



U.S. Department of Justice

National Security Division

Assistant Attorney General

Washington, D.C. 20530

September 1, 2021

Dear Members of the News Media Dialogue Group,

In the course of several investigations of the unauthorized disclosure of classified information, the Department of Justice issued legal process and obtained court orders for records concerning members of the news media. As has been acknowledged through notifications sent by the Department to members of the news media, those records pertained to journalists at CNN, the *New York Times*, and the *Washington Post*.

At the direction of the Attorney General, I am providing in the enclosed attachment additional information in the form of three chronologies regarding events related to the approval of these actions pursuant to 28 C.F.R. § 50.10, as well as subsequent court proceedings.

These chronologies reflect information provided in documentation prepared for purposes of the approval processes required by 28 C.F.R. § 50.10, as well as court filings, and are not intended to provide a comprehensive accounting of these events or of internal deliberations within the Department, nor do they describe other events related to the Department's investigations of the unauthorized disclosure of classified information.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Lesko".

Mark Lesko
Acting Assistant Attorney General

1. Events Related to the Issuance of Legal Process and Court Orders Pertaining to a CNN Journalist

Background: In July 2017, CNN.com published an article containing classified information that had not been approved for release. An entity within the United States Intelligence Community subsequently sent the Department of Justice a crime report requesting a criminal investigation. In August 2017, after reviewing the crime report, the Counterintelligence and Export Control Section of the Department's National Security Division ("NSD") requested the Federal Bureau of Investigation ("FBI") to open an investigation regarding the unauthorized disclosure of classified information that appeared in the article. Once opened, NSD and the United States Attorney's Office for the Eastern District of Virginia worked jointly on the FBI investigation. No members of the news media were the subjects or targets of the investigation. After pursuing a variety of investigative steps to obtain information from non-media sources, investigators sought approval pursuant to 28 C.F.R. § 50.10 to issue legal process and obtain court orders for records related to the reporter who authored the article. The following describes events related to that approval process and subsequent legal proceedings.

On May 13, 2020, Attorney General Barr approved a request submitted by the Assistant Attorney General for the Criminal Division on behalf of NSD, concurred in by the Deputy Attorney General, pursuant to 28 C.F.R. § 50.10 for authorization to: (1) issue legal process for toll records for four telephone numbers used by CNN reporter Barbara Starr; (2) apply for court orders pursuant to 18 U.S.C. § 2703(d) seeking non-content information from third-party providers for two email accounts used by Starr; (3) forego negotiations with Starr and CNN for voluntary production of the information sought; and (4) delay providing notice to Starr pursuant to 28 C.F.R. § 50.10(e)(2). Attorney General Barr's authorization included a requirement to use filter procedures in reviewing responsive materials.

The Department subsequently issued legal process for the telephone toll records pertaining to Starr. That legal process did not contain orders prohibiting their disclosure by the recipients.

On May 19, 2020, the Department filed two *ex parte*, sealed applications with the U.S. District Court for the Eastern District of Virginia pursuant to 18 U.S.C. § 2703(d) for non-content information pertaining to two of Starr's email accounts. The Department also requested that the court issue orders pursuant to 18 U.S.C. § 2705(b) directing the recipients, two third-party email providers, not to notify any person of the existence of the Department's applications or the resulting orders for two years from the date of those orders unless otherwise ordered by the court, except for the purpose of receiving legal advice. The court granted the Department's applications on the same day and issued orders to the third-party providers pursuant to 18 U.S.C. §§ 2703(d) and 2705(b). One of the third-party providers subsequently returned responsive materials; the other indicated that it did not possess the records sought.

On June 26, 2020, Attorney General Barr approved a subsequent request submitted by the Assistant Attorney General for the Criminal Division on behalf of NSD, concurred in by the

Deputy Attorney General, to forego the use of filter procedures in reviewing responsive materials because, inter alia, the materials sought did not contain the contents of communications.

On July 14, 2020, the Department filed an *ex parte*, sealed application with the U.S. District Court for the Eastern District of Virginia pursuant to 18 U.S.C. § 2703(d) for non-content information pertaining to Starr's CNN-provided email account. The Department also requested that the court issue an order pursuant to 18 U.S.C. § 2705(b) directing the recipient, Warner Media LLC, not to notify any person of the existence of the Department's application or the resulting order for two years from the date of that order unless otherwise ordered by the court, except for the purpose of receiving legal advice. On July 15, the court granted the Department's application and issued an order to Warner Media, LLC pursuant to 18 U.S.C. §§ 2703(d) and 2705(b).

On September 11, 2020, Warner Media moved to quash or modify the court's order, and the Department and Warner media litigated the matter through January 2021. On January 26, 2021, the Department and Warner Media entered into a resolution pursuant to which Warner Media would produce a limited subset of responsive records. Warner Media completed production of those records on February 16, 2021.

On April 2, 2021, Attorney General Garland approved a request submitted by the Acting Assistant Attorney General for the Criminal Division on behalf of NSD, concurred in by the Acting Deputy Attorney General, for authorization to delay for up to an additional and final 45 days the provision of notice to Starr of the Department's receipt of her telephone toll records and non-content information associated with her email accounts, pursuant to 28 C.F.R. § 50.10(e)(3). The request was based on, inter alia, investigators' review of responsive materials having been constrained by the COVID-19 pandemic. The Attorney General approved the requested authorization subject to the imposition of filter procedures.

On May 13, 2021, the Department provided notice to Starr that, pursuant to legal process, the Department had obtained her telephone toll records and certain non-content records associated with her email accounts.

On June 5, 2021, the Department issued a statement announcing that it would no longer seek compulsory legal process in investigations into unauthorized disclosures of information from members of the news media engaged in newsgathering activities.

On June 8, 2021, Warner Media filed a motion with the Department's consent to unseal certain materials related to its litigation with the Department, and the court granted that motion on the same day. On June 10, 2021, Warner Media filed a motion with the Department's consent to unseal additional materials related to the litigation, and the court granted that motion as well.

On July 19, 2021, Attorney General Garland issued a memorandum directing that "[t]he Department of Justice will 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," subject to the provisions set forth in the remainder of the memorandum. The memorandum directed the Deputy Attorney General to undertake a review

process to further explain, develop, and codify these protections in regulations after consulting with relevant stakeholders.

2. Events Related to the Issuance of Legal Process and a Court Order Pertaining to Four New York Times Journalists

Background: In April 2017, the New York Times published an article containing classified information that had not been approved for release. An entity within the United States Intelligence Community subsequently sent the Department of Justice a crime report requesting a criminal investigation. In August 2017, after reviewing the crime report, the Counterintelligence and Export Control Section of the Department's National Security Division ("NSD") requested the Federal Bureau of Investigation ("FBI") to open an investigation regarding the unauthorized disclosure of classified information that appeared in the article. Once opened, NSD and the United States Attorney's Office for the District of Columbia worked jointly on the FBI investigation. No members of the news media were the subjects or targets of the investigation. After pursuing a variety of investigative steps to obtain information from non-media sources, investigators sought approval pursuant to 28 C.F.R. § 50.10 to issue legal process and obtain a court order for records related to the reporters who authored the article. The following describes events related to that approval process and subsequent legal proceedings.

On September 25, 2020, Attorney General Barr approved a request submitted by the Assistant Attorney General for the Criminal Division on behalf of NSD, concurred in by the Deputy Attorney General, pursuant to 28 C.F.R. § 50.10 for authorization to: (1) issue legal process for toll records for six telephone numbers used by *Times* reporters Michael Schmidt, Matthew Apuzzo, Adam Goldman, and Eric Lichtblau; (2) apply for a court order pursuant to 18 U.S.C. § 2703(d) seeking non-content information from Google, LLC for six email accounts used by the reporters; (3) forego negotiations with the reporters and the *Times* for voluntary production of the information sought; and (4) delay providing notice to the reporters pursuant to 28 C.F.R. § 50.10(e)(2). Attorney General Barr's authorization included a requirement to use filter procedures in reviewing responsive materials.

On November 13, 2020, Attorney General Barr approved a subsequent request by NSD, the United States Attorney's Office for the District of Columbia, and the FBI's Washington Field Office, concurred in by the Deputy Attorney General, to proceed without requiring the use of filter procedures in reviewing responsive materials because, inter alia, the materials sought did not contain the contents of communications.

The Department subsequently issued legal process for the telephone toll records pertaining to the reporters. That legal process did not contain orders prohibiting their disclosure by the recipients.

On December 22, 2020, the Department filed an *ex parte*, sealed application with the U.S. District Court for the District of Columbia pursuant to 18 U.S.C. § 2703(d). The Department also requested that the court issue an order pursuant to 18 U.S.C. § 2705(b) directing the recipient, Google LLC, not to notify any person of the existence of the Department's application or the resulting order for one year from the date of that order unless otherwise ordered by the court, except for the purpose of receiving legal advice.

On January 5, 2021, the court granted the Department's application and issued an order to Google pursuant to 18 U.S.C. §§ 2703(d) and 2705(b). The Department subsequently agreed to Google's request to temporarily withhold enforcement of the order so that Google could notify legal counsel for the *New York Times*, and on February 25, 2021, the Department filed a motion to modify the court's nondisclosure order to allow Google to share the Section 2703(d) order with the *Times*'s Deputy General Counsel and to extend Google's deadline to produce responsive records until March 11, 2021. The court granted that motion on March 3, 2021.

Following further discussions with the *Times*'s Deputy General Counsel, the Department agreed to seek orders from the court permitting the Deputy General Counsel to share the Section 2703(d) order with outside counsel and other *Times* executives, and the court modified its nondisclosure orders accordingly on March 8, 2021 and March 22, 2021. The Department also sought orders from the court extending the deadline for Google to produce responsive records, and the court entered several orders extending those deadlines between March 2021 and May 2021.

On June 2, 2021, following additional discussions with counsel for the *Times*, the Department filed a motion to withdraw its December 22, 2020 application for the reporters' records and to quash the Section 2703(d) order. The Department also moved to withdraw the court's nondisclosure orders. Also on June 2, 2021, the Department provided notice to each of the four reporters that, pursuant to legal process, the Department had received their telephone toll records, and that a court had authorized an order to obtain non-content communication records for their email accounts but that no such records were obtained. On June 4, 2021, the court granted the Department's motion and quashed its prior orders.

On June 5, 2021, the Department issued a statement announcing that it would no longer seek compulsory legal process in investigations into unauthorized disclosures of information from members of the news media engaged in newsgathering activities.

On June 8, 2021, the *Times* filed a motion to unseal the Department's original application for the Section 2703(d) order and all related filings on the court's docket. On June 28, 2021, the Department filed a motion to unseal all filings, subject to redactions, with the exception of the Department's underlying December 22, 2020 application. On June 30, 2021, the court granted the Department's motion and unsealed those materials.

On July 19, 2021, Attorney General Garland issued a memorandum directing that "[t]he Department of Justice will 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," subject to the provisions set forth in the remainder of the memorandum. The memorandum directed the Deputy Attorney General to undertake a review process to further explain, develop, and codify these protections in regulations after consulting with relevant stakeholders.

Between June 2021 and August 2021, the Department filed several motions with the *Times*'s consent for a continuance to respond to the *Times*'s June 8, 2021 motion. In a motion filed on August 10, 2021, the Department noted that it has informed the *Times*'s counsel that, by

September 10, 2021, the Department intends to file a motion to unseal a redacted version of its December 22, 2020 application.

3. Events Related to the Issuance of Legal Process and a Court Order Pertaining to Three Washington Post Journalists

Background: Between May 2017 and July 2017, the Washington Post published three articles containing classified information that had not been approved for release. An entity within the United States Intelligence Community subsequently sent the Department of Justice a crime report requesting a criminal investigation. In August 2017, after reviewing the crime report, the Counterintelligence and Export Control Section of the Department's National Security Division ("NSD") requested the Federal Bureau of Investigation ("FBI") to open an investigation regarding the unauthorized disclosure of classified information that appeared in the articles. Once opened, NSD and the United States Attorney's Office for the District of Columbia worked jointly on the FBI investigation. No members of the news media were the subjects or targets of the investigation. After pursuing a variety of investigative steps to obtain information from non-media sources, investigators sought approval pursuant to 28 C.F.R. § 50.10 to issue legal process and obtain a court order for records related to the reporters who authored the articles. The following describes events related to that approval process and subsequent legal proceedings.

On November 13, 2020, Attorney General Barr approved a request submitted by the Acting Assistant Attorney General for the Criminal Division on behalf of NSD, concurred in by the Deputy Attorney General, pursuant to 28 C.F.R. § 50.10 for authorization to: (1) issue subpoenas for toll records for six telephone numbers used by *Post* reporters Ellen Nakashima and Greg Miller, and by former *Post* reporter Adam Entous; (2) apply for a court order pursuant to 18 U.S.C. § 2703(d) seeking non-content information from a third-party provider for three email accounts used by the reporters; (3) forego negotiations with the reporters and the *Post* for voluntary production of the information sought; and (4) delay providing notice to the reporters pursuant to 28 C.F.R. § 50.10(e)(2). Additionally, Attorney General Barr approved a request by NSD, the United States Attorney's Office for the District of Columbia, and the FBI's Washington Field Office, concurred in by the Deputy Attorney General, to proceed without requiring the use of filter procedures in reviewing responsive materials because, inter alia, the materials sought did not contain the contents of communications.

The Department subsequently issued legal process for the telephone toll records pertaining to the reporters. That legal process did not contain orders prohibiting their disclosure by the recipients.

On December 22, 2020, the Department filed an *ex parte*, sealed application with the U.S. District Court for the District of Columbia pursuant to 18 U.S.C. § 2703(d). The Department also requested that the court issue an order pursuant to 18 U.S.C. § 2705(b) directing the recipient, a third-party service provider, not to notify any person of the existence of the Department's application or the resulting order for one year from the date of that order, unless otherwise ordered by the court, except for the purpose of receiving legal advice. On January 5, 2021, the court granted the Department's application and issued an order to the third-party service provider pursuant to 18 U.S.C. §§ 2703(d) and 2705(b). The third-party provider complied with the court's order but did not possess responsive records.

In May 2021, the Department closed the investigation. On May 3, 2021, the Department provided notice to the three reporters that, pursuant to legal process, the Department had obtained their telephone toll records and that a court had authorized an order to obtain non-content communication records for their email accounts, but that no such records were obtained.

On June 5, 2021, the Department issued a statement announcing that it would no longer seek compulsory legal process in investigations into unauthorized disclosures of information from members of the news media engaged in newsgathering activities.

On June 11, 2021, the Department filed a motion with the court to unseal the docket and the court's January 5, 2021 order. The Department also moved that the court void the nondisclosure provision in its January 5, 2021 order. The court subsequently requested briefing from the Department regarding the need to keep the Department's December 22, 2020 application under seal.

On July 6, 2021, the court issued an order voiding its nondisclosure order. On July 9, 2021, the Department filed a motion requesting unsealing of the docket and all related filings, including its December 22, 2020 application, subject to redactions. On July 13, 2021, the court granted the Department's motion and unsealed those materials.

On July 19, 2021, Attorney General Garland issued a memorandum directing that "[t]he Department of Justice will 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," subject to the provisions set forth in the remainder of the memorandum. The memorandum directed the Deputy Attorney General to undertake a review process to further explain, develop, and codify these protections in regulations after consulting with relevant stakeholders.