

HOUSE No. 1457

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

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 freedom of speech and association.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Brian R. Mannel</i>	<i>2nd Barnstable</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>

<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Ryan C. Fattman</i>	<i>18th Worcester</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Joseph F. Wagner</i>	<i>8th Hampden</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>

HOUSE No. 1457

By Mr. Lewis of Winchester, a petition (accompanied by bill, House, No. 1457) of Jason M. Lewis and others relative to the use and protection of personal information in criminal investigations. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to protect freedom of speech and association.

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

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

3 SECTION 1. Section 1 of Chapter 66A of the General Laws, as appearing in the 2010
4 Official Edition, is hereby amended by striking out the definition of “Personal data”, at lines 32
5 through 39, and inserting the following definitions:--

6 “Commonwealth Fusion Center”, that entity established by Executive Order 476 within
7 the executive office of public safety and security, or any successor entity.

8 “Criminal intelligence information”, data which has been evaluated to determine that it is
9 relevant to the identification of and the criminal activity engaged in by an individual who or
10 organization which is reasonably suspected of involvement in criminal activity. Such reasonable
11 suspicion is established when information exists which establishes sufficient facts to give a
12 trained law enforcement or criminal justice agency officer, investigator, or employee a basis to
13 believe that there is a reasonable possibility that an individual or organization is involved in a
14 definable criminal activity or enterprise.

15 “Criminal intelligence system”, the arrangements, equipment, facilities, and procedures
16 used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal
17 intelligence information, including the commonwealth fusion center, the Boston regional
18 intelligence center, and any successor entities.

19 “Personal data”, any information concerning an individual which, because of name,
20 identifying number, mark or description can be readily associated with a particular individual;
21 provided, however, that personal data shall not include information that would reasonably be
22 expected to: interfere with an ongoing criminal investigation or other law enforcement
23 proceeding; constitute a clearly unwarranted invasion of personal privacy; disclose the identity of
24 a confidential source; or endanger the life or physical safety of any individual.

25 SECTION 2. Said Chapter 66A is hereby amended by inserting after section 2 the
26 following sections:-

27 Section 2 ½. At least once annually, every criminal intelligence system shall conduct an
28 internal audit, the report of which shall be a public record. This audit shall include:

29 (1) For each database that contains personal data, the number of authorized users,
30 each user’s level of access, and the quantity of data accessed by each user on a weekly basis;

31 (2) For each database that contains personal data, the number of transactions
32 performed by transaction type, unique user, and access location;

33 (3) For each database that contains personal data, the quantity of data collected and
34 maintained from each unique source, and the frequency of use in an investigation of data from
35 each source;

36 (4) The numbers of investigations authorized and denied under subsection (b)(4) of
37 section 1A of Chapter 276;

38 (5) The number of investigations authorized under said subsection (b)(4) that remain
39 open;

40 (6) For each open investigation authorized under said subsection (b)(4), the length of
41 time the investigation has remained open and a justification for continued collection or
42 maintenance of protected information;

43 (7) The number of investigations authorized under said subsection (b)(4) that have
44 led to indictments or prosecutions, and the names and docket numbers of resulting court
45 proceedings;

46 (8) The number of authorized disseminations under subsection (b)(3) of section 1A of
47 Chapter 276, and to which entity each dissemination was made.

48 Section 2 ¾. Every criminal intelligence system shall provide assistance and unrestricted
49 access to the inspector general, who may from time to time prepare a report on the compliance of
50 criminal intelligence systems with section 1A of Chapter 276, which report shall include
51 recommendations for corrective action and be a public record.

52 SECTION 3. Chapter 276 of the General Laws is hereby amended by striking out section
53 1A and inserting in place thereof the following section:-

54 Section 1A. (a) No state or local law enforcement agency, prosecutorial office,
55 criminal intelligence system, police or peace officer, or agent thereof shall track, collect or
56 maintain information about the political, religious or social views, associations or activities of
57 any individual, group, association, organization, corporation, business or partnership or other
58 entity unless such information directly relates to an investigation of criminal activities, and there
59 are reasonable grounds to suspect the subject of the information is involved in criminal conduct.
60 Any information collected or maintained under this section shall be referred to hereinafter as
61 “protected information.”

62 (b) No criminal intelligence system, as defined in chapter 66A of the General Laws, or
63 state or local law enforcement agency in receipt of information from an criminal intelligence
64 system, shall collect, maintain, or disseminate protected information except in accordance with
65 the provisions of this section:

66 (1) No protected information obtained in violation of any applicable federal, state, or
67 local law, ordinance, or regulation shall be knowingly accessed, received, maintained, or
68 disseminated.

69 (2) All protected information shall be evaluated for the reliability of its source and the
70 accuracy of its content prior to being recorded in any investigation file.

71 (3) Protected information shall be disseminated only to law enforcement agencies,
72 contingent upon review and prior written authorization by the head of the originating law
73 enforcement agency or criminal intelligence system. A record of any such written authorization,
74 which shall specify the reasons the dissemination is necessary, shall be maintained for a
75 minimum of five years. The originating entity shall record each instance of dissemination,
76 whether written or oral, in a log containing the name of the subject or subjects, the name of the
77 entity with whom the information was shared, and the date of dissemination.

78 (4) All investigations undertaken on the basis of any protected information shall first be
79 authorized in writing by the head of the investigating law enforcement agency or criminal
80 intelligence system. A record of any such written authorization, which shall specify the reasons
81 for such investigation, shall be maintained in the corresponding investigation file for a minimum
82 of five years

83 (5) All information recorded in any investigation file shall be reviewed at least once
84 every five years, and any information that is not reliable, accurate, relevant, and timely, shall be
85 destroyed, provided however, that any documents related to the authorization for and termination
86 of investigations based in whole or in part on protected information collected under section 1A
87 of this chapter, and any authorization to disseminate such protected information, shall be

88 retained. Information retained in an investigation file after a review shall be accompanied by the
89 following documentation: the name of the reviewer, the date of review, and an explanation of the
90 decision to retain the information.