

It is not the first time AP has come under government scrutiny. Of that the Justice Department has sought the phone records of reporters.

The news gathering organization, Associated Press has released information that the Justice Department “secretly obtained two months of telephone records of reporters and editors for The Associated Press” in what the news cooperative's top executive called a "massive and unprecedented intrusion" into how news organizations gather the news.

But it is hardly the first time the Justice Department has flexed its muscle to demand reporter source information. .

In September of 2008 Senator Charles Grassley (R-Iowa) asked then Attorney General John Ashcroft for “documents related to the government subpoena of an Associated Press reporter's telephone records.’

The focus of that investigation included the subpoena of now Washington Times editor John Solomon in an attempt to identify law enforcement officials that had given information on a wiretap intercept of NJ Sen. Robert Torricelli’s conversation to the Associated Press.

At that time, Grassley wrote to Ashcroft saying:

"I know you share with me the belief that the protection of the freedom of the press is a central pillar of our democracy. There is no question that efforts by the Justice Department to subpoena the records of a reporter should

be done with caution and only when the needs of justice are great."

"Going after reporters' telephone records with a subpoena should happen almost never," Grassley stated in a further written statement. "When it does, the bar should be very high and the circumstances extraordinary. It should never happen until every other avenue is exhausted."

The to the 2001 request was strong with The Washington Post editorializing that, "The Justice Department has a legitimate interest in uncovering the source of leaks in sensitive investigations. ... So if officials who saw the AP's story wanted to know who was responsible, the instinct was understandable. It was, however, an instinct that should have been resisted or pursued by other means."

In May of 2006, Time magazine was ordered to turn over documents relating to the defense of vice president Dick Cheney's former Chief of Staff, I. Lewis "Scooter" Libby. **The order by U.S. District Reggie B. Walton** said that, citing a lack of relevancy, former Time reporter Miller would not have to provide notebooks, calendars, or phone records, to lawyers for Libby.

Walton further opined, "The First Amendment does not protect a news reporter or that reporter's news organization from producing documents ... in a criminal case,"

In 2004 US Attorney Patrick Fitzgerald issued subpoenas

for the phone records of New York Times reporters Philip Shenon and Judith Miller. Fitzgerald asserted that the reporters alerted Islamic Charities, under investigation for funding terrorist operations, to a 2001 planned government raid of their offices and blocking of assets. (["2nd Circuit OKs look at *Times*' phone records,"](#) Associated Press, Aug. 1, 2006)

On Feb. 24, 2005, a federal judge ruled in favor of the *Times*, saying that the paper had a First Amendment right to protect the confidentiality of its sources by refusing to give up its phone records to the government. However, on Aug. 1, 2006, a divided three-judge panel of the 2nd Circuit overturned the lower court's decision and ruled that the government could inspect the reporters' phone records.

This most recent effort by the government to obtain reporter's phone records included incoming and outgoing calls, including the length of each call, for both work and personal phone number of reporters in AP offices in New York, Washington and Hartford, Conn. and the AP reporters phones in the House of Representatives press gallery.

The government sweep resulted in the gathering of records from more than 20 separate telephone lines assigned to AP and AP journalists during the period of April and May of 2012.

The Justice Department offers no "explanation for the seizure" according to AP President and CEO Gary Pruitt

who calls the seizure “extraordinary.”

Pruitt wrote AG Eric Holder saying:

"There can be no possible justification for such an overbroad collection of the telephone communications of The Associated Press and its reporters. These records potentially reveal communications with confidential sources across all of the newsgathering activities undertaken by the AP during a two-month period, provide a road map to AP's newsgathering operations, and disclose information about AP's activities and operations that the government has no conceivable right to know," Pruitt said.

Pruitt is asking for the destruction of all records being held by the AG.

The Government is not saying why it sought the records, other than to conduct a criminal investigation as to where an AP reporter gathered leaked information in a May 7, 2012 story concerning a foiled Yemen terror action stopping an airliner bomb plot scheduled for around the one-year anniversary of the May 2, 2011, killing of Osama bin Laden.

The plot was significant because the White House had told the public it had "no credible information that terrorist organizations, including al-Qaida, are plotting attacks in the U.S. to coincide with the (May 2) anniversary of bin Laden's death."

Associated Press had, at the request of the government

citing that release of would jeopardize national security, held the story. AP then held the story until government officials told the news agency that releasing the story was no longer an endangerment to national security.

CIA director John Brennan talked about the AP story and leaks investigation in written testimony to the Senate:

"The irresponsible and damaging leak of classified information was made ... when someone informed the Associated Press that the U.S. Government had intercepted an IED (improvised explosive device) that was supposed to be used in an attack and that the U.S. Government currently had that IED in its possession and was analyzing it," he said.

He also defended the White House's plan to discuss the plot immediately afterward. "Once someone leaked information about interdiction of the IED and that the IED was actually in our possession, it was imperative to inform the American people consistent with Government policy that there was never any danger to the American people associated with this al-Qa'ida plot," Brennan noted.

Brennan has said that the FBI investigated whether he was AP's source, which he has denied calling the release of information about the terror plot to the media an "unauthorized and dangerous disclosure of classified information."

In 2001, when Solomon's records were subpoenaed

Investigative Editors and Reporters (IRE) executive director Brant Houston wrote Ashcroft concluding that

“While we understand that the Attorney General has disqualified himself from the AP subpoena, we nevertheless believe that this incident may be part of an unsound trend and reflects a change of policy that has occurred at the Department. We seek assurance that the Justice Department will take heed in the future to give proper deference and consideration of the First Amendment and qualified privilege.” (see complete letter and DOJ response pdf above)

Reporters do not enjoy any current law that gives journalists protection of their sources. The First Amendment states that *"Congress shall make no law...abridging the freedom of speech, or of the press..."* which means that news media should not be subject to governmental censorship. That the government does cannot block the press from publishing a story.

That does not, however, guarantee any protection for the newsgathering or records that a journalist may develop in the creation of that story.