* § 2000aa(a).

[10] *Id.* § 2000aa-7(a).

[11] *Id.* § 2000aa(b).

[12] *Id.* §§ 2000aa(a)–(b).

[13] Use of a warrant is also permitted if the government has not received a response to a subpoena or otherwise exhausted its judicial remedies to compel enforcement of the subpoena.

[14] 42 U.S.C. § 2000aa(a)(1), (b)(1).

[15] *Id.* § 2000aa-6(a), (f).

[16] *Id.* § 2000aa-5

[17] Aff. of Matthew T. Johnson, *In re the Matter of Search of the Real Property and Premises of Hannah Natanson*, No. 26-sw-00045 (E.D.V.A. Jan. 30, 2026), Dkt. No. 39, <https://www.rcfp.org/wp-content/uploads/2026/01/2026-01-30-In-re-Washington-Post-search-unsealing-Redacted-warrant-affidavit.pdf>; *see also* Press Release, Reporters Comm. for Freedom of the Press, *RCFP Statement on FBI's Newly Unsealed Justification For Seizing Reporter's Electronic Devices* (Feb. 2, 2026), <https://www.rcfp.org/natanson-fbi-search-affidavit-unsealing-statement/> (“The government appears to have ignored a crucial press freedom guardrail in searching a journalist’s home and did not alert the magistrate judge to the law’s application in this case, let alone show how or if it had complied with the statute’s considerable protections.”).

[18] The 2021 policy adopted this approach out of concern that a balancing test might fail to “properly weight” the national interest in protecting journalists and their sources. Mem., *Use of Compulsory Process to Obtain Information from, or Records of, Members of the News Media*, Att’y Gen. Merrick Garland (July 19, 2021), *available at* <https://www.govinfo.gov/content/pkg/GOVPUB-J-PURL-gpo158037/pdf/GOVPUB-J-PURL-gpo158037.pdf>.

[19] 28 C.F.R. § 50.10 (a)(2) (2025).

[20] *Id.* § 50.10 (b)(2).

[21] Ryan Lucas, *Justice Department Revokes Biden-Era Protections for Reporters in Leak Investigations*, NPR (Apr. 25, 2025), <https://www.npr.org/2025/04/25/nx-s1-5377624/pam-bondi-reporters-subpoena-leaks>.

[22] *Id.* § 50.10(c)(3).

[23] *Id.* § 50.10(f).

[24] *Id.* . § 50.10(c)(4)(ii).

[25] *Id.* § 50.10(c)(iii).

[26] *Id.* § 50.10(e).

[27] *Id.*

[28] *Id.* § (d)(5). This language was added following controversy in 2014 over the use of a search warrant to obtain a reporter’s private emails for alleged violations of the Espionage Act. Notably, this use arguably fell within the PPA’s exceptions—but the Department never intended to prosecute the journalist himself, just the government source. The “sole purpose” language clarified that if such extraordinary investigative measures were taken, the Department must intend to prosecute the journalist and cannot use the exception as a tool to investigate a third party, such as the source of an alleged leak

[29] *See* 28 C.F.R. § 50.10(d) (2022); 28 C.F.R. § 50.10(d) (2015).

[30] In addition to these statutory and regulatory restrictions on the government’s ability to obtain information from members of the media, the First Amendment imposes separate limitations in service of protecting against undue interference with the freedom

of the press. Similarly, the Fourth Amendment constrains the manner in which the government may conduct searches of journalistic material, insofar as the government's search tactics are unsupported by probable cause or impermissibly broad. This is most evident with respect to electronically stored information and digital devices.

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