

JOURNALIST RECORDS FROM THE “LAST FIVE YEARS”

Some weeks ago, there was some concern raised by DOJ's response to an October 10, 2017 letter from Ron Wyden, written in the wake of an August Jeff Sessions press conference asking how many times DOJ has seized journalists' records.

1. For each of the past five years, how many times has DOJ used subpoenas, search warrants, national security letters, or any other form of legal process authorized by a court to target members of the news media in the United States and American journalists abroad to seek their (a) communications records, (b) geo-location information, or (c) the content of their communications? Please provide statistics for each form of legal process.
2. Has DOJ revised the 2015 regulations, or made any other changes to internal procedures governing investigations of journalists since January 20, 2017? If yes, please provide me with a copy.

In response, in a letter claiming to provide all the “requests for information from January 2012

to the present,” DOJ pointed to the 2013 collection of AP records and the 2014 subpoena of James Risen. It also claimed,

The Federal Bureau of Investigation does not currently use national security letters to advance media leak investigations.

DOJ’s letter was written after Ali Watkins received notice, on February 13, that her phone and email records had been seized in the investigation of James Wolfe. It also comes after DOJ subpoenaed the Twitter information of Dissent Doe and Popehat last spring in conjunction with DOJ’s dumb persecution of Justin Shafer, both of whom have websites providing original content.

Whether DOJ has gotten more aggressive about seizing reporters’ phone records or content is a question I’m unsurprisingly very interested in.

All that said, DOJ may simply be playing word games, at least thus far.

Note, first of all, that Wyden only asked for the “past five years.” While DOJ claimed to present records spanning into the present, had DOJ responded to the actual request, it might have only presented past requests. Additionally, if Watkins got 90 day notice of her records being seized, the request itself would have taken place after the Wyden request.

While more specious, the May 2017 Twitter subpoena may have been deemed to be the same year as Wyden’s request.

Note three other details. First, Wyden’s letter (though not DOJ’s response) describes “targeting” journalists. Obviously, that word has a specific meaning in the context of surveillance, and I could see DOJ claiming that the Shafer investigation, for example, targeted Shafer, not his Tweeps.

Additionally, Wyden only asks about US news media and US journalists overseas. That’s not

going to include an obvious target (whether or not DOJ still considers him a publisher): Julian Assange, an Australian publisher living in what counts as Ecuadoran territory.

Finally, note that DOJ specifies they don't use NSLs for "media leak investigations." That, too, has a specific meaning, one that probably doesn't include the Shafer investigation on trumped up cyberstalking charges.

The Watkins case, especially, demands explanation. But finding it might just require rewording the questions.