

HOUSE No. 3272

The Commonwealth of Massachusetts

PRESENTED BY:

Josh S. Cutler

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 relative to the free flow of information.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>

HOUSE No. 3272

By Mr. Cutler of Duxbury, a petition (accompanied by bill, House, No. 3272) of Josh S. Cutler and others 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. 762 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to the free flow of information.

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 , as appearing in the 2012 Official
3 Edition, is hereby amended by adding the 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) any person who is or has been an employee, agent, or independent
7 contractor of any news media as defined here, and who, for gain, is or has been regularly
8 engaged in bona fide news gathering for such entity, and who obtained or prepared the news or
9 information that is sought while serving in that capacity; or (b) any news media, or any parent,

10 subsidiary, or affiliate of the news media as defined below to the extent that the subpoena or
11 other compulsory process seeks news 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, or other matters
14 of public concern or public interest.

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

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

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

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

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

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

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

40 (i) disclosure of the identity of a source is critical and necessary to prevent imminent
41 harm to public safety;

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

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

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

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

53 (ii) the news or information could not reasonably be obtained by alternative means;

54 (iii) there is an overriding public interest in the disclosure; and

55 (iv) the party has attempted prior negotiations with the covered person or news media.

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

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