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# Holder Tightens Rules for Obtaining Reporters' Data

By CHARLIE SAVAGE

WASHINGTON — Attorney General Eric H. Holder Jr., who has been criticized for the Justice Department's aggressive tactics in secretly obtaining phone logs and e-mails of reporters as part of leak investigations, on Friday announced new guidelines that would significantly narrow the circumstances under which journalists' records could be obtained.

At the same time, a White House spokesman said that President Obama backed the Justice Department's changes as well as its call, at the end of a report on the revisions, to more often find ways to deal with leaks of classified information that fall short of criminal investigations. Under Mr. Obama, prosecutors have filed charges in seven leak-related cases to date, compared with three such cases under all previous presidents combined.

"There are circumstances in which leaks are better addressed through administrative means, such as withdrawal of security clearances or imposition of other sanctions," said Matt Leich, the White House spokesman. "The president agrees with the Justice Department's recommendation and has directed his team to explore how the administration could more effectively use alternatives in appropriate cases."

In a [six-page report](#), Mr. Holder outlined changes to the Justice Department's investigative guidelines that would prevent the Federal Bureau of Investigation from portraying a reporter as a co-conspirator in a criminal leak as a way to get around a legal bar on secret search warrants for reporting materials.

The revisions would also make it harder — though not impossible — for prosecutors to obtain a journalist's calling records from telephone companies without giving news organizations advance notice. Notifying news organizations in advance would give them a chance to contest the request in court.

"The Department of Justice is firmly committed to ensuring our nation's security, and protecting the American people, while at the same time safeguarding the freedom of the press," Mr. Holder said. "These revised guidelines will help ensure the proper balance is struck when pursuing investigations into unauthorized disclosures."

Investigators' targeting of the communications records of Associated Press and Fox News in leak investigations came to light in May, [setting off a furor, both among journalists and in Co administration's increasingly aggressive record on leak investigations.](#)



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President Obama in May had given Mr. Holder a deadline of Friday to review the rules and make recommendations. Mr. Holder held a series of meetings with newsroom leaders and lawyers for media companies, along with lawmakers and First Amendment scholars, in May and June, and briefed Mr. Obama about the changes at the White House on Friday morning.

Several directly addressed controversies from the May disclosures. For example, a 2010 affidavit that came to light in May sought a warrant for e-mails from the Google account of James Rosen of Fox News in which he corresponded with a State Department analyst who was suspected of leaking classified information.

Congress has generally forbidden search warrants for journalists' work materials, but the statute makes an exception if the reporter is suspected of committing a crime. An F.B.I. agent wrote that Mr. Rosen qualified for that exception because he had violated the Espionage Act by seeking government secrets to report.

No American journalist has ever been prosecuted for gathering and publishing classified information, so the language raised the prospect that the Obama administration was taking its leak crackdown to a new level. The administration insisted that it never intended to charge Mr. Rosen and had portrayed him as a criminal merely to get around the prohibition on accessing his e-mails.

The revision to the guidelines would bar such a tactic by saying that the "suspect exception" may only be invoked "when the member of the news media is the focus of the criminal investigation for conduct going beyond ordinary news-gathering activities." Search warrants invoking the exception, it adds, will not be allowed "if the sole purpose is the investigation of a person other than the member of the news media."

In addition, the new guidelines will require the attorney general to sign off on invoking the exception. Previously, a deputy assistant attorney general could do so.

The Justice Department also disclosed in May that it had obtained calling records for more than 20 telephone lines of A.P. offices and journalists in connection with an investigation into a leak about a foiled bomb plot in Yemen in 2012.

The subpoena was controversial because the department gave no advance notice, so The A.P. was unable to negotiate over the scope of the subpoena or challenge it in court. The revisions to the guidelines will make it harder — though not impossible — for prosecutors to take such a step in the future.

Prosecutors, for example, have interpreted the previous rules as carrying a presumption that investigators will withhold advanced notice to reporters, unless an assistant attorney general decides it would not be harmful to do so in a particular case.

The revised guidelines would reverse that presumption and raise the decision-making level to the attorney

general. Moreover, the new guidelines will make clear that the possibility that negotiations and judicial review “may delay the investigation will not, on its own, be considered a compelling reason” to avoid advanced notice. Finally, even if the attorney general finds that there is a compelling reason to delay notice, it can be for a maximum of 90 days. Under previous rules, the notice could be put off indefinitely.

Another set of changes would update the guidelines, last revised three decades ago, so that the same protections that cover phone calls will also cover all “communications records” and “business records” that are stored and maintained by third parties. In 2011, it [came to light](#) that investigators had secretly obtained credit card, bank, and airline travel records of a New York Times reporter, James Risen, in another leak investigation.

The guidelines will say that the department’s top press and civil liberties officials must review and make a recommendation about any request for reporters’ records, and they will direct the Justice Department to start issuing an annual tally disclosing how many times it has made an effort to obtain them, the report said.

Mr. Holder also reiterated the administration’s support — announced in May — for reviving efforts to [enact a federal media shield law](#) that would place the decision about delaying notice of any subpoena for reporters’ phone records in the hands of a judge rather than the attorney general. A bill to do so, sponsored by Senator Charles E. Schumer, Democrat of New York, had faltered in 2010.

“While these reforms will make a meaningful difference, there are additional protections that only Congress can provide,” Mr. Holder said. “For that reason, we continue to support the passage of media shield legislation.”