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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE: GOVERNMENT APPLICATIONS
FOR WARRANTS AND COURT ORDERS
PURSUANT TO 18 U.S.C. §§ 2703, 2705 &
3123 PERTAINING TO RECORDS AND
COMMUNICATIONS OF THE NEWS
MEDIA

Standing Order 21-67 (BAH)

Chief Judge Beryl A. Howell

ORDER

On July 19, 2021, the U.S. Department of Justice (“DOJ”) announced that it would “no longer use compulsory legal process for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering activities.” July 19, 2021 Memorandum from Attorney General Merrick Garland to Deputy Attorney General *et al.*, Use of Compulsory Process to Obtain Information from, or Records of, Members of the News Media (“July 19, 2021 DOJ Memorandum”), at 1.¹ The new policy applies, *inter alia*, to “subpoenas, warrants [and] court orders, issued pursuant to 18 U.S.C. § 2703(d) and § 3123,” *id.*, “for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering activities,” *id.*

Limited exceptions to this new general prohibition are provided. As noted in the July 19, 2021 DOJ Memorandum, consistent with current regulations, the “prohibition on compulsory process does not apply to obtaining information from or records of a member of the news media who is the subject or target of an investigation when that status is not based on or within the scope of newsgathering activities.” *Id.* In addition, the government may seek records of those to whom the protections of current regulations do not apply, including agents of a foreign power

¹ The memorandum is available online at: <https://www.justice.gov/ag/page/file/1413001/download>.

and members of a terrorist organization. *See id.* at 2. The general ban is also inapplicable to members of the news media who have consented to provide their communication records in response to compulsory process, or when use of compulsory process “is necessary to prevent an imminent risk of death or serious bodily harm.” *Id.*

In the “limited circumstances in which it remains permissible to use compulsory legal process for the purpose of obtaining information from or records of a member of the news media,” prosecutors are required to comply with “current exhaustion and component approval requirements.” *Id.*; *see also, e.g.,* 28 CFR § 50.10 (outlining heightened review and approval requirements).

The July 19, 2021 DOJ Memorandum was prompted by a recognition that DOJ’s internal procedural protections heretofore may have insufficiently weighed “the important national interest in protecting journalists from compelled disclosure of information revealing their sources, sources they need to apprise the American people of the workings of their government.” July 19, 2021 DOJ Memorandum at 1. DOJ’s review process is continuing with the goal of further developing its policies and codifying newly adopted protections in regulations. *See id.* at 3.

Accordingly, in light of the core First Amendment values at stake when the government seeks to obtain the communication records of a member of the news media, *see* 28 CFR § 50.10; *see also* July 19, 2021 DOJ Memorandum at 1; 42 U.S.C. § 2000aa (cited in 28 CFR § 50.10(d)(4)), and to ensure transparency and consistency in applications presented to the Court, after consultation with the U.S. Attorney for the District of Columbia, it is hereby

ORDERED that any government application for a warrant or court order, pursuant to 18 U.S.C. §§ 2703 and 2705 of the Stored Communications Act, or 18 U.S.C. § 3123 of the Pen

Register Act, seeking information from or records of an individual or entity who is, or who purports to be, a member of the news media and/or an order forbidding the disclosure of such a warrant or court order, shall include a statement confirming that the submitting attorney is aware that the Department of Justice has regulations relating to Members of the News Media, which are binding upon Department attorneys, and that the submitting attorney is familiar with those regulations, including the applicable requirements set forth in 28 CFR § 50.10 or successor regulations, the Justice Manual, and the July 19, 2021 DOJ Memorandum.

SO ORDERED.

Date: November 9, 2021



Beryl A. Howell

BERYL A. HOWELL
Chief Judge