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May 22, 2013

The Honorable James M. Cole
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Deputy Attorney General Cole:

We are writing to you in your capacity as Acting Attorney General for a national security leaks investigation in which the Justice Department subpoenaed two months of telephone call records of reporters and editors for the Associated Press (AP). According to media reports, the Justice Department obtained telephone records for the main AP telephone number in the U.S. House of Representatives Press Gallery, for AP office numbers in New York City, Washington, D.C., and Hartford, Connecticut, and for the work and personal phone numbers of individual reporters. In total, the Justice Department obtained call records for at least 20 separate phone lines during the months of April and May of last year. According to the AP, more than 100 journalists work in the offices where the phones are located.

At a press conference on May 14, 2013, and before a House Judiciary Committee hearing on May 15, 2013, Attorney General Eric Holder stated that the subpoenas were issued in an investigation into leaks of information relating to a matter of national security. Attorney General Holder also revealed that he recused himself from the investigation because he had been interviewed by the FBI in connection with the leaks, and "because I thought it would be inappropriate and have a bad appearance to be a person who was a fact witness in the case to actually lead the investigation, given the fact, unlike Mr. Cole, that I have a greater interaction with members of the press than he does."[1]

In a letter dated May 14, 2013, you informed Mr. Gary Pruitt, AP President and CEO, that the criminal investigation into the unauthorized disclosure of classified information was opened in May 2012. Your letter also restated some of the regulations found in 28 CFR §50.10

[1] Transcript of House Judiciary Committee Hearing on Oversight of the United States Department of Justice at page 31, line 644, May 15, 2013.

and incorporated into the U.S. Attorney's manual regarding the procedures that must be followed when the Justice Department seeks to subpoena information belonging to journalists. The regulations require the Justice Department to take all reasonable alternative investigative steps before considering subpoenas for telephone toll records of any member of the media.[2] In addition, the regulations require negotiations with the media to be pursued in all cases involving such subpoenas where the Assistant Attorney General determines that such negotiations would not pose "a substantial threat to the integrity of the investigation."[3] There is also a requirement that the subpoenas be drawn as narrowly as possible, namely that they be directed at relevant information regarding a limited subject matter and should cover a reasonably limited time period.[4]

The AP reports that five of the reporters and one of the editors targeted by the Justice Department were involved in a May 7, 2012, story about a failed airline bomb plot originating in Yemen. According to media reports, the AP held the story back for a week upon the request of the CIA, and only published the story once the CIA indicated that it no longer had such concerns about risks to national security.[5]

At the House Judiciary Committee oversight hearing, Attorney General Holder repeatedly stated that he could not answer questions about the subpoenas because he lacked any knowledge of the investigation due to his recusal. As Acting Attorney General for this investigation, you are in the best position to answer our questions in this matter. Therefore, please respond to the following questions as soon as possible, but by no later than May 31, 2013:

1. On what date did Attorney General Holder recuse himself from this investigation?

2. How did you learn of Attorney General Holder's recusal? Did Attorney General Holder personally inform you of his intent to recuse himself from the investigation? Was his recusal made in writing or memorialized in any manner?

3. Did every Justice Department official or employee who possessed the improperly disclosed information at issue in this investigation recuse themselves? Did every Department official or employee interviewed by the FBI in connection with this investigation recuse themselves from this investigation? Please provide a list of all Justice Department officials or employees who recused themselves from this investigation.

4. Do you also possess the improperly disclosed information at issue in this investigation? If so, were you interviewed by the FBI in connection with this investigation?

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[2] 28 CFR §50.10(b)
[3] *See* 28 CFR §50.10(d)
[4] *See* 28 CFR §50.10(g)(1)
[5] *Some Question Whether AP Leak on Al-Qaeda Plot Put U.S. at Risk*, The Washington Post, May 15, 2013

5. If you do possess the information at issue in this investigation, why were you not required to also recuse yourself? Please provide us with any and all applicable statutes, regulations or internal Justice Department policies that govern the recusal of a Department official or employee from an investigation.

6. Attorney General Holder testified that he was "95% percent certain, that the Deputy Attorney General, acting in my stead, was the one who authorized the subpoena....." He then clarified that he believed you did personally approve the subpoena requests. Please confirm that you did, in fact, personally approve and sign the subpoena requests for AP telephone toll records.

7. The Justice Department issued subpoenas for several telephone lines that are reportedly accessible to and used by a large number of reporters. What steps did the Department take, if any, to narrow the scope of the telephone toll records request to ensure that only those telephone toll records made by the subject reporters and staff were obtained?

8. The Justice Department issued subpoenas for a telephone line located in the U.S. House of Representatives Press Gallery. Are there any statutes, regulations or internal Justice Department policies applicable to requests for telephone toll records for a telephone located inside the U.S. Capitol complex, even if such telephone line is paid for by a media outlet?

9. 28 CFR §50.10(b) requires the Department to take all reasonable alternative investigative steps prior to obtaining telephone toll records pertaining to a member of the media. Please describe all of the alternative investigative steps the Department took in this investigation prior to issuing the subpoenas for the AP telephone toll records.

10. It has been reported that the AP refrained from releasing the story of the Yemeni bomb plot for a week until Obama administration officials confirmed that doing so would not jeopardize national security interests. This indicates a willingness on the part of the AP to work with the Justice Department on issues affecting national security. Given this, why did the Department not seek the AP's assistance with its request or provide notice to the AP prior to issuing the subpoenas?

11. 28 CFR §50.10(d) requires prior notice to a media outlet where "the responsible Assistant Attorney General determines that such negotiations [with the media] would not pose a substantial threat to the integrity of the investigation..." Is it the Department's position that a substantial threat to the integrity of the investigation existed in this instance? Please provide a detailed explanation of the facts and circumstances in this case that justified foregoing prior notice to the AP under the "substantial threat" exception.

Thank you for your cooperation in responding to our questions. Please contact Samuel Ramer, Senior Counsel for the Subcommittee on Crime, Terrorism, Homeland Security and Investigations at sam.ramer@mail.house.gov with any questions. We look forward to your prompt reply.

Sincerely,

BOB GOODLATTE
Chairman
House Committee on the Judiciary

F. JAMES SENSENBRENNER, Jr.
Chairman
Subcommittee on Crime, Terrorism
Homeland Security and Investigations

LAMAR SMITH
Member
House Committee on the Judiciary

SPENCER BACHUS
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J. RANDY FORBES
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Member
House Committee on the Judiciary

RON DeSANTIS
Member
House Committee on the Judiciary

DARRELL E. ISSA
Member
House Committee on the Judiciary

cc: The Honorable John Conyers, Ranking Member
cc: The Honorable Bobby Scott, Ranking Member, Subcommittee on Crime, Terrorism, Homeland Security and Investigations