



United States Mission to the OSCE

Response to the Russian Federation on the Issue of Privacy Protections and Freedom of Speech

As delivered by Chargé d'Affaires Gary Robbins
to the Permanent Council, Vienna
June 6, 2013

President Obama commented on May 23 about protecting civil liberties, including freedom of expression and privacy in the United States, and protecting national security.

He stated, “[t]he Justice Department’s investigation of national security leaks offers a recent example of the challenges involved in striking the right balance between our security and our open society. As Commander-in Chief, I believe we must keep information secret that protects our operations and our people in the field. To do so, we must enforce consequences for those who break the law and breach their commitment to protect classified information. But a free press is also essential for our democracy. I am troubled by the possibility that leak investigations may chill the investigative journalism that holds government accountable.”

President Obama went on to call upon Congress to pass a media shield law to guard against government overreach.

To be clear, and contrary to the earlier statement in this body by the Russian Federation, the United States Department of Justice did not in fact “tap” or “intercept” phone calls of the Associated Press. Following established laws – all of which are public – and Justice Department policies, it sought and obtained records of telephone calls in connection with an ongoing criminal investigation. According to Deputy Attorney General James Cole, the Justice Department “did not seek the content of any calls.” In fact, the Department of Justice has transparent guidelines on when and how to obtain such records.

Department of Justice policy provides that subpoenas for toll records associated with media organizations should be requested only in certain circumstances. First, there must be reasonable grounds to believe that a federal crime has been committed and that the information sought by the subpoena is essential to the success of the investigation. Second, the Department of Justice must take all reasonable alternative investigative steps before even considering the issuance of a subpoena for toll records related to a media organization. Third, any subpoena that is issued should be drawn as narrowly as possible, be directed at relevant information regarding a limited subject matter, and cover a reasonably limited time period. The Department of Justice takes these requirements seriously and followed them in the matter to which the Russian Federation’s statement refers.

Consistent with Department policy, the subpoenas seeking toll records associated with AP personnel were limited in time and scope. They sought only toll records and did not seek the

content of any calls. We note that toll records—not unlike a telephone bill—merely provide a list of incoming and outgoing calls, including the time, date, and duration of each call. The toll records have been and will remain closely held. They have been used solely for purposes of the ongoing investigation, and access has been and will continue to be restricted accordingly.

Given concerns raised by members of the press in light of the subpoena of AP's phone records, the Attorney General has agreed to review the guidelines that govern the issuance of subpoenas to the news media and has met with members of media organizations to hear their concerns as part of this review.

Thank you, Mr. Chairman.