

113TH CONGRESS
1ST SESSION

H. R. 1962

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2013

Mr. POE of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Flow of Informa-
5 tion Act of 2013”.

1 **SEC. 2. COMPELLED DISCLOSURE FROM COVERED PER-**
2 **SONS.**

3 (a) CONDITIONS FOR COMPELLED DISCLOSURE.—In
4 any matter arising under Federal law, a Federal entity
5 may not compel a covered person to provide testimony or
6 produce any document related to information obtained or
7 created by such covered person as part of engaging in
8 journalism, unless a court determines by a preponderance
9 of the evidence, after providing notice and an opportunity
10 to be heard to such covered person—

11 (1) that the party seeking to compel production
12 of such testimony or document has exhausted all
13 reasonable alternative sources (other than the cov-
14 ered person) of the testimony or document;

15 (2) that—

16 (A) in a criminal investigation or prosecu-
17 tion, based on information obtained from a per-
18 son other than the covered person—

19 (i) there are reasonable grounds to be-
20 lieve that a crime has occurred; and

21 (ii) the testimony or document sought
22 is critical to the investigation or prosecu-
23 tion or to the defense against the prosecu-
24 tion; or

25 (B) in a matter other than a criminal in-
26 vestigation or prosecution, based on information

1 obtained from a person other than the covered
2 person, the testimony or document sought is
3 critical to the successful completion of the mat-
4 ter;

5 (3) in the case that the testimony or document
6 sought could reveal the identity of a source of infor-
7 mation or include any information that could reason-
8 ably be expected to lead to the discovery of the iden-
9 tity of such a source, that—

10 (A) disclosure of the identity of such a
11 source is necessary to prevent an act of ter-
12 rorism against the United States or its allies or
13 other significant and specified harm to national
14 security with the objective to prevent such
15 harm;

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

20 (C) disclosure of the identity of such a
21 source is necessary to identify a person who has
22 disclosed—

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

1 (ii) individually identifiable health in-
2 formation, as such term is defined in sec-
3 tion 1171(6) of the Social Security Act (42
4 U.S.C. 1320d(6)), actionable under Fed-
5 eral law; or

6 (iii) nonpublic personal information,
7 as such term is defined in section 509(4)
8 of the Gramm-Leach-Bliley Act (15 U.S.C.
9 6809(4)), of any consumer actionable
10 under Federal law; and

11 (4) that the public interest in compelling disclo-
12 sure of the information or document involved out-
13 weighs the public interest in gathering or dissemi-
14 nating news or information.

15 (b) LIMITATIONS ON CONTENT OF INFORMATION.—
16 The content of any testimony or document that is com-
17 pelled under subsection (a) shall—

18 (1) not be overbroad, unreasonable, or oppres-
19 sive and, as appropriate, be limited to the purpose
20 of verifying published information or describing any
21 surrounding circumstances relevant to the accuracy
22 of such published information; and

23 (2) be narrowly tailored in subject matter and
24 period of time covered so as to avoid compelling pro-

1 duction of peripheral, nonessential, or speculative in-
2 formation.

3 (c) **RULE OF CONSTRUCTION.**—Nothing in this Act
4 shall be construed as applying to civil defamation, slander,
5 or libel claims or defenses under State law, regardless of
6 whether or not such claims or defenses, respectively, are
7 raised in a State or Federal court.

8 **SEC. 3. COMPELLED DISCLOSURE FROM COMMUNICATIONS**
9 **SERVICE PROVIDERS.**

10 (a) **CONDITIONS FOR COMPELLED DISCLOSURE.**—
11 With respect to testimony or any document consisting of
12 any record, information, or other communication that re-
13 lates to a business transaction between a communications
14 service provider and a covered person, section 2 shall apply
15 to such testimony or document if sought from the commu-
16 nications service provider in the same manner that such
17 section applies to any testimony or document sought from
18 a covered person.

19 (b) **NOTICE AND OPPORTUNITY PROVIDED TO COV-**
20 **ERED PERSONS.**—A court may compel the testimony or
21 disclosure of a document under this section only after the
22 party seeking such a document provides the covered per-
23 son who is a party to the business transaction described
24 in subsection (a)—

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

6 (2) an opportunity to be heard before the court
7 before the time at which the testimony or disclosure
8 is compelled.

9 (c) EXCEPTION TO NOTICE REQUIREMENT.—Notice
10 under subsection (b)(1) may be delayed only if the court
11 involved determines by clear and convincing evidence that
12 such notice would pose a substantial threat to the integrity
13 of a criminal investigation.

14 **SEC. 4. DEFINITIONS.**

15 In this Act:

16 (1) COMMUNICATIONS SERVICE PROVIDER.—

17 The term “communications service provider”—

18 (A) means any person that transmits infor-
19 mation of the customer’s choosing by electronic
20 means; and

21 (B) includes a telecommunications carrier,
22 an information service provider, an interactive
23 computer service provider, and an information
24 content provider (as such terms are defined in

1 sections 3 and 230 of the Communications Act
2 of 1934 (47 U.S.C. 153, 230)).

3 (2) COVERED PERSON.—The term “covered
4 person” means a person who, for financial gain or
5 livelihood, is engaged in journalism and includes a
6 supervisor, employer, parent, subsidiary, or affiliate
7 of such covered person. Such term shall not in-
8 clude—

9 (A) any person who is a foreign power or
10 an agent of a foreign power, as such terms are
11 defined in section 101 of the Foreign Intel-
12 ligence Surveillance Act of 1978 (50 U.S.C.
13 1801); or

14 (B) any organization designated by the
15 Secretary of State as a foreign terrorist organi-
16 zation in accordance with section 219 of the
17 Immigration and Nationality Act (8 U.S.C.
18 1189).

19 (3) DOCUMENT.—The term “document” means
20 writings, recordings, and photographs, as those
21 terms are defined by Federal Rule of Evidence 1001
22 (28 U.S.C. App.).

23 (4) FEDERAL ENTITY.—The term “Federal en-
24 tity” means an entity or employee of the judicial or
25 executive branch or an administrative agency of the

1 Federal Government with the power to issue a sub-
2 poena or issue other compulsory process.

3 (5) JOURNALISM.—The term “journalism”
4 means the gathering, preparing, collecting,
5 photographing, recording, writing, editing, reporting,
6 or publishing of news or information that concerns
7 local, national, or international events or other mat-
8 ters of public interest for dissemination to the pub-
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