HOUSE DOCKET, NO. 1797 FILED ON: 1/15/2015

HOUSE . . . . . No. 1533

The Commonwealth of Massachusetts

PRESENTED BY:

Alice Hanlon Peisch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Alice Hanlon Peisch	*14th Norfolk*
James M. Cantwell	*4th Plymouth*

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By Ms. Peisch of Wellesley, a petition (accompanied by bill, House, No. 1533) of Alice Hanlon Peisch and James M. Cantwell relative to providing protection against compelled disclosure of certain information by members of the news media. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1553* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act providing 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:

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

SECTION 2. Chapter 233 of the General Laws , as appearing in the 2012 Official Edition, is hereby amended by adding the following section:-

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

"Covered person", any person who is or has been an employee, agent, or independent contractor of any news media as defined here, who is or has been engaged in bona fide news gathering for such entity, and who obtained or prepared the news or information that is sought while serving in that capacity, or news media, or any parent, subsidiary, or affiliate of the news

10 media as defined below to the extent that the subpoena or other compulsory process seeks news
11 or information described in subsection (b) of this section.

12 "News or information", written oral, pictorial, photographic or electronically recorded
13 information or communication concerning local, national, or worldwide events, o r other matters.

14 "News media", any newspaper, magazine or other periodical, book publisher, news
15 agency, wire service, radio or television station or network, cable or satellite station or network,
16 or audio or audiovisual production company, or a high school, college, and university affiliated
17 and sanctioned student press, or any entity that is in the regular business of gathering and
18 disseminating news or information to the public by any means, including, but not limited to,
19 print, broadcast, photographic, mechanical, internet, or electronic distribution.

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

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

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

31 (2) The protection from compelled disclosure described in subparagraph (1) shall apply to
32 a supervisor, employer or any person assisting a covered person to whom said sub paragraph (1)
33 applies.

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

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

39 (i) disclosure of the identity of a source is necessary to prevent imminent and actual harm
40 to public security from acts of terrorism;

41 (ii) compelled disclosure of the identity of a source would prevent such harm; and

42 (iii) the harm sought to be redressed by requiring disclosure clearly outweighs the public
43 interest in protecting the free flow of information.

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

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

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

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

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

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