



Written by [Jack Kenny](#) on May 31, 2013

Behind Eric Holder's Closed Door, News Execs Plead Case for Free Press

Representatives of several major news organizations went behind closed doors Thursday in an off-the-record discussion with Attorney General Eric Holder on the rules governing Department of Justice searches of news media telephone records and e-mail in investigations of news leaks.

Holder and Deputy Attorney General James Cole are "reaching out to editors and counsels for news organizations about how to strike what they called 'the balance' between protecting the flow of information and journalists' ability to do our jobs and what they described as national security damage," according to [Politico](#) editor-in-chief John Harris, one of the media executives who attended the closed-door meeting in Cole's Justice Department office.



Other media representatives in attendance were Martin Baron, executive editor of the *Washington Post*; Gerald Seib, the *Wall Street Journal's* Washington bureau chief; Jane Mayer, staff writer for *The New Yorker* magazine; and Jim Warren, the Washington bureau chief for the *New York Daily News*. Other news organizations that were invited but did not attend were the Associated Press, the *New York Times*, the *Huffington Post*, CNN, Fox News, Reuters, NBC News, CBS News, and the McClatchy news service. Members of those organizations cited the AG's insistence that participants might not report on the meeting as the reason for not attending.

"They don't help us inform the public," McClatchy Washington bureau chief James Asher said of off-the-record sessions in an [interview](#) with Poynter News University. "This one seems designed mostly to make a public relations point and not a substantive one. If the government wants to justify its pursuit of journalists, they ought to do it in public."

"If it is not on the record, AP will not attend," an Associated Press spokesperson [told](#) *Huffington Post's* Michael Calderone, adding that AP would offer its views on how regulations should be updated in an open letter. "We would expect AP attorneys to be included in any planned meetings between the Attorney General's office and media lawyers on the legal specifics."

"It isn't appropriate for us to attend an off the record meeting with the attorney general," *New York Times* Executive Editor Jill Abramson told Calderone. "Our Washington bureau is aggressively covering the department's handling of leak investigations at this time." The *Times* also said at least two active leak investigations involve *Times* reporters

Following news stories about the seizure of AP phone records and the e-mail of Fox News chief Washington correspondent James Rosen, President Obama announced he was assigning Holder the task



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of coming up with proposals for revising Justice Department rules governing access to media records. Holder has until July 12 to make his recommendations. Thursday's meeting was the first of several the attorney general has planned for getting input from media outlets across the country. Another meeting was scheduled for Friday. *Huffington Post* Washington Bureau Chief Ryan Grim was among the news executives who voiced objection to the off-the record requirement for the meetings. "A conversation specifically about the freedom of the press should be an open one," Grim [told](#) CNN. "We have a responsibility not to betray that."

Others said they would attend despite the condition that they not report on it. "ABC News will attend the meeting and press for that conversation to be put on the record," a spokesperson told the Washington journal [The Hill](#). "I prefer that any meeting be on the record," *Washington Post* Editor-in-Chief Marty Baron stated, adding, "That said, journalists routinely participate in off-the-record sessions, whether they prefer those conditions or not, and then continue to report on events. I am going to this meeting in order to represent our interests as journalists and to raise our concerns. I'll also listen to what the Attorney General has to say. I trust that our journalists will report on this as vigorously as they would any other subject."

White House spokesman Josh Earnest denied it was hypocritical to insist that a meeting about press freedom be off the record.

"The AG is interested in having a constructive policy discussion with professional journalists about a subject most people think is a complex policy issue," Earnest told reporters aboard Air Force One.

"This format will best facilitate the candid, free-flowing discussions we hope to have in order to bring about meaningful engagement," said a Justice Department official quoted in the Erik Wemple [blog](#) at the *Washington Post*. The official issued the statement on the condition that he would not be named.

At the end of the session, Justice Department officials agreed that the journalists could mention publicly and in general some of the ideas that were discussed, *Politico* reported. According to one journalist *Politico* quoted without naming, the media representatives were unanimous in telling the Justice Department officials that zeal for law enforcement was trespassing on the freedom of the press.

"The guidelines require a balance between law enforcement and freedom of the press," the journalist said, "and we all argued that the balance was out of kilter, with the national security and law enforcement interests basically overwhelming the public's right to get information."

The *New York Times*, relying on ["an adviser familiar with the deliberations,"](#) said Holder has discussed expanding a requirement for high-level review of proposed subpoenas for reporters' phone records to include e-mails as well. Thursday's discussion focused on whether to tighten the rule about giving advance notice to news organizations before their records are subpoenaed, allowing them to negotiate over its scope or challenge it in court, the *Times* reported. Both the AP phone records and Rosen's e-mails were searched without advance notice. The current rule for calling log subpoenas requires prior notice, provided a high-level Justice Department official "determines that such negotiations would not pose a substantial threat to the integrity of the investigation." As the *Times* noted, "It is ambiguous whether that means prior notification is the general presumption or the exception."

A lawyer for Verizon told the *Times* this week that the company would not say whether it had turned over calling records for *Times* reporters, since the company complies with Justice Department requests not to tell its customers when phone records have been subpoenaed.

Politico ran its account of Thursday's meeting under the headline: "Eric Holder to Media: I Get It." But



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is unclear just what Holder gets about objections to government surveillance of news organizations or what the news media and the public will be getting from the Justice Department concerning the freedom of the press and the people's right to know what their government is doing.

"I didn't come away with a precise understanding of how those guidelines might change, and I didn't have impression they were settled in their own mind," Harris said of the attorney general and his deputy.

"I think it was overall a constructive conversation, but whether it results in real change remains to be seen," Mayer of *The New Yorker* told *Politico*. "I felt all the journalists there spoke up well about the issues, and pulled no punches."

Photo of Attorney General Eric Holder: AP Images



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