Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

The Fourth Amendment Meets the Fourth Estate: Law Enforcement Searches of Journalists

February 10, 2026

Law enforcement searches or confiscations of news media materials can raise questions about the intersection of the First Amendment to the Constitution, which guarantees freedom of the press, and the Fourth Amendment to the Constitution, which prohibits unreasonable searches and seizures. Litigation stemming from law enforcement's execution of a search warrant for the home and electronic devices of a Washington Post reporter in January 2026 illustrates the potential tension between law enforcement's evidence-gathering prerogatives and news media members' reliance on confidential sources. Although news media organizations have argued that law enforcement access to news-gathering materials should be subject to heightened constraints relative to other searches in light of the First Amendment's promise of press freedom, the Supreme Court in *Zurcher v. Stanford Daily* largely declined to impose such constraints. Following *Zurcher*, Congress enacted the Privacy Protection Act, which prohibits certain law enforcement searches of the news media or others engaged in public dissemination of information. Department of Justice (DOJ) policies have provided additional guidance for law enforcement searches of news media, including searches of third-party (e.g., telecommunications providers) records that may reveal information about the news media or their sources. This Legal Sidebar provides a brief overview of law enforcement evidence-gathering tools and constitutional limitations on searches and seizures, a summary of the Privacy Protection Act and DOJ policies on obtaining evidence from and about the news media, and considerations for Congress.

Background on Evidence-Gathering Tools and Requirements

Law enforcement can obtain evidence of suspected offenses in several ways. Among the tools law enforcement can use to gather documentary materials are grand jury subpoenas, administrative subpoenas for certain types of investigations, and search and seizure warrants. When an investigating grand jury issues a subpoena, the recipient is obligated to provide any materials the subpoena demands, upon pain of contempt. There are various reasons law enforcement could choose not to use a subpoena, however:

Congressional Research Service
https://crsreports.congress.gov
LSB11393

perhaps because they believe it would be ineffective, or perhaps because their primary objective is to obtain evidence from someone with the potential right to refuse production as self-incriminating. In such cases and others, law enforcement may opt to conduct searches and seizures within certain constitutional constraints.

The Fourth Amendment imposes limits on searches and seizures by the government. Courts have determined that a Fourth Amendment search occurs if "the Government obtains information by physically intruding on a constitutionally protected area" or "when the government violates a subjective expectation of privacy that society recognizes as reasonable." The Supreme Court has said that "'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." If a law enforcement activity qualifies as a search or seizure, then the Fourth Amendment requires it to be reasonable, which ordinarily means that the search or seizure must be conducted pursuant to a warrant supported by probable cause and issued by a neutral magistrate (with some exceptions). To satisfy the probable cause standard to obtain a search warrant, law enforcement must generally show a likelihood that (1) the materials sought are "seizable by virtue of being connected with criminal activity," and (2) the materials "will be found in the place to be searched." The Fourth Amendment dictates that the resulting warrant must "particularly describ[e] the place to be searched, and the persons or things to be seized." Although a purpose of this requirement is to prohibit "general searches" permitting seizure of "one thing under a warrant describing another," in practice warrants sometimes use broad terms.

News Media Searches and *Zurcher v. Stanford Daily*

The Supreme Court addressed the application of the Fourth Amendment to searches of news media organizations in the 1978 case *Zurcher v. Stanford Daily*. In that case, a student newspaper reporter had photographed a clash between student demonstrators and the police. Law enforcement obtained and executed a warrant to search the student newspaper office for the photographic negatives and other evidence of alleged criminal battery by the demonstrators. The student journalists sued officials involved in the search, alleging among other things that the search had violated the students' First and Fourth Amendment rights. The District Court ruled in the students' favor, finding that the Fourth Amendment prohibited so-called "third-party searches"—in which law enforcement searches property whose owner or occupant is not suspected of committing a crime—unless obtaining evidence via subpoena would be "impracticable." The District Court further held that where the third party being searched is a newspaper, the First Amendment's guarantee of press freedom required that warrants should only issue when necessary to prevent destruction or concealment of evidence. The Court of Appeals affirmed.

The Supreme Court reversed, holding that the Fourth Amendment authorizes issuance of warrants "to search *any* property, whether or not occupied by a third party, at which there is probable cause to believe that fruits, instrumentalities, or evidence of a crime will be found." The Court reasoned that "[t]he critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." With respect to the students' First Amendment arguments, the Court acknowledged that searches have the potential to stifle expression. Nonetheless, the Court found that the Fourth Amendment's reasonableness and warrant requirements were adequate to protect press freedom. The Court declined to impose a higher standard for searches implicating First Amendment interests, finding the Fourth Amendment required at most that courts in such cases "apply the warrant requirements with particular exactitude," so as to "leave as little as possible to the discretion or whim of the officer in the field."

The Privacy Protection Act

Congress responded to *Zurcher* in 1980 by enacting the Privacy Protection Act (PPA), which limits the ability of federal, state, and local officials to conduct certain searches and seizures implicating First Amendment activities. A Senate Judiciary Committee Report (Senate Report) accompanying the PPA expressed concern that "the search warrant procedure in itself does not sufficiently protect the press and other innocent third parties." The Senate Report communicated a preference for "less intrusive means" of obtaining evidence from those groups, such as "voluntary compliance or a subpoena." According to the Senate Report, Congress's goal for the PPA was to create additional protections beyond Fourth Amendment warrant requirements for those engaged in "public communication." Generally speaking, the PPA's focus on public communication means that the law has been found to encompass journalists and news organizations, as well as others involved in disseminating information to the public. In practice, PPA litigation has stemmed from a variety of alleged searches and seizures, including of a newspaper's records and data taken during a newsroom raid; the videotapes of an individual arrested while recording protests; and a video camera confiscated from a "a self-described citizen-journalist" filming the interior of a municipal building.

The PPA creates protections for two categories of materials possessed by persons with the purpose of disseminating them to the public through interstate or foreign commerce. The first category, governed by 42 U.S.C. § 2000aa(a), encompasses *work product materials*. As one federal appellate court has construed the term, work product materials include "materials (other than property used to commit a criminal offense) that are to be communicated to the public and contain the authors' impressions, opinions, conclusions, or theories." According to the Senate Report, the term's focus on public communication was intended to exclude, for instance, "financial records of a business which are held by a member of the press," as contrasted with a report about those financial records created by a reporter or a "whistle-blower who intended that the contents of the report be made public." The Senate Report concluded that work product materials were deserving of the highest level of protection in the PPA because they "involve[] a creative, mental process."

The PPA therefore generally prohibits the search or seizure of work product materials if they are "possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication." There are three exceptions. First, the PPA in general does not limit the ability of law enforcement to conduct customs-related searches at U.S. borders or points of entry (a topic discussed in other CRS products). Second, the government may seize work product materials if "there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being." Third, work product materials may be searched or seized under what is sometimes called the "suspect exception" to the PPA, which applies if there is probable cause that "the person possessing such materials has committed or is committing the criminal offense to which the materials relate." As a default, the suspect exception does not apply to crimes constituting receipt, possession, or communication of the relevant materials. For example, if a reporter "knowingly receive[s] a stolen corporate report" and is charged with "receipt of stolen property," that would likely not justify the search and seizure of their work product materials under the PPA suspect exception. The statute does permit the search and seizure of work product materials under the suspect exception for certain subcategories of possession offenses, however, including the "receipt, possession, or communication" of child sexual abuse material, national defense information, classified information, and other restricted data.

The second category of information protected by the PPA is *documentary materials*, defined as "materials upon which information is recorded," which at least one federal court has found to encompass computer data. As with work product materials, the definition excludes contraband or materials used to commit crimes.

The PPA prohibition on searches and seizures of documentary materials largely mirrors the work product materials provision. As with work product materials, the government may search or seize documentary materials at borders, in connection to certain emergencies involving bodily injury or death, or pursuant to the suspect exception. Consistent with the Senate Judiciary Committee's view that documentary materials require less protection, however, Congress employed a "subpoena-first rule" for documentary materials. Therefore, the PPA contains two additional exceptions to the prohibition on searches and seizures of documentary materials that apply to certain instances where a subpoena would be, or has been, ineffective. One of the exceptions permits the search or seizure of documentary materials when it is reasonably believed that a subpoena "would result in the destruction, alteration, or concealment of such materials." The other exception permits searches and seizures in certain situations where documentary materials have not been provided in response to a "court order directing compliance" with a subpoena. In contrast, the PPA contains no such provisions permitting the search or seizure of work product materials where a subpoena has been, or would be, ineffective, perhaps reflecting "the [Senate Judiciary] Committee's belief that the creative process represented in work product is at the heart of First Amendment concerns and that the proper penalty for a journalist withholding his personal creation lies with the punishment of contempt."

The PPA creates a civil cause of action for damages against governmental entities or individual government actors who conduct searches or seizures in violation of the statute. In such a claim against individuals, however, it is a "complete defense" if "the officer or employee had a reasonable good faith belief in the lawfulness of his conduct." The PPA does not permit the exclusion of evidence from a criminal trial of a third party based on a PPA violation. The Senate Report took the position that "defendants can only claim the benefits of the exclusionary rule if their own Fourth Amendment rights are violated." The Committee was "sensitive to the danger" that the lack of an exclusionary remedy could result in the government "deliberately . . . invad[ing] one person's Fourth Amendment right in order to obtain evidence against another person," but it expressed an expectation that federal and state law enforcement would "not allow the provisions regarding exclusion of evidence . . . to be manipulated in bad faith by their officers and agents."

Digital News Media Data Stored with Third Parties

In *Zurcher*, the Supreme Court upheld law enforcement's ability to search non-suspect third parties for evidence of crimes. In the modern era, one common example of this practice is when law enforcement obtains customer data from telecommunications and technology companies—a process subject to its own constitutional and statutory considerations. The Fourth Amendment ordinarily does not protect information voluntarily shared with a third party, although the Supreme Court has recognized a notable exception involving certain long-term cell phone location data. Through the Stored Communications Act (SCA), Congress enacted additional statutory protections for particular categories of electronic communications and related metadata that are stored with third parties. Depending on the particular category of covered information, law enforcement may only compel disclosure under the SCA pursuant to a subpoena, court order, or warrant (with the latter providing the highest level of access to covered information). The SCA framework may be relevant when law enforcement seeks news media data stored with third-party providers.

Although at least one federal court has stated that documentary materials could encompass computer data, it does not appear that any reported federal cases have addressed how the PPA itself might treat electronic news media data stored with third-party providers, such as an email with a draft news story attached. Based on statutory text, it appears that for the PPA to protect against the seizure of news media materials held by third-party providers, the third-party provider would need to be in possession of the relevant materials with the purpose to engage in public dissemination (in the case of work product materials) or in possession in connection with such a purpose (in the case of documentary materials).

DOJ Policy on Obtaining News Media Information

DOJ first codified regulations related to subpoenas for news media materials in 1974; those regulations required and established guidelines for Attorney General approval of subpoenas to members of the news

media and required law enforcement to negotiate with the media prior to the issuance of subpoenas in certain circumstances. After passage of the PPA, DOJ updated its policies to include subpoenas for media telephone toll records and published regulations governing search warrants for documents held by disinterested third parties, as the law specifically required; those regulations stated that the PPA prohibited news media searches "except under specified circumstances," but did not establish separate rules governing search warrants for news media work product or documents.

In 2010, DOJ obtained a warrant to search a reporter's email in connection with a leak investigation. The affidavit submitted in connection with the government's warrant application stated there was evidence of the reporter breaking the law "at the very least, either as an aider, abettor and/or co-conspirator." Nonetheless, DOJ issued a statement to the effect that prosecutors had no intention of charging the reporter, and while the leaker was indicted, the reporter was never charged with a crime. Around the same time, DOJ obtained, via subpoena, records of Associated Press telephone activity in connection with another investigation. After these incidents generated public attention and congressional scrutiny, Attorney General Holder proposed and implemented changes to DOJ policy to strengthen protections for members of the news media in 2014. These changes included, among other things, an expansion of the policy to cover search warrants and court orders requiring production of news media data held by third-party providers. The new policy also included a provision restricting prosecutors from seeking search warrants for news media work product or documentary materials "under the PPA suspect exception," when the search's "sole purpose is to further the investigation of a person other than the member of the news media." By contrast, the policy allowed for use of subpoenas and certain court orders to obtain such materials where "the information sought is essential to the successful investigation or prosecution" of a crime.

The next major change to the DOJ policy on obtaining information from the news media came after reports emerged in 2021 that DOJ had obtained court orders to seize certain communication records for reporters in connection with reporting about potential Russian interference in the 2016 presidential election, possibly in violation of the news media policy. In July 2021, Attorney General Garland issued a memorandum to DOJ personnel which, among other things, amended the "sole purpose" provision. Where previously the policy stated that DOJ officials "should not be authorized" to seek news media search warrants for the sole purpose of obtaining evidence of crimes by third parties, the updated policy provided that DOJ officials "are not authorized" to do so.

In 2025, Attorney General Bondi issued a memorandum to DOJ personnel announcing changes to the news media policy. The updated policy, per the memorandum, "contemplates the use of subpoenas, court orders, and search warrants to compel production of information and testimony by and relating to members of the news media, subject to the [PPA] and the approval of the Department's leadership in some instances." The revised regulations removed the "sole purpose" restriction, restoring the possibility that search warrants could be executed on the news media for the sole purpose of obtaining evidence of crimes by third parties. As detailed above, the PPA still prohibits searching news media organizations or journalists for work product unless there is probable cause to believe the media member or organization has committed certain crimes, or where immediate seizure is necessary to prevent serious injury or death. (Documentary materials may be searched under these circumstances and when law enforcement determines that a subpoena would result in destruction of evidence or where a subpoena has not been complied with.) Nevertheless, at least one federal appellate court has determined that the government does not need to proactively articulate any PPA exception in its application for a search warrant. Law enforcement compliance with the PPA is instead typically adjudicated after the fact through a civil action for damages following the warrant's execution.

Considerations for Congress

With the PPA, Congress limited law enforcement's ability to search and seize news media work product and documentary materials. The Senate Report accompanying the PPA expressed particular expectations with respect to how law enforcement would balance its needs with press freedoms. Should Congress decide to change the balance, there are a number of adjustments it could make to the PPA. For example, should Congress seek to facilitate law enforcement access to news media materials, it has the option to broaden the scope of the suspect exception to the PPA, add additional exceptions, or repeal the PPA altogether. Alternatively, if Congress determines that the PPA is insufficiently protective of press freedoms, it could seek to strengthen the act by, among other things, eliminating certain exceptions, allowing an exclusionary remedy, limiting the applicability of the PPA's good faith defense, or requiring warrant applications implicating the PPA to specify the particular exception authorizing the search. Another option would be to codify the former DOJ regulation prohibiting searches of or about journalists where law enforcement's "sole purpose" was to gather evidence of offenses by third parties. Congress could also amend the PPA to expressly address news media materials in the possession of third-party telecommunications or internet services providers.

Congress also has the option to address press searches in the context of Federal Rule of Criminal Procedure 41, which governs search warrants for federal law enforcement. Rule 41 does not impose substantive restrictions on the government's review of seized electronic data, stating only that data storage devices may be seized and subsequently reviewed off-site to determine what data is responsive to the warrant. Congress has the option to limit law enforcement exposure to confidential source information that is outside the scope of the warrant by requiring initial review of materials seized from the news media to be conducted by a judicial officer or designee. For example, in some instances involving law enforcement seizure of potentially attorney-client privileged materials, courts have required review by a magistrate or special master. Another potential model outside the context of the Rules of Criminal Procedure is the statute imposing specific procedural requirements on the application for and execution of wiretap warrants.

In addition to search warrants, media organizations and even law enforcement have at times called on Congress to pass a comprehensive media shield law to insulate the press from other forms of compulsory process. Most states have their own media shield laws, but no such federal law exists. The 2007 Free Flow of Information Act and the 2023 PRESS Act are two examples of bills on the subject that Congress has considered; each passed the House but not the Senate.

Author Information

Cassandra J. Barnum
Legislative Attorney

Peter G. Berris
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of

Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.