

SENATE No. 01194

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

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 to protect privacy and personal data.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Susan C. Fargo</i>	<i>Third Middlesex</i>
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Steven L. Levy</i>	<i>4th Middlesex</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>

SENATE No. 01194

By Ms. Chandler, petition (accompanied by bill, Senate, No. 1194) of Spilka, Donnelly, Eldridge and other members of the General Court for legislation relative to the Commonwealth Fusion Center and other intelligence data centers [Joint Committee on Public Safety and Homeland Security].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 931 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to protect privacy and personal data.

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. Section 18 of chapter 6A of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by inserting after the word “board”, at line 5, the following:-
3 - ; criminal intelligence systems operating in Massachusetts

4 SECTION 2. Section 18 ³/₄ of said chapter 6A, as so appearing, is hereby amended by
5 adding at the end thereof:--
6 (10) to promulgate rules and regulations to ensure that criminal intelligence systems operating in
7 Massachusetts, including but not limited to the commonwealth fusion center and the Boston
8 regional intelligence center, as defined in chapter 66A of the General Laws:

9 (a) maintain records regarding the sources of criminal intelligence information and personal
10 data, as defined in said Chapter 66A, that such criminal intelligence systems review, collect, and
11 maintain, and the quantity of data received from each source;

12 (b) maintain criminal intelligence information or personal data concerning an individual or
13 organization only if there is a reasonable suspicion that the individual is involved in criminal
14 conduct or activity and the information is relevant to that criminal conduct or activity. Such
15 reasonable suspicion is established when information exists which establishes sufficient facts to
16 give a trained law enforcement or criminal justice agency officer, investigator, or employee a
17 basis to believe that there is a reasonable possibility that an individual or organization is involved
18 in a definable criminal activity or enterprise;

19 (b) disseminate criminal intelligence information or personal data only where there is a need
20 to know and a right to know the information in the performance of a law enforcement activity;

21 (c) disseminate criminal intelligence information or personal data only to law enforcement
22 authorities which shall agree to follow procedures regarding information receipt, maintenance,
23 security, and dissemination which are consistent with the receipt, maintenance, security and
24 dissemination limitations, requirements and procedures applicable to the criminal intelligence
25 system. Nothing herein shall limit the dissemination of an assessment of intelligence
26 information to a government official or to any other individual, when necessary, to avoid
27 imminent danger to life or property;

28 (d) notify submitting criminal justice agencies, law enforcement agencies, criminal
29 intelligence systems or other submitting individuals prior to initiation of formal information
30 exchange arrangements with any Federal, State, regional, or other information systems;

31 (e) adopt, implement, and maintain procedures to ensure the maximum feasible security,
32 confidentiality, and integrity of personal information, as defined in Chapter 93H, and personal
33 data, as defined in Chapter 66A, including but not limited to labeling all such data to indicate
34 levels of sensitivity, levels of confidence, and the identity of the submitting criminal justice
35 agency, law enforcement agency, or other submitting entity or individual;

36 (f) adopt, implement, and maintain written information security programs governing the
37 collection, use, dissemination, storage, retention and destruction of personal information, as
38 defined in Chapter 93H, and personal data, as defined in Chapter 66A, and ensure that criminal
39 intelligence systems securely store and protect the information against unauthorized access,
40 destruction, use, modification, disclosure or loss, and destroy the information as soon as it is no
41 longer needed. Such programs shall address, without limitation, administrative, technical and
42 physical safeguards, and shall include sanctions for unauthorized access, utilization, or disclosure
43 of information stored and maintained by criminal intelligence systems, and shall comply with all
44 federal and state privacy and information security laws and regulations, including but not limited
45 to all applicable rules and regulations used by the Secretary of State's Supervisor of Public
46 Records under Chapter 93H.

47 (g) file annually, on or before the first of September, a notice as directed by section sixty-
48 three of Chapter 30.

49 (h) protect the security and privacy of data collected by criminal intelligence systems
50 operating in Massachusetts by requiring that such criminal intelligence systems, at a minimum:

51 (i) address any participation by entities other than public law enforcement agencies in
52 criminal intelligence system activities;

53 (ii) require any agency submitting data to a criminal intelligence system to maintain in its
54 agency files documentation of each such submission, which shall be made available for
55 reasonable audit and inspection by the inspector general;

56 (iii) establish protocols for screening, hiring, transferring, promoting, and terminating
57 personnel authorized to have direct access to criminal intelligence information or personal data;
58 and

59 (iv) implement subsection (10) of this section, as well as the provisions of Chapter 66A
60 and section 1A of Chapter 276.

61 11) provide assistance and unrestricted access to the inspector general in the preparation of an
62 annual report on the compliance of criminal intelligence systems with subsection (10), which
63 report shall include recommendations for corrective action. Said report shall be filed annually on
64 or before the thirtieth of April with the clerks' offices of the senate and the house of
65 representatives, the ways and means committees of the senate and house of representatives, and
66 the joint committee on state administration and regulatory oversight, which shall convene a
67 public hearing concerning the report within 60 days of its filing.

68 SECTION 3. Section 63 of Chapter 30 of the General Laws, as appearing in the 2008
69 Official Edition, is hereby amended by striking the word "and", at line 19, and by inserting after
70 the word "system", at line 21, the following:-- ; and (j) a signed certification by the individual
71 identified herein at subsection (i) that acknowledges his or her personal accountability for the
72 data maintained by and disseminated from the system and that the operations of the system are,
73 to the best of his or her knowledge, in compliance with all applicable federal, state and local
74 laws, ordinances, and regulations.

75 SECTION 4. Section 1 of Chapter 66A of the General Laws, as appearing in the 2008
76 Official Edition, is hereby amended by inserting the following definitions:--

77 “Boston Regional Intelligence Center”, that entity within the office of the police
78 commissioner of the Boston police department responsible for collecting and analyzing criminal
79 intelligence information within the Metro-Boston homeland security region, or any successor
80 entity.

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

83 “Criminal intelligence information”, data which has been evaluated to determine that it is
84 relevant to the identification of and the criminal activity engaged in by an individual who or
85 organization which is reasonably suspected of involvement in criminal activity.

86 “Criminal intelligence system”, the arrangements, equipment, facilities, and procedures
87 used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal
88 intelligence information, including the commonwealth fusion center and the Boston regional
89 intelligence center.

90 SECTION 5. Said section 1 of Chapter 66A, as so appearing, is hereby further amended
91 by striking the words “such information is not contained in a public record, as defined in clause
92 Twenty-sixth of section seven of chapter four and shall not include intelligence information,
93 evaluative information or criminal offender record information as defined in section one hundred
94 and sixty-seven of chapter six.”, at lines 34 through 39, and inserting in their place the
95 following:-- personal data shall not include information that would reasonably be expected to:
96 interfere with an ongoing criminal investigation or other law enforcement proceeding; constitute

97 a clearly unwarranted invasion of personal privacy; disclose the identity of a confidential source;
98 or endanger the life or physical safety of any individual.

99 SECTION 6. Said Chapter 66A is hereby amended by inserting after section 2 the
100 following section:-

101 Section 2 ½. At least once annually, every criminal intelligence system shall conduct an
102 internal audit, the results of which shall be public records. This audit shall include:

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

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

107 (3) For each database that contains personal data, the quantity of data collected and
108 maintained from each unique source, and the frequency of data from each source being used in
109 an investigation;

110 (4) Since the last audit, the numbers of investigations authorized and denied under
111 subsection (b)(4) of section 1A of Chapter 276;

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

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

117 (7) Since the last audit, the number of investigations authorized under said subsection
118 (b)(4) that have led to indictments or prosecutions, and the names and docket numbers of
119 resulting court proceedings;

120 (8) Since the last audit, the number of authorized disseminations under subsection (b)(3)
121 of section 1A of Chapter 276, and to which entity each dissemination was made.

122 SECTION 7. Section 3 of said Chapter 66A, as so appearing, is hereby amended by
123 inserting after the word “towns.”, at line 9, the following:- The Secretary of Public Safety and
124 Security shall promulgate rules and regulations to carry out the purposes of this chapter which
125 shall be applicable to the Commonwealth Fusion Center and other criminal intelligence systems,
126 including those operated by public safety entities of the cities and towns.

127 SECTION 8. Chapter 276 of the General Laws is hereby amended by striking out section
128 1A, as appearing in the 2008 Official Edition, and inserting in place thereof the following
129 section:-

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

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

142 (1) No protected information shall be knowingly received, maintained, or disseminated
143 that has been obtained in violation of any applicable federal, state, or local law, ordinance, or
144 regulation.

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

147 (3) Protected information shall be disseminated only to law enforcement agencies,
148 contingent upon review and prior written authorization by the head of the originating law
149 enforcement agency or criminal intelligence system. A record of any such written authorization,
150 which shall specify the reasons the dissemination is necessary, shall be maintained for a
151 minimum of five years. The originating entity shall record each instance of dissemination in a
152 log containing the name of the subject or subjects, the name of the entity with whom the
153 information was shared, and the date of dissemination.

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

159 (5) All information recorded in any investigation file shall be reviewed at least once
160 every five years, and any information that is not reliable, accurate, relevant, and timely, shall be
161 destroyed, provided however, that any documents related to the authorization for and termination
162 of investigations based in whole or in part on protected information collected under section 1A
163 of this chapter, and any authorization to disseminate such protected information, shall be
164 retained. Information retained in an investigation file after a review shall be accompanied by the
165 following documentation: the name of the reviewer, the date of review, and an explanation of the
166 decision to retain the information.