

SENATE No. 1673

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act providing protection against compelled disclosure of certain information by the news media ..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. This act may be cited as the "Free Flow of Information Act."

2 SECTION 2. Chapter 233 of the General Laws is hereby amended by adding the
3 following section:-

4 Section 84. (a) For the purposes of this section, the following terms shall have the
5 following meanings:-

6 "Covered person", a person who engages in the gathering of news information and has
7 the intent, at the beginning of the process of gathering news or information, to disseminate such
8 news or information to the public.

9 "News or information", written, oral, pictorial, photographic or electronically recorded
10 information or communication concerning local, national, or worldwide events, or other matters.

11 "News media", shall include: a newspaper, a magazine; a journal or other periodical;
12 radio; television; any means of disseminating news or information gathered by press

13 associations, news agencies or wire services, including dissemination to the news media such as
14 identified herein; or any printed, photographic, mechanical or electronic means of disseminating
15 news or information to the public.

16 (b) (1) Except as provided in subsection (c), no entity of the judicial, legislative or
17 executive branch of the commonwealth with the power to issue a subpoena or provide other
18 compulsory process shall compel any covered person, who is providing or has provided services
19 for the news media to disclose:

20 (i) the source of any news or information procured by such covered person, or any
21 information that would tend to identify such source, while providing services for the news media,
22 whether or not such source has been promised confidentially: or

23 (ii) any news or information procured by the covered person, while providing services for
24 the news media, that is not itself communicated in the news media, including any: notes;
25 outtakes; photographs or photographic negatives; video or sound tapes; film or; other data,
26 irrespective of its nature, that is not itself communicated in the news media.

27 (2) The protection from compelled disclosure described in subparagraph (1) shall apply to
28 a supervisor, employer or any person assisting a covered person to whom said subparagraph (1)
29 applies.

30 (3) Any news or information obtained in violation of this section shall be inadmissible in
31 any action, proceeding or hearing before any entity of the judicial legislative or executive branch
32 of the commonwealth.

33 (c) A state entity may not compel a covered person to testify or produce any document in
34 any proceeding or in connection with any issue arising under state law unless:

35 (1) disclosure of the identity of a source is necessary to prevent imminent and actual
36 harm to public security from acts of terrorism;

37 (2) compelled disclosure of the identity of a source would prevent such harm; and

38 (3) the harm sought to be redressed by requiring disclosure clearly outweighs the public
39 interest in protecting the free flow of information.

40 (d)(1) A court may compel disclosure of news or information described in clause (ii) of
41 paragraph (1) of subsection (b) and protected from disclosure under said subsection (b) if the
42 court finds, after providing notice and an opportunity to be heard to the person or entity from
43 whom the news or information is sought, that the party seeking the news or information has
44 established by clear and convincing evidence that:

45 (i) the news or information is critical and necessary to the resolution of a significant legal
46 issue before an entity of the judicial, legislative or executive branch of the commonwealth that
47 has the power to issue a subpoena;

48 (ii) the news or information could not be obtained by any alternative means; and

49 (iii) there is an overriding public interest in the disclosure.

50 (2) A court may not compel disclosure of the source of any news or information
51 described in clause (i) of paragraph (1) of subsection (b) and protected from disclosure under
52 said subsection (b).

53 (e) The publication by the news media or the dissemination by a covered person while
54 providing services for the news media of a source of news or information, or a portion of the
55 news or information, procured in the course of pursuing professional activities shall not
56 constitute a waiver of the protection from compelled disclosure that is described in subsection
57 (b).