

FOR IMMEDIATE RELEASE
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DOJ OIG Releases Report on DOJ Obtaining Records of Members of Congress, Congressional Staffers, and Members of the News Media using Compulsory Process

Department of Justice (DOJ) Inspector General Michael E. Horowitz announced today the release of [a report](#) examining DOJ's use of legal authorities, referred to in today's report as "compulsory process," to compel third parties to provide to DOJ non-content communications records of Members of Congress, congressional staffers, and members of the news media.

Background

Between 2017 and 2020, DOJ issued compulsory process to obtain non-content communications records of Members of Congress, congressional staffers, and reporters at *CNN*, *The New York Times*, and *The Washington Post* to attempt to identify the sources of leaked classified information that had been published in news articles in 2017. DOJ also obtained non-disclosure orders (NDOs) that prevented the Members of Congress, congressional staffers, reporters, and newsroom leadership from learning about the use of some of the compulsory process to seek these records.

Records of Members of Congress and Congressional Staffers

The DOJ OIG found that DOJ issued compulsory process to third parties for the non-content communications records of 2 Members of Congress and 43 individuals who were congressional staffers at the time the articles containing the classified information were published. We determined that all of the Members and congressional staffers whose records were sought became aware of the classified information in connection with their congressional responsibilities. Our findings included:

- The party affiliations of those for whom compulsory process was issued were as follows: Both Members of Congress were Democrats, 21 of the staffers worked in Democratic positions, 20 worked in Republican positions, and 2 worked in nonpartisan positions.
 - We did not find evidence of retaliatory motivation by the career prosecutors who issued the compulsory process for records of Members of Congress and congressional staffers, or that they sought the compulsory process based on party affiliation.
 - At the time of these investigations, DOJ did not have a policy that expressly or clearly addressed the use of compulsory process to obtain from third parties the communications records of Members of Congress or congressional staffers, or the use of NDOs in connection with such compulsory process.
 - We found that, in most instances, the inclusion of the staffers in the subject pools for the federal criminal investigations was based on the fact that they had been provided or gained access to the
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classified information pursuant to their job duties, which includes conducting oversight of the Executive Branch, close in time to the publication of the information by the news media.

- In addition, DOJ sought and obtained NDOs that prevented the Members of Congress and congressional staffers from learning about the use of some of the compulsory process to seek their records. The NDO applications submitted to the court did not address case-specific information. Rather, the NDO applications appeared to use general language describing the risks that could arise if the compulsory process was disclosed, similar to those outlined in the then applicable DOJ policy, such as that “the subject(s) responsible for the criminal activity may become aware of this investigation and be likely to flee from prosecution.” In making such assertions, the applications did not indicate to the court that some of the accounts that were subject to the NDOs belonged to Members of Congress or congressional staff, which Department policy at the time did not require.
- As reflected in our recommendations to DOJ, the report concluded that DOJ should carefully assess its policies to ensure that appropriate constitutional and prudential questions are considered before it issues compulsory process for records of Members of Congress and congressional staffers or seeks NDOs related to them.

Records of Reporters

The OIG found that DOJ issued compulsory process to third parties for the non-content communications records of 8 reporters from 3 publications; some of the compulsory process had accompanying NDOs. Our findings included:

- In seeking compulsory process for members of the news media, DOJ complied with some but not all of the then applicable provisions of DOJ’s News Media Policy. Specifically, DOJ failed to convene the News Media Review Committee to consider the compulsory process authorization requests; DOJ did not obtain the required Director of National Intelligence (DNI) certification in one investigation, and we were unable to confirm whether the DNI certification it obtained in another investigation was provided to the Attorney General before he authorized the request; and DOJ did not obtain the Attorney General’s express authorization for the NDOs that were sought for the compulsory process issued in the investigations.
- DOJ had substantially overhauled its News Media Policy in 2014 and 2015 following serious criticisms concerning DOJ’s efforts to obtain communications records of members of the news media. We were troubled that these failures occurred only a few years after this overhaul.

DOJ further revised its News Media Policy in 2022. We believe it is a matter of critical importance to the reputation of DOJ and to the legitimate interests of the news media that, having again revised its News Media Policy in response to significant criticism, DOJ make every effort to ensure full and exacting compliance with its new policy in the future.

The DOJ OIG made three recommendations to DOJ. DOJ concurred in these recommendations and has taken steps to implement these recommendations by making several revisions to applicable policies. Consistent with our ordinary practice, we will evaluate these and any further policy revisions to ensure that each of the recommendations is fully implemented.

Report: Today’s report is available on our [website](#).