

COORDINATION WITH U.S. ATTORNEYS' OFFICES FOR RELEASE OF INFORMATION

I. Purpose

This directive establishes the Department of Homeland Security (DHS) policy for coordination with U.S. Attorneys' Offices for release of information.

II. Scope

This directive applies to all DHS organizational elements.

III. Authorities

This directive is governed by numerous Public Laws and national policy, such as:

- A. Freedom of Information Act, 5 USC 552.

IV. Definitions

A. **Criminal proceeding**: The performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

B. **Civil proceeding**: The phrase civil law enforcement proceeding means a civil action or proceeding before any court or other tribunal brought by the Department of Justice under the authority of the United States to enforce federal laws or regulations, and includes proceedings related to the enforcement of an administrative subpoena or summons or civil investigative demand.

V. Responsibilities

A. The **Assistant Secretary for Public Affairs**: shall have responsibility for all aspects of this directive.

B. **All Under Secretaries and Designated DHS Officials**: shall be responsible for compliance with this directive in their organizational element.

VI. Policy & Procedures

A. **Policy**:

The disclosure of official information to the news media will be fully coordinated with the DHS Office of Public Affairs and its organizational elements under the following guidelines:

1. Criminal Proceedings:
 - a. In matters involving pre-complaint or pre-indictment arrests and seizures, officials shall coordinate with all affected offices within the department of homeland security and its component agencies, if applicable.
 - b. In matters involving post-complaint or post-indictment arrests and seizures made during the execution of search warrants, all statements and news releases by DHS and its organizational elements will be coordinated with the appropriate U.S. Attorney prior to release.
 - c. No information shall be disclosed which details grand jury proceedings or prejudices either potential or on-going criminal actions;
 - d. At no time shall any personnel of DHS and its organizational elements furnish any statement or information to influence the outcome of a trial. DHS spokespersons or their surrogates may make the following types of information public on a case by case basis in consultation with counsel:
 - (1) The name, age, residence, employment, marital status, and similar background information of the defendant(s).
 - (2) The substance or text of the charge, such as a complaint, indictment, or information.
 - (3) The identity of the investigating and/or arresting agency(s) and the length or scope of an investigation.

(4) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and, if deemed appropriate, a description of physical items seized at the time of arrest.

e. DHS personnel will refrain from making available the following information:

- (1) Observations about a defendant's character.
- (2) Statements, admissions, confessions, or alibis attributable to a defendant.
- (3) Details of investigative techniques and intelligence profiles.
- (4) Statements concerning the identity, credibility, or testimony of prospective witnesses.
- (5) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial. However, this generally does not include quantities or types of contraband seized.
- (6) Staffing levels of specific enforcement units.
- (7) Names of juvenile offenders.

2. Media Requests To Photograph Defendant:

a. Photographing of defendants by news media representatives in public places or in transit is neither encouraged nor discouraged, but the accused shall not be posed. Upon request of the media, mug shots of defendants or suspects may be provided in the interest of public safety, i.e. Fugitives, developing investigative leads, crime deterrence, etc.

b. When news organizations arrive at the scene of an enforcement action in progress, without prior DHS knowledge, DHS personnel shall not interfere with the photographing of defendants in public places or in transport. Additionally, other than by reason of a court order, DHS personnel shall not prevent the lawful efforts of the news media to photograph, tape, record or televise an enforcement action from outside of its designated perimeter so long as the DHS controlled area is not breached.

c. Decisions to allow any photographing, videotaping or filming by the media at federal inspection stations shall be made in consultation with the servicing public affairs officer and with the concurrence and control of the appropriate supervisor.

d. Detention of news media members and/or the detention of recording equipment, film, video, or audio tape, or notes is prohibited unless the media has violated federal law or has endangered the safety of law enforcement officers or civilians.

3. Enforcement Actions - Arrests, Seizures, Search Warrants, Surveillance:

a. In cases in which a search warrant or arrest warrant is to be executed, no advance information shall be provided to the news media about actions to be taken by law enforcement personnel, nor shall media representatives be solicited or invited to be present. This prohibition will also apply to operations in preparation for the execution of warrants and to any multi-agency action in which DHS personnel participate.

b. If the media arrive at the scene of enforcement actions, the officer in charge (or designee) or the public affairs officer shall be the only authorized spokespersons within the previously stated guidelines. Authorized spokespersons may provide information to the news media and general public, provided that dissemination of such information does not endanger public safety or the integrity of the enforcement action and does not compromise the identity of participating law enforcement officers.

4. Civil Proceedings:

a. Guidelines for civil cases (information concerning fines, penalties and forfeitures cases) in 19 C.F.R. 103.32 shall be followed.

b. After the penalty proceeding is closed by payment of the claim amount, payment of a mitigated amount or judicial action, the identity of the violator, the section of the law violated, the amount of the penalty assessed, loss of revenue, mitigated amount (if applicable), and the amount of money paid may be disclosed to the public by the appropriate Public Affairs Officer or other designated DHS officer.

c. Public disclosure of any other item of information concerning such cases, whether open or closed, shall only be made in conformance with the procedures provided in 103.5 (Freedom of Information Act).

B. **Procedures**: All requests for information will be fully coordinated with DHS Office of Public Affairs.

C. **Questions or Concerns Regarding the Process**: Any questions or concerns regarding this directive should be addressed to the Office of Public Affairs.