

Privacy Protection Updates Act

The Privacy Protection Act of 1980 protects journalists against government searches and seizures of their documentary and work-product materials. Passed by Congress in response to such search warrants being allowed by *Zurcher v. Stanford Daily* (1978), the Privacy Protection Act is grounded in the concern about the chilling effect of government searches and seizures of journalists' records. The Privacy Protection Act requires less intrusive methods, except in certain narrow circumstances.

However, loopholes in the law have been abused by multiple presidential administrations, including in the recent and unprecedented raid of a Washington Post reporter's home as part of a leak investigation. In this case, the Department of Justice obtained a search warrant without informing the reviewing judge of the existence of the Privacy Protection Act, despite clear evidence that the heightened protections under the Privacy Protection Act were likely to apply. Further, even if a judge finds that a search or seizure is unlawful under the Privacy Protection Act, current law provides no opportunity for an impacted journalist to suppress protected materials searched or seized in violation of the law, meaning that those illegally obtained materials could still be used by the government in court.

Bill Summary:

The Privacy Protection Updates Act makes a number of critical changes to close these loopholes and ensure strong protections for journalists against unreasonable searches and seizures of their documentary materials or work product materials.

Specifically, the bill would:

- Require the government to disclose the existence of the Privacy Protection Act and prove that an exception applies, if the government wants to search or seize a journalist's materials with a warrant.
- Maintain the existing exception for exigent circumstances, but establish a new process for mandatory judicial review within 48 hours of the emergency seizures of a journalist's materials to determine whether the search or seizure was justified and ensure accountability for government misuse of exigency exceptions.
- Create a process for suppression of journalist records that are illegally searched or seized.
- Clarify that the Privacy Protection Act applies to journalist records stored on the cloud.

Endorsements:

The Privacy Protection Updates Act has been endorsed by the Committee to Protect Journalists, Demand Progress, Freedom of the Press Foundation, and Protect the 1st Foundation.