

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Cynthia Stone Creem**

*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 passage of the accompanying bill:

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

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00898 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT PROVIDING PROTECTION 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:*

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

2 SECTION 2. Chapter 233 of the General Laws is hereby amended by adding the following  
3 section:-

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

6 "Covered person", a person who engages in the gathering of news information and has the intent,  
7 at the beginning of the process of gathering news or information, to disseminate such news or  
8 information to the public.

9 "News or information", written, oral, pictorial, photographic or electronically recorded  
10 information or communication concerning local, national, or worldwide events, or other matters.

11 "News media", shall include: a newspaper, a magazine; a journal or other periodical; radio;  
12 television; any means of disseminating news or information gathered by press associations, news  
13 agencies or wire services, including dissemination to the news media such as identified herein; or  
14 any printed, photographic, mechanical or electronic means of disseminating news or information  
15 to the public.

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

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

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

27 (2) The protection from compelled disclosure described in subparagraph (1) shall apply to a  
28 supervisor, employer or any person assisting a covered person to whom said subparagraph (1)  
29 applies.

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

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

35 (1) disclosure of the identity of a source is necessary to prevent imminent and actual harm to  
36 public security from acts of terrorism;

37 (2) compelled disclosure of the identity of a source would prevent such harm; and

38 (3) the harm sought to be redressed by requiring disclosure clearly outweighs the public interest  
39 in protecting the free flow of information.

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

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

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

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

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

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