



Written by [Jack Kenny](#) on May 14, 2013

Seizure of AP Phone Records Said to “Shock the American Conscience”

News that the U.S. Department of Justice secretly obtained two months of telephone records of reporters and editors working for the Associated Press has triggered a storm of protest from news organizations and civil libertarians and placed another potential scandal at the door of a White House already on the defensive over allegations of a cover-up in the Benghazi investigation and the IRS targeting conservative groups for added scrutiny and tax audits.



In what its top executive called a [“massive and unprecedented intrusion”](#) by the government into news gathering activities, the AP reported Monday that records were seized of calls from both office and personal phone numbers of individual reporters, and from general AP office numbers in New York, Washington, D.C., and Hartford, Connecticut, in addition to the main number for the AP in the House of Representatives press gallery. Records for more than 20 different phone lines assigned to the AP and its journalists were seized for the months of April and May, 2012, according to AP lawyers. More than 100 journalists work in the offices where the phone lines were targeted, the news agency said.

Ronald Machen, the U.S. attorney in Washington, sent notice of the action in a letter the AP received on Friday. The records were obtained through Justice Department subpoenas, though it is not known whether a judge or grand jury authorized the subpoenas, the AP said.

William Miller, a spokesman for Machen, told the [New York Times](#) that in general the U.S. attorney follows “all applicable laws, federal regulations and Department of Justice policies when issuing subpoenas for phone records of media organizations.” He would not address questions about the seizure of the AP records, however. “We do not comment on ongoing criminal investigations,” Miller said in an e-mail to the *Times*.

Machen’s letter did not say why the records were taken, but government officials have previously said in public that the U.S. attorney in Washington is conducting a criminal investigation into who may have provided information for a May 7, 2012, AP story about what was believed to be a foiled terror plot. The story disclosed details of a CIA operation in Yemen that supposedly stopped an al-Qaeda plot to detonate a bomb on an airplane bound for the United States. Five reporters and an editor who worked on that story were among those whose phone records were seized, the AP said.

The alleged bomber was later [revealed](#) to be a CIA spy attempting to penetrate the Yemen-based al-Qaeda in the Arabian Peninsula.

John Brennan, then the president’s counterterrorism advisor and currently head of the CIA, said in written testimony to the Senate that an “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.”



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The Associated Press said Monday it had delayed reporting the story at the request of government officials, and published it only after officials said publication would no longer jeopardize national security. The story went out while the Obama administration continued to request that it be withheld until the administration could make an official announcement, the AP said.

In a strongly worded letter of protest to Attorney General Eric Holder, AP President and Chief Executive Officer Gary Pruitt demanded the return of the phone records and destruction of all copies.

“There can be no possible justification for such an overbroad collection of the telephone communications of The Associated Press and its reporters,” Pruitt wrote. “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.”

Holder announced last June the Justice Department was conducting two investigations of news leaks, one into revelations about the alleged bombing plot in Yemen, and the other into reports of U.S. cyber warfare against Iran’s nuclear program.

The New York Times said Monday the investigation into the cyberwar leaks is believed to be focused on *Times* reporter David Sanger, who has written news stories and a book about a joint American-Israeli effort to sabotage Iranian nuclear centrifuges with the so-called Stuxnet virus. The Justice Department would not respond to the *Times*’ query as to whether it had taken steps in the *Times* investigation similar to the seizure of the AP phone records. A lawyer for the newspapers said he had had no contact of any sort from the government.

Holder’s announcement last June came at a time when some members of Congress were calling for a crackdown on leaks, following news stories about the bomb plot, the cyberwar efforts, the president’s “kill list” for targeting suspected terrorists with drone strikes, and revelations about the raid that killed al-Qaeda leader Osama bin Laden. Republicans charged the Obama administration with leaking the information in an election year to enhance the president’s reputation for prosecuting the war on terror, a charge denied at the White House. Thirty-one Republican senators signed a letter to Holder, calling on the attorney general to immediately appoint a special counsel to investigate national security leaks from the executive branch. The GOP lawmakers named National Security Advisor Thomas Donilon as a likely source of leaks for Sanger’s book, *Confront and Conceal*.

Arnie Robbins, executive director of the American Society of News Editors, called the seizure of AP phone records “a disturbing affront to a free press. It’s also troubling because it is consistent with perhaps the most aggressive administration ever against reporters doing their jobs — providing information that citizens need to know about our government.” The Obama administration has prosecuted six criminal cases against people accused of revealing classified information, more than all previous administrations combined, the AP said. According to the British publication [The Guardian](#), those prosecuted have included a former CIA officer for revealing details to journalists about waterboarding, and a former member of the National Security Agency for disclosing that the agency was about to spend millions of dollars on a software program that he said was more expensive than a similar program developed in-house.

The president’s press secretary, Jay Carney, said the White House was not behind the seizure of the AP phone records.



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“Other than press reports, we have no knowledge of any attempt by the Justice Department to seek phone records of the A.P.,” he said, adding, “We are not involved in decisions made in connection with criminal investigations.”

The Newspaper Association of America issued a statement saying the Justice Department actions “shock the American conscience and violate the critical freedom of the press protected by the U.S. Constitution and the Bill of Rights.”

“The attorney general must explain the Justice Department’s actions to the public so that we can make sure this kind of press intimidation does not happen again,” said Laura Murphy, the director of American Civil Liberty Union’s Washington legislative office.

The seizure was roundly criticized on Capitol Hill as well. “The First Amendment is first for a reason,” said House Speaker John Boehner. “If the Obama Administration is going after reporters’ phone records, they better have a damned good explanation.”

“The Fourth Amendment is not just a protection against unreasonable searches and seizures, it is a fundamental protection for the First Amendment and all other Constitutional rights,” said Sen. Rand Paul (R-Ky.). “It sets a high bar — a warrant — for the government to take actions that could chill exercise of any of those rights. We must guard it with all the vigor that we guard other constitutional protections.”

Photo of AP’s New York headquarters: AP Images



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