

SENATE No. 931

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act regarding the Commonwealth Fusion Center and other intelligence data centers..

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. The General Laws are hereby amended by inserting after chapter 12B the
2 following chapter:-

3 CHAPTER 12C

4 Office of Data Protection and Privacy Oversight for the Commonwealth Fusion Center
5 and Other Intelligence Data Centers

6 Section 1. As used in this chapter, the following words shall have the following
7 meanings: --

8 “Boston Regional Intelligence Center”, that entity within the office of the police
9 commissioner of the Boston police department responsible for collecting and analyzing
10 intelligence data within the Metro-Boston homeland security region, or any successor entity.

11 “Commonwealth Fusion Center”, that entity established by Executive Order 476 within
12 the executive office of public safety and homeland security.

13 “Office”, the office of data protection and privacy oversight for Massachusetts
14 intelligence data centers.

15 “Intelligence data center”, any entity whose mission includes collecting, analyzing, and
16 sharing intelligence data and other data for law enforcement or homeland security purposes,
17 including the commonwealth fusion center and the Boston regional intelligence center.

18 “Personally identifiable information”, all personal data, as defined in section 1 of Chapter
19 66A of the General Laws, and any data element or combination of data elements that identifies
20 or could be used to identify any individual, including, but not limited to, by any of the following:

21 name of person;

22 date of birth;

23 address of residence;

24 electronic password;

25 unique account number;

26 phone number;

27 biometric identifiers including signature, DNA, fingerprints, iris or retinal scans, palm
28 telemetry, photograph, facial recognition measurements or any other biometric measurement;

29 e-mail address;

30 Internet Protocol address;

31 (10) web address; or

32 (11) any other unique identifier

33 Section 2. There shall be an office of data protection and privacy oversight for
34 intelligence data centers operating in Massachusetts, including the commonwealth fusion center,
35 which shall be independent of any supervision or control by any executive agency.

36 Section 3. The office shall be under the direction of a commissioner, who shall devote
37 full time to his or her duties.

38 Section 4. The commissioner shall be appointed by the unanimous vote of the governor,
39 the president of the senate and the speaker of the house of representatives, and the secretary of
40 the commonwealth, and shall serve for a term of three years.

41 Section 5. The person so appointed shall be selected without regard to party affiliation
42 and solely on the basis of integrity and demonstrated ability in data management, privacy
43 protection, public administration, law, management analysis, or the administration of justice.

44 In case of a vacancy in the position of the commissioner, his or her successor shall be
45 appointed in the same manner for the unexpired term. No person shall be appointed for more
46 than two three-year terms.

47 The person so appointed may be removed from office, for cause, by a majority vote of the
48 attorney general, the state auditor, and the governor. Such cause may include substantial neglect
49 of duty, gross misconduct or conviction of a crime. The reasons for removal of the
50 commissioner shall be stated in writing and shall include the basis for such removal. Such
51 writing shall be sent to the clerk of the senate, the clerk of the house of representatives, the

52 governor, and the secretary of the commonwealth at the time of the removal and shall be deemed
53 to be a public document.

54 Section 6. The commissioner may, subject to appropriation, appoint such other personnel
55 as may be deemed necessary to perform the duties of the office.

56 The commissioner shall be authorized to apply for, and accept on behalf of the
57 commonwealth, federal, local or private grants, bequests, gifts or contributions for the purpose of
58 carrying out the functions of the office.

59 The commissioner shall develop procedures for the office appropriate to the effective
60 performance of its duties.

61 Section 7. The commissioner or his or her designees shall have access at any and all
62 reasonable times to any facility, program, or portion thereof that is operated by intelligence data
63 centers in the commonwealth, and to all records, reports, materials, and employees in order to
64 carry out the responsibilities of the office.

65 Section 8. The commissioner may request the attendance and testimony of witnesses and
66 the production of documents, papers, books, records, reports, reviews, recommendations
67 correspondence, data and other information that the commissioner reasonably believes is relevant
68 to the oversight and reporting responsibilities of the office. If a request is denied, the
69 commissioner shall have the power to issue a subpoena for witnesses and the production of
70 documents and any other data, in whatever form, including electronic, that the commissioner
71 reasonably believes is relevant. If any person to whom a subpoena is issued fails to appear, or
72 having appeared, refuses to give testimony or fails to produce evidence required, the
73 commissioner may apply to the superior court to issue an order to compel the testimony and

74 production of documents of any such witnesses. A failure to obey the order may be punished as
75 contempt. Any person or office or custodian of records to whom such a request or subpoena is
76 directed may seek injunctive relief in the superior court to defer a subpoena issued by the
77 commissioner.

78 Section 9. The office shall:

79 examine, on a system-wide basis, the entire scope of the intelligence and other operations
80 of intelligence data centers in Massachusetts;

81 investigate, evaluate, and analyze the particular procedures, both as written and in
82 practice, employed by intelligence data centers in collecting data, including personally
83 identifiable information, and in protecting the privacy and security of such information;

84 investigate, evaluate, and analyze the particular procedures, both written and in practice,
85 employed by intelligence data centers to ensure that the activities of such centers do not infringe
86 on the rights to freedom of assembly, association, and expression guaranteed by the United
87 States constitution and the Massachusetts Declaration of Rights;

88 investigate, evaluate, and analyze the impact of any military involvement in intelligence
89 data center activities;

90 investigate, evaluate, and analyze the impact of any private sector involvement in
91 intelligence data center activities on the privacy and security of personally identifiable
92 information;

93 investigate, evaluate, and analyze the quality, timeliness, completeness, accuracy and
94 efficiency of intelligence data centers' responses to individuals' requests under the provisions of
95 chapter 66A of the general laws;

96 issue semi-annual written reports, which shall be public records, and shall be filed with
97 the clerks of the senate and house of representatives, and submitted to the governor, the chairs of
98 the house and the senate ways and means committees, the chairs of the joint committees on the
99 judiciary, on public safety and homeland security, on consumer protection and professional
100 licensure, on economic development and emerging technologies, and on state administration and
101 regulatory oversight. The first report shall be filed on or before January 30, 2010;

102 assist and cooperate with the members of the great and general court and the several
103 relevant committees, as noted, in convening and participating in annual public hearings
104 concerning the operations of intelligence data centers in the commonwealth;

105 provide independent oversight of data and privacy protection functions at intelligence
106 data centers, with regard to the collection, maintenance and storage, and any disclosure, transfer,
107 or dissemination of personally identifiable information or intelligence data;

108 advise the public and public officials in all branches and at all levels of state government
109 about the data and privacy protection operations of the commonwealth fusion center and other
110 intelligence data centers; and

111 make annual findings and recommendations concerning the operations of the
112 commonwealth fusion center and other intelligence centers and submit appropriate legislation to
113 address identified issues.

114 SECTION 2. Chapter 276 of the General Laws is hereby amended by striking out section
115 1A, as appearing in the 2006 Official Edition, and inserting in place thereof the following
116 section:-

117 Section 1A. No state or local law enforcement agency, prosecutorial office, or police or
118 peace officer shall collect or maintain information about the political, religious or social views,
119 associations or activities of any individual, group, association, organization, corporation,
120 business or partnership or other entity unless such information directly relates to an investigation
121 of criminal activities, and there are reasonable grounds to suspect the subject of the information
122 is involved in criminal conduct.

123 SECTION 3. Said Chapter 276 is hereby further amended by inserting after section 1A
124 the following section:-

125 Section 1B. Any information collected or maintained under section 1A of this chapter
126 shall be referred to hereinafter as “protected information.” No intelligence data center, as
127 defined in chapter 12C of the General Laws, or state or local law enforcement agency in receipt
128 of information from an intelligence data center, shall collect, maintain, or disseminate such
129 information except in accordance with the provisions of this section:

130 No information shall be knowingly received, maintained, or disseminated that has been
131 obtained in violation of any applicable federal, state, or local law, ordinance, or regulation.

132 All protected information shall be evaluated for the reliability of its source and the
133 accuracy of its content prior to being recorded in any investigation file.

134 Protected information shall be disseminated only to law enforcement agencies, contingent
135 upon review and prior written authorization by the head of the originating law enforcement
136 agency or intelligence data center. A record of any such written authorization shall be
137 maintained for a minimum of five years.

138 All investigations undertaken on the basis of any protected information shall first be
139 authorized in writing by the head of the investigating law enforcement agency or intelligence
140 data center. A record of any such written authorization shall be maintained in the corresponding
141 investigation file for a minimum of five years

142 All information recorded in any investigation file shall be reviewed at least once every
143 five years, and any information that is not reliable, accurate, relevant, and timely, shall be
144 destroyed, provided however, that any documents related to the authorization for and termination
145 of investigations based in whole or in part on protected information collected under section 1A
146 of this chapter, and any authorization to disseminate such protected information, shall be
147 retained.

148 SECTION 4. Section 3 of Chapter 66A of the General Laws, as appearing in the 2006
149 Official Edition, is hereby amended by inserting after the word “towns.”, at line 9, the
150 following:-

151 The Secretary of Public Safety and Security shall promulgate rules and regulations to
152 carry out the purposes of this chapter which shall be applicable to the Commonwealth Fusion
153 Center and other intelligence data centers, including those operated by public safety entities of
154 the cities and towns.