

**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 2015**

By memorandum dated February 21, 2014, the Attorney General committed to making public, on an annual basis, data regarding the Department's 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 also* United States Attorneys' Manual (USAM) 9-13.400(L)(4). This public report, which encompasses authorizations during calendar year 2015, is derived from information provided by Department Divisions and United States Attorneys' Offices.

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 the prosecution of Nicole Eason for kidnapping and transportation of a minor with intent to engage in criminal sexual activity, the Attorney General authorized the United States Attorney's Office for the Central District of Illinois and the Criminal Division's Child Exploitation and Obscenity Section to issue a subpoena to Reuters News Agency for complete audio and/or video recordings of interviews of the defendant and a witness to provide testimony necessary to authenticate the recordings. The subpoena was issued on the date trial commenced, December 14, 2015.

As required by the Department's policy, *see* 28 C.F.R. § 50.10(c)(4)(iv), months before seeking the Attorney General's authorization to issue a subpoena, prosecutors commenced negotiations with Reuters in an attempt to obtain the news agency's consent to provide the requested recordings and an authentication witness without compulsion, as Reuters had posted on its website a lengthy piece by reporter Megan Twohey featuring the involvement of the defendant and her husband in "rehoming" adopted children that included inculpatory statements made by the defendant as well as video and audio clips of Twohey's interviews of the Easons. While the request for Attorney General authorization was pending, Department prosecutors continued to pursue negotiations with Reuters, but the news agency persisted in its refusal to provide copies of the defendant's recorded statements and an authentication witness, and expressed its intent to challenge any subpoena authorized by the Attorney General.

Satisfied that the information sought was narrowly tailored to that which was essential to a successful prosecution of a child exploitation case; that negotiations with Reuters had failed; and that the request would not unreasonably interfere with Reuters's newsgathering activities, the Attorney General ultimately authorized the issuance of the subpoena. *See* 28 C.F.R. § 50.10(c)(4). Reuters moved to quash, arguing that the subpoena reflected an "untimely and improper fishing expedition" and an unreasonable burden on the newsgathering process. In

granting Reuters's motion, the district court expressly rejected Reuters's claim that the information sought by the subpoena was substantively unreasonable, but agreed that the request was untimely, finding that it was "problematic" to require Reuters to produce "at this stage someone to provide testimony and authenticate the audio and video."

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

1. In an investigation concerning extortion, the Attorney General authorized the questioning of an individual who maintains a website and whom the Department determined should be afforded the protections of the policy. The individual was suspected of demanding payment from public officials in exchange for agreeing not to publish certain unfavorable information about the public officials.

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 an investigation concerning bribery and money laundering, a Deputy Assistant Attorney General for the Criminal Division authorized a United States Attorney's Office to apply for warrants to search a safety deposit box held in the name of an entity that describes itself as a "media platform" as well as a bag, cellular telephones, and other electronic media seized by law enforcement authorities incident to the arrests of a foreign businessman and his assistant, who had a key to the safe deposit box, for conspiracy to make false statements to law enforcement officials. The investigation had revealed that the businessman and his assistant had brought millions of dollars into the United States, funneled/launched the funds through several purported non-governmental organizations, including the media platform, and used the funds to bribe public officials for the purpose of garnering support for foreign business interests.

Although investigators had not uncovered any evidence that the businessman or his assistant had engaged in newsgathering activities, or that the safe deposit box was connected to newsgathering activities, based on the limited information available about the purported media platform and the individuals' role in the same, in an abundance of caution, the Department afforded the entity and the individuals the protections of the policy, and a Deputy Assistant Attorney General authorized federal prosecutors to apply for the warrants. *See* 28 C.F.R. §§ 50.10(d)(4) and (d)(6); *see also* USAM 9-19.240. The Criminal Division did not, however, conclude that the entity, the businessman, or his assistant are members of the news media.

2. In an investigation concerning the possession and distribution of child pornography, a Deputy Assistant Attorney General for the Criminal Division authorized a United States Attorney's Office to apply for a warrant to search a

residence and computing equipment shared by several members of a family, one of whom is a member of the news media. *See* 28 C.F.R. § 50.10(d)(4); *see also* USAM 9-19.240. Investigators used search protocols designed to minimize intrusion into the family member's newsgathering activities, *see* 28 C.F.R. § 50.10(d)(7), and employed safeguards to ensure that any information or records related to newsgathering were not retained, *see* Memorandum from the Attorney General to All Department Employees Regarding Updated News Media Policy (Feb. 21, 2014).

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 an investigation concerning arson, a United States Attorney authorized the issuance of a subpoena to a television station for a copy of a broadcast interview of the target. The television station expressly agreed to provide the recording in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
2. In the prosecution of Matthew Keys for violating the Computer Fraud and Abuse Act, the United States Attorney for the Eastern District of California authorized the issuance of subpoenas to nine current and 13 former employees of the *Los Angeles Times* and the Tribune Company, including personnel from the finance and information technology (IT) departments, for trial testimony; and to an affiliate of the Tribune Company for Keys's personnel records. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A)(ii), (C) and (iii). In addition, the *Los Angeles Times* and the Tribune Company did not object to the issuance of the subpoenas.

The United States Attorney also authorized the issuance of subpoenas to Overplay, AT&T, and Yahoo!, and an application for the issuance of an order to Google, pursuant to 18 U.S.C. § 2703(d), for non-content records relating to Keys's accounts. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(C) and (iii). The communications service providers complied with the subpoenas and court order.

3. In an investigation concerning threats targeting the Chief Executive Officer of a private company, a United States Attorney authorized the issuance of two subpoenas to a television station for the content of publicly-available comments posted on a website maintained by the television station and for information identifying the individual(s) responsible for posting the comments. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(B) and (iii). The television station complied with the subpoenas.
4. In an investigation concerning the misappropriation of funds from a charitable foundation and tax fraud, a United States Attorney authorized the issuance of subpoenas to four television networks for records related to charitable contributions made to the foundation by the networks. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). The networks have been complying with the subpoenas.

5. In an investigation concerning the fraudulent receipt of federal annuity benefits by family members of a deceased former federal employee, a United States Attorney authorized the issuance of a subpoena to a newspaper for information related to a subscription. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). The newspaper indicated that it would comply with the subpoena. But, after a guilty plea was entered, the newspaper was not required to produce the subpoenaed records.
6. In an investigation concerning public corruption, a United States Attorney authorized the issuance of a subpoena to a local television station for a copy of broadcast footage. The television station expressly agreed to provide the requested footage in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i).

7. In an investigation concerning arson and the use of destructive devices, a United States Attorney authorized the issuance of subpoenas to five national television news networks, eight local television stations, two news media organizations, two freelance photographers, and one stock photography agency for videos and photographs of fires and related events. The news media entities and individuals expressly agreed to provide the footage and images in response to subpoenas. *See* 28 C.F.R. § 50.10(c)(3)(i).
8. In an investigation concerning bomb threats sent to a university through its newspaper, a United States Attorney authorized the issuance of subpoenas to the newspaper for access and server logs for its website. The newspaper expressly agreed to provide the requested information in response to subpoenas. *See* 28 C.F.R. § 50.10(c)(3)(i).
9. In an investigation concerning immigration fraud, a United States Attorney authorized the issuance of subpoenas to 36 newspapers for copies of advertisements for seasonal work and records related to payment for any such advertisements. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). The newspapers complied with the subpoenas.
10. In the prosecution of former local police lieutenant Steven Blakeney for civil rights violations, the United States Attorney for the Eastern District of Missouri issued a subpoena to CBS affiliate KMOV for a copy of broadcast news footage depicting the arrest of the victim. KMOV expressly agreed to provide the broadcast footage in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i).
11. In an investigation concerning a conspiracy to impede or injure federal officers and firearms-related offenses, a United States Attorney authorized the issuance of subpoenas to one member of the news media for video footage of confrontations between citizens and law enforcement personnel, and to a second member of the news media for both footage of the confrontations and testimony regarding the same. The members of the news media expressly agreed to provide the footage and testimony in response to subpoenas. *See* 28 C.F.R. § 50.10(c)(3)(i).

12. In the prosecution of Joseph Ferriero for racketeering, Travel Act violations, and mail and wire fraud, the United States Attorney for the District of New Jersey authorized the issuance of a subpoena to reporter Shannon Harrington for trial testimony authenticating an article he wrote that was published in the *Bergen Record* in October 2003, which reported the existence of a company that Ferriero and others created to solicit and receive bribe payments and Ferriero's denial of his connection to the company. Through counsel, the *Bergen Record* expressly agreed that Harrington could provide the requested testimony. *See* 28 C.F.R. § 50.10(c)(3)(i). In addition, Harrington's current employer, Bloomberg News, did not object. Harrison complied with the subpoena and testified at trial.
13. In the prosecution of Paul Rivera and Michael Garrett for racketeering, murder, drug trafficking, sex trafficking of children, witness tampering, money laundering, and other offenses, the United States Attorney for the Eastern District of New York authorized the issuance of a trial subpoena to *Straight Stuntin' Magazine* for records related to advertisements placed by the defendants. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). The magazine represented that it was unable to locate any records responsive to the subpoena.
14. In the prosecution of Edward A. Leon for making false declarations before a federal grand jury, the United States Attorney for the Northern District of New York authorized the issuance of a trial subpoena to WNYT reporter Dan Bazile for testimony about the defendant's statements to Bazile, as reported in a published news article. Both WNYT and Bazile agreed that he could provide the requested testimony in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i). Although Bazile remained willing to testify at trial, he was excused from doing so because the defendant stipulated that he made the statements attributed to him in Bazile's article.
15. In the prosecution of former State Senator Thomas Libous for making false statements to federal law enforcement authorities, the United States Attorney for the Southern District of New York authorized the issuance of a subpoena to WNBF Radio for trial testimony authenticating a recording of a broadcast interview of the defendant. The radio station expressly agreed to provide an authentication witness in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i). The court excluded testimony regarding the interview on the grounds of relevance. It therefore was unnecessary to authenticate the recording.
16. In an investigation concerning the unauthorized intrusion into the protected database of a news media entity, a United States Attorney authorized the issuance of a subpoena to the news media entity for technical information and other records relating to the intrusion. The news media entity expressly agreed to provide the information and records in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i).

17. In an investigation concerning threats made to a federal judge, a United States Attorney authorized the issuance of a subpoena to a news media entity for “information relating 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.” 28 C.F.R. §§ 50.10(c)(3)(ii)(B) and (iii). The news media entity complied with the subpoena.
18. In the prosecution of Dakota Williston for murder of a two-year-old child in Indian Country, the United States Attorney for the Eastern District of Oklahoma authorized the issuance of subpoenas to reporters Chris Willingham and Bruce Willingham of the *McCurtain Daily Gazette* for testimony regarding their interview of Williston, much of which was published in the newspaper. The reporters expressly agreed to provide the requested testimony in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i). The prosecutors only called Chris Willingham to testify at trial.
19. In an investigation concerning mail, wire, and honest services fraud, a United States Attorney authorized the issuance of grand jury subpoenas to two television stations for footage of interviews of a subject of the investigation that had either been aired or otherwise made publicly available. The television stations expressly agreed to provide the footage in response to subpoenas. *See* 28 C.F.R. § 50.10(c)(3)(i).
20. In a civil investigation of a *qui tam* complaint alleging a healthcare kickback scheme, the Health and Human Services Office of the Inspector General (HHS OIG) issued subpoenas to two news media entities for copies of advertisements and related billing and payment information. Because HHS OIG is conducting the investigation in conjunction with a United States Attorney’s Office and the Civil Division’s Fraud Section, the Principal Deputy Assistant Attorney General for the Civil Division authorized Department attorneys to seek the issuance of the subpoenas. *See* 28 C.F.R. §§ 50.10(c)(3)(i) and (c)(3)(ii)(A) and (iii).¹ The news media entities complied with the subpoenas.
21. In *United States ex rel. Landis v. Tailwind et al.*, in which the government has claimed violations of the False Claims Act in connection with the United States Postal Service’s (USPS) sponsorship of a professional bicycle racing team, the Principal Deputy Assistant Attorney General for the Civil Division authorized the issuance of subpoenas to Sony Pictures Entertainment, Inc. and to Harpo, Inc. for certified copies of the aired interviews of Lance Armstrong as well as unedited footage of the interviews. The government’s claims are based on the defendants’ use, or facilitation of the use, of performance enhancing drugs and other banned

¹ Because the Civil Division does not have a presidentially-appointed Assistant Attorney General, the Principal Deputy Assistant Attorney General serves as the head of the Civil Division, and is empowered to make all decisions reserved for the Assistant Attorney General.

practices in violation of the USPS sponsorship agreement. At the time that the subpoenas were issued, the Civil Division understood that the media entities expressly had agreed to provide copies of both the aired and unaired footage in response to subpoenas. *See* 28 C.F.R. § 50.10(c)(3)(i). However, after the subpoenas were issued, the media entities provided certified copies of the aired footage, but declined to produce the unaired footage. The Civil Division did not pursue the matter further.

22. Pursuant to a Mutual Legal Assistance Treaty request, the Assistant Attorney General for the Criminal Division authorized the Office of International Affairs (OIA) to apply for an order, pursuant to 18 U.S.C. § 2703(d), to obtain from a communications service provider certain non-content records reflecting communications of a foreign-based journalist who is charged with an offense “not based on, or within the scope of, newsgathering activities.” 28 C.F.R. §§ 50.10(c)(3)(ii)(C) and (iii). The communications service provider complied with the order.