

SENATE No. 1115

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

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 to protect the free flow of information in Massachusetts.

PETITION OF:

NAME:

Rebecca L. Rausch

DISTRICT/ADDRESS:

Norfolk, Worcester and Middlesex

SENATE No. 1115

By Ms. Rausch, a petition (accompanied by bill, Senate, No. 1115) of Rebecca L. Rausch for legislation to protect the free flow of information in Massachusetts. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to protect the free flow of information in Massachusetts.

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. Chapter 233 of the General Laws, as appearing in the 2020 Official Edition,
2 is hereby amended by inserting after section 83 the following section:-

3 Section 84. Free Flow of Information Act.

4 (a) For the purposes of this section, the following terms shall have the following
5 meanings unless the context clearly requires otherwise:-

6 “Covered journalist”, a person who regularly and credibly gathers, prepares, collects,
7 photographs, records, writes, edits, reports, investigates, or publishes news or information in a
8 professional manner that concerns local, national, or international events or other matters of
9 public interest for dissemination to the public.

10 “Covered service provider”, (a) any person that, by an electronic means, stores,
11 processes, or transmits information in order to provide a service to customers of the person; (b) a
12 telecommunications carrier and a provider of an information service; (c) a provider of an

13 interactive computer service and an information content provider; (d) a provider of remote
14 computing service; or (e) a provider of electronic communication service to the public.

15 “Document”, writings, audio and video recordings, and photographs.

16 “Government entity”, office, agency, board, commission, agent or employee of the
17 commonwealth or its subdivisions with the power to issue a subpoena or issue other compulsory
18 process.

19 “Journalism”, credible and professional gathering, preparing, collecting, photographing,
20 recording, writing, editing, reporting, investigating, or publishing news or information that
21 concerns local, national, or international events or other matters of public interest for
22 dissemination to the public.

23 “Personal account of a covered journalist”, an account with a covered service provider
24 used by a covered journalist that is not directly associated with the publication for which the
25 covered journalist engages in journalism.

26 “Personal technology device of a covered journalist”, a handheld communications device,
27 laptop computer, desktop computer, or other internet-connected device used by a covered
28 journalist that is not provided or administered by the publication for which the covered journalist
29 engages in journalism.

30 “Protected information”, any information identifying a source who provided information
31 as part of engaging in journalism, and any records, contents of a communication, documents, or
32 information that a covered journalist obtained or created as part of engaging in journalism.

33 (b) In any matter arising under state law, a government entity may not compel a covered
34 journalist to disclose protected information, unless a court of competent jurisdiction determines
35 by a preponderance of the evidence, after providing notice and an opportunity to be heard to the
36 covered journalist, that the disclosure of the protected information is necessary to prevent, or to
37 identify any perpetrator of, an act of terrorism against the United States, the commonwealth or its
38 subdivisions; or the disclosure of the protected information is reasonably likely to prevent a
39 threat of imminent violence, bodily harm, or death.

40 (c) (i) A government entity may not compel a covered service provider to provide
41 testimony or production of any document consisting of any record, information, or other
42 communications stored by a covered service provider on behalf of a covered journalist, including
43 without limitation testimony or production of any document relating to a personal account or a
44 personal technology device of a covered journalist, unless a court of competent jurisdiction
45 determines by a preponderance of the evidence that disclosure is reasonably likely to prevent a
46 threat of imminent violence, bodily harm, or death. If such a determination is made, the court
47 shall issue an order authorizing the government entity to compel the disclosure.

48 (ii) A government entity seeking to compel the provision of testimony or production of
49 any document pursuant to this subsection shall inform the court that the testimony or document
50 relates to a covered journalist.

51 (iii) The court may authorize a government entity to compel the provision of testimony or
52 production of a document under this subsection only after the government entity seeking the
53 testimony or document provides the covered journalist on behalf of whom the testimony or
54 document is stored notice of the subpoena or other compulsory request for such testimony or

55 document from the covered service provider not more than 3 days after the subpoena or request
56 is issued to the covered service provider. The court shall provide the covered journalist an
57 opportunity to be heard prior to issuing a decision.

58 (iv) Notice and an opportunity to be heard under subparagraph (iii) above may be delayed
59 for not more than 45 days if the court determines there is clear and convincing evidence that such
60 notice would pose a clear and substantial threat to the integrity of a criminal investigation or
61 would present an imminent risk of death or serious bodily harm. The 45-day period may be
62 extended by the court for additional periods of not more than 45 days if the court makes a
63 renewed determination that there is clear and convincing evidence that providing notice to the
64 covered journalist would pose a clear and substantial threat to the integrity of a criminal
65 investigation or would present an imminent risk of death or serious bodily harm.

66 (d) The content of any testimony, document, or protected information that is compelled
67 under paragraphs (b) and (c) shall not be overbroad, unreasonable, or oppressive, and as
68 appropriate, shall be limited to the purpose of verifying published information or describing any
69 surrounding circumstances relevant to the accuracy of such published information and narrowly
70 tailored in subject matter and time period covered to avoid compelling the production of
71 peripheral, nonessential, or speculative information.