

Congress of the United States

Washington, DC 20515

May 18, 2021

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland:

We write to request that the Department of Justice (DOJ) issue guidelines to prohibit the practice of obtaining journalists' communications records in order to identify their sources.

The Washington Post recently revealed that three current and former reporters were notified by DOJ that it had obtained their communications records. According to the Washington Post, the government used a subpoena to obtain the journalists' phone records and obtained a court order requiring the disclosure of email metadata, which it did not obtain, for reasons that are unclear.

DOJ's spokesperson made it clear that the reporters were not themselves being investigated or accused of wrongdoing, telling the press that "The targets of these investigations are not the news media recipients but rather those with access to the national defense information who provided it to the media and thus failed to protect it as lawfully required."

In years past, the government would often attempt to force journalists to reveal their sources, by dragging them into court, where many chose to spend time in jail for contempt of court, rather than violate their oath to keep their sources' identities hidden. Now that most Americans carry always-on, always-recording smartphones, the government prefers to go to telecommunications companies, hoping that records of calls and texts might reveal the source. While certainly more convenient for the government, using subpoenas and surveillance orders to pry into a journalists' communications history is no less invasive and destructive than forcing a journalist to reveal their source.

We are working to introduce a federal journalist shield law in the coming months. However, the Biden Administration has the opportunity to voluntarily leave behind the thuggish and Orwellian abuses of power of the last administration, and stand up as a

world leader for press freedoms. To that end, we urge you to revise DOJ's guidelines for investigations of journalists. Simply put, the government should not collect journalists' communications records unless it's investigating them for a crime or as part of an investigation into foreign espionage, in which case it should get a warrant.

In addition, please provide us with copies of DOJ's 2019 and 2020 annual reports on surveillance of the media, covering the tenure of Attorney General Barr, which DOJ has yet to post online.

Thank you for your attention to this important matter.

Sincerely,



Ron Wyden
United States Senator



Jamie Raskin
Member of Congress