

**Free Flow of Information Act of 2007 (Engrossed as Agreed to or Passed by House)**

HR 2102 EH

110th CONGRESS  
1st Session  
**H. R. 2102**

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**AN ACT**

To maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the `Free Flow of Information Act of 2007'.

**SEC. 2. COMPELLED DISCLOSURE FROM COVERED PERSONS.**

(a) Conditions for Compelled Disclosure- In any matter arising under Federal law, a Federal entity may not compel a covered person to provide testimony or produce any document related to information obtained or created by such covered person as part of engaging in journalism, unless a court determines by a preponderance of the evidence, after providing notice and an opportunity to be heard to such covered person--

(1) that the party seeking to compel production of such testimony or document has exhausted all reasonable alternative sources (other than the covered person) of the testimony or document;

(2) that--

(A) in a criminal investigation or prosecution, based on information obtained from a person other than the covered person--

(i) there are reasonable grounds to believe that a crime has occurred; and

(ii) the testimony or document sought is critical to the investigation or prosecution or to the defense against the prosecution; or

(B) in a matter other than a criminal investigation or prosecution, based on information obtained from a person

other than the covered person, the testimony or document sought is critical to the successful completion of the matter;

(3) in the case that the testimony or document sought could reveal the identity of a source of information or include any information that could reasonably be expected to lead to the discovery of the identity of such a source, that--

(A) disclosure of the identity of such a source is necessary to prevent, or to identify any perpetrator of, an act of terrorism against the United States or its allies or other significant and specified harm to national security with the objective to prevent such harm;

(B) disclosure of the identity of such a source is necessary to prevent imminent death or significant bodily harm with the objective to prevent such death or harm, respectively;

(C) disclosure of the identity of such a source is necessary to identify a person who has disclosed--

(i) a trade secret, actionable under section 1831 or 1832 of title 18, United States Code;

(ii) individually identifiable health information, as such term is defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), actionable under Federal law; or

(iii) nonpublic personal information, as such term is defined in section 509(4) of the Gramm-Leach-Bliley Act (15 U.S.C. 6809(4)), of any consumer actionable under Federal law; or

(D)(i) disclosure of the identity of such a source is essential to identify in a criminal investigation or prosecution a person who without authorization disclosed properly classified information and who at the time of such disclosure had authorized access to such information; and

(ii) such unauthorized disclosure has caused or will cause significant and articulable harm to the national security; and

(4) that the public interest in compelling disclosure of the information or document involved outweighs the public interest in gathering or disseminating news or information.

(b) Authority to Consider National Security Interest- For purposes of making a determination under subsection (a)(4), a court may consider the extent of any harm to national security.

(c) Limitations on Content of Information- The content of any testimony or document that is compelled under subsection (a) shall--

(1) not be overbroad, unreasonable, or oppressive and, as appropriate, be limited to the purpose of verifying published

information or describing any surrounding circumstances relevant to the accuracy of such published information; and  
(2) be narrowly tailored in subject matter and period of time covered so as to avoid compelling production of peripheral, nonessential, or speculative information.

(d) Rule of Construction- Nothing in this Act shall be construed as applying to civil defamation, slander, or libel claims or defenses under State law, regardless of whether or not such claims or defenses, respectively, are raised in a State or Federal court.

(e) Exception Relating to Criminal or Tortious Conduct- The provisions of this section shall not prohibit or otherwise limit a Federal entity in any matter arising under Federal law from compelling a covered person to disclose any information, record, document, or item obtained as the result of the eyewitness observation by the covered person of alleged criminal conduct or as the result of the commission of alleged criminal or tortious conduct by the covered person, including any physical evidence or visual or audio recording of the conduct, if a Federal court determines that the party seeking to compel such disclosure has exhausted all other reasonable efforts to obtain the information, record, document, or item, respectively, from alternative sources. The previous sentence shall not apply, and subsections (a) and (b) shall apply, in the case that the alleged criminal conduct observed by the covered person or the alleged criminal or tortious conduct committed by the covered person is the act of transmitting or communicating the information, record, document, or item sought for disclosure.

### **SEC. 3. COMPELLED DISCLOSURE FROM COMMUNICATIONS SERVICE PROVIDERS.**

(a) Conditions for Compelled Disclosure- With respect to testimony or any document consisting of any record, information, or other communication that relates to a business transaction between a communications service provider and a covered person, section 2 shall apply to such testimony or document if sought from the communications service provider in the same manner that such section applies to any testimony or document sought from a covered person.

(b) Notice and Opportunity Provided to Covered Persons- A court may compel the testimony or disclosure of a document under this section only after the party seeking such a document provides the covered person who is a party to the business transaction described in subsection (a)--

(1) notice of the subpoena or other compulsory request for such testimony or disclosure from the communications service provider not later than the time at which such subpoena or request is issued to the communications service provider; and

- (2) an opportunity to be heard before the court before the time at which the testimony or disclosure is compelled.
- (c) Exception to Notice Requirement- Notice under subsection (b)(1) may be delayed only if the court involved determines by clear and convincing evidence that such notice would pose a substantial threat to the integrity of a criminal investigation.

## **SEC. 4. DEFINITIONS.**

In this Act:

- (1) COMMUNICATIONS SERVICE PROVIDER- The term `communications service provider'--
- (A) means any person that transmits information of the customer's choosing by electronic means; and
  - (B) includes a telecommunications carrier, an information service provider, an interactive computer service provider, and an information content provider (as such terms are defined in sections 3 and 230 of the Communications Act of 1934 (47 U.S.C. 153, 230)).
- (2) COVERED PERSON- The term `covered person' means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain and includes a supervisor, employer, parent, subsidiary, or affiliate of such covered person. Such term shall not include--
- (A) any person who is a foreign power or an agent of a foreign power, as such terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);
  - (B) any organization designated by the Secretary of State as a foreign terrorist organization in accordance with section 219 of the Immigration and Nationality Act (8 U.S.C. 1189);
  - (C) any person included on the Annex to Executive Order No. 13224, of September 23, 2001, and any other person identified under section 1 of that Executive order whose property and interests in property are blocked by that section;
  - (D) any person who is a specially designated terrorist, as that term is defined in section 595.311 of title 31, Code of Federal Regulations (or any successor thereto); or
  - (E) any terrorist organization, as that term is defined in section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(3) DOCUMENT- The term `document' means writings, recordings, and photographs, as those terms are defined by Federal Rule of Evidence 1001 (28 U.S.C. App.).

(4) FEDERAL ENTITY- The term `Federal entity' means an entity or employee of the judicial or executive branch or an administrative agency of the Federal Government with the power to issue a subpoena or issue other compulsory process.

(5) JOURNALISM- The term `journalism' means the gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.

Passed the House of Representatives October 16, 2007.

Attest:

Clerk.

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