

To law enforcement personnel with a warrant to search the premises of this news organization:

Federal law expressly restricts your authority to search news organizations including this one. I ask that you refrain from your search and instead wait for me to contact counsel.

If you proceed to search and do so in violation of the law, you will expose your agency and yourself to liability. In general, the law requires you to seek information from a news organization through use of a subpoena rather than a search warrant.

The law, the federal Privacy Protection Act of 1980 (the “PPA”), was enacted to protect the flow of information to journalists by prohibiting law enforcement, including local agencies, from searching for or seizing journalistic work product or documentary materials, except in certain narrow circumstances.¹

Such circumstances, which include searching “to prevent the death of, or serious bodily injury to, a human being”,² are not present here.

Even if your agency suspects that materials in my news organization’s possession constitute evidence of a crime, the PPA prohibits executing a search warrant “if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein.”³

If your agency truly believes this news organization possesses materials that amount to evidence of a crime, the PPA generally requires you to seek a court to order the information to be produced under subpoena and exhaust all remedies in furtherance of enforcing that subpoena.⁴ Then, and only then, might a search warrant be appropriate.

As the Reporters Committee for Freedom of the Press put it in a letter to the chief of the Marion Police Department in the aftermath of unconstitutional raid of the *Marion County Record* newspaper in 2023,⁵ “search warrants based on the mere receipt, possession, communication, or withholding of work product material are virtually always proscribed with only limited exceptions, and the PPA’s ‘subpoena first’ requirement for documentary material reflects the law’s design to steer law enforcement to the least intrusive investigative means with respect to newsrooms.”⁶

Furthermore, the Kansas Shield Law protects journalists from testifying under oath in court or otherwise disclosing information they obtain in the course of their employment.⁷ Thereunder,

¹ See Pub. L. No. 96-440, 94 Stat. 1879 (1980), codified at [42 U.S.C. §§ 2000aa, 2000aa-5 to 2000aa-7](#).

² 42 U.S.C. §§ 2000aa(a)(2)

³ 42 U.S.C. §§ 2000aa(a)(1) and (b)(1).

⁴ 42 U.S.C. §§ 2000aa(b)(4).

⁵ Smith, S. *Police stage ‘chilling’ raid on Marion County newspaper, seizing computers, records and cellphones*, KANSAS REFLECTOR, August 11, 2023.

⁶ Letter from Reporters Committee for the Freedom of the Press to Chief Gideon Cody, August 13, 2023, retrieved from https://www.rcfp.org/wp-content/uploads/2023/08/2023-08-13_Reporters-Committee-Marion-letter.pdf on August 24, 2023.

⁷ K.S.A. 60-482.

“[t]he party claiming the privilege ... shall be entitled to a hearing.”⁸ As such, if you search illegally today, you are hereby on notice not to access or otherwise review any of the items you seize until after a court hearing.

Finally, under Kansas law, an affidavit in support of a search warrant must “state[] facts sufficient to show probable cause that a crime has been, is being or is about to be committed.”⁹ A search conducted on the basis of insufficient facts would be unlawful.

In the strongest possible terms, I urge you to reconsider executing a warrant to search and wait to hear from counsel, which I assure you will be very soon.

⁸ K.S.A. 60-483

⁹ K.S.A. 22-2502(a).