

DOJ Will Use Compulsory Legal Process to Compel Production of Information From News Media Following Recent Update to Policy

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On April 25, Attorney General (AG) Pam Bondi issued an internal [memorandum](#) to Department of Justice (DOJ) employees, changing the DOJ's policy on obtaining information from, or records of, members of the news media. Under this new policy, the DOJ will again use compulsory legal process, such as subpoenas, court orders, and search warrants, to compel the production of information from the news media, including when investigating government leaks.

The DOJ's use of compulsory legal process to obtain information from the news media has evolved over the years, generally involving some form of a balancing test of First Amendment protections and government interests. In [2021](#), then-AG Garland changed DOJ policy to prohibit the DOJ from using compulsory legal process to obtain information within the scope of newsgathering activities, with only certain narrow exceptions.

Bondi's new policy changes course and rescinds the prior administration's policy. The memorandum explains that the DOJ will no longer preclude compelling information from the news media. However, according to the memorandum, the DOJ will continue to employ procedural protections to limit the use of compulsory legal process. For instance, the Bondi policy states that members of the news media will be presumptively entitled to advance notice of such investigative activities, subpoenas should be narrowly drawn, and warrants must include protocols designed to limit the scope of intrusion into potentially protected materials or newsgathering activities.

The memorandum also indicates that DOJ leadership or the AG herself will be involved in approving certain "techniques" involving the news media. In so doing, DOJ leadership will consider whether:

- "[T]here are reasonable grounds to believe that a crime has occurred and the information sought is essential to a successful prosecution;"
- "[P]rosecutors have made all reasonable attempts to obtain the information from alternative source;" and
- "[A]bsent a threat to national security, the integrity of the investigation, or bodily harm, the government has pursued negotiations with the affected member of the news media."

The DOJ's updated policy appears to focus on prosecuting government employees who leak information, not the news media. The memorandum sends a clear message that the DOJ "will not tolerate unauthorized disclosures that undermine President Trump's policies, victimize government agencies, and cause harm to the American people," and signals that in certain instances "[a]ccountability, including criminal prosecutions" of government employees who leak information may be forthcoming. But the memorandum also mentions "efforts to question or

arrest members of the news media," which Bondi must approve.

News media organizations and journalists should be cautious when considering how to approach classified, grand jury, and/or other confidential information from a source and should ensure their actions cannot be viewed as aiding and abetting illegal activity on the part of government or other leakers. Additionally, with the rise in alternative media platforms, companies and individuals engaged in alternative media should consider reviewing their policies, procedures, and practices now to avoid potential issues in the future.

Consider engaging counsel skilled in First Amendment and state Shield law issues and government investigations now to be prepared for potential issues and field questions as they arise. If you have any questions, comments, or concerns about the potential implications of this article, we are available to evaluate the best strategy for you.

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