

S 448

Free Flow of Information Act of 2009

Congress: 111 (2009–2011, Ended)

Chamber: Senate

Policy Area: Law

Introduced: Feb 13, 2009

Current Status: Placed on Senate Legislative Calendar under General Orders. Calendar No. 225.

Latest Action: Placed on Senate Legislative Calendar under General Orders. Calendar No. 225. (Dec 11, 2009)

Official Text: <https://www.congress.gov/bill/111th-congress/senate-bill/448>

Sponsor

Name: Sen. Specter, Arlen [R-PA]

Party: Republican • **State:** PA • **Chamber:** Senate

Cosponsors (15 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Graham, Lindsey [R-SC]	R · SC		Feb 13, 2009
Sen. Lugar, Richard G. [R-IN]	R · IN		Feb 13, 2009
Sen. Schumer, Charles E. [D-NY]	D · NY		Feb 13, 2009
Sen. Gillibrand, Kirsten E. [D-NY]	D · NY		Mar 23, 2009
Sen. McCaskill, Claire [D-MO]	D · MO		Mar 23, 2009
Sen. Klobuchar, Amy [D-MN]	D · MN		Mar 30, 2009
Sen. Murray, Patty [D-WA]	D · WA		Mar 30, 2009
Sen. Hagan, Kay R. [D-NC]	D · NC		May 18, 2009
Sen. Kaufman, Edward E. [D-DE]	D · DE		Nov 5, 2009
Sen. Udall, Tom [D-NM]	D · NM		Nov 18, 2009
Sen. Leahy, Patrick J. [D-VT]	D · VT		Dec 14, 2009
Sen. Landrieu, Mary L. [D-LA]	D · LA		Feb 4, 2010
Sen. Isakson, Johnny [R-GA]	R · GA		Mar 4, 2010
Sen. Sanders, Bernard [I-VT]	I · VT		Mar 9, 2010
Sen. Dodd, Christopher J. [D-CT]	D · CT		Mar 22, 2010

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Reported By	Dec 11, 2009

Subjects & Policy Tags

Policy Area:

Law

Related Bills

No related bills are listed.

Free Flow of Information Act of 2009 - Prohibits a federal entity (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 other compulsory process), in any proceeding or in connection with any issue arising under federal law, from compelling a covered person to disclose protected information, unless a federal court in the jurisdiction where the compulsory process has been or would be issued determines, after providing notice and an opportunity for the covered person to be heard, that all reasonable alternative sources have been exhausted and that separate specified conditions have been met depending on whether the matter is a criminal investigation or prosecution.

Defines a "covered person" as a person (including a supervisor, employer, parent company, subsidiary, or affiliate of such person) who:

- with the primary intent to investigate events and procure material in order to disseminate to the public news or information concerning matters of public interest, regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes on such matters by conducting interviews, making direct observations of events, or collecting, reviewing, or analyzing original writings, statements, transcripts, photographs, recordings, tapes, data, or other information;
- has such intent at the inception of the process of gathering the news or information sought; and
- obtains such news or information to disseminate by print, broadcasting, mechanical, photographic, electronic, or other means.

Excludes from the definition of covered person foreign powers and their agents, members or affiliates of foreign terrorist organizations, specially designated global terrorists, and other organizations and people who are reasonably likely to commit, attempt, or provide support for terrorism.

Defines "protected information" as:

- information identifying a source who provided information under a promise or agreement of confidentiality made by a covered person as part of engaging in journalism; or
- any records, contents of a communication, documents, or information that a covered person obtained or created as part of engaging in journalism and upon a promise or agreement of confidentiality.

Requires, in a criminal investigation or prosecution, a determination by the court that:

- if the party seeking to compel disclosure is the federal government, based on public information or information obtained from a source other than the covered person, there are reasonable grounds to believe a crime has occurred;
- based on such public or source information, the protected information is essential to the investigation or prosecution or to the defense against the prosecution;
- the Attorney General certifies that the decision to request compelled disclosure was consistent with federal regulations, if compelled disclosure is sought by a member of the Department of Justice (DOJ) in circumstances governed by regulations specifying DOJ policy with respect to the news media; and
- the covered person has not established by clear and convincing evidence that disclosure would be contrary to public interest, including the interest in gathering and disseminating information or news as well as maintaining the free flow of information and the public interest in compelling disclosure, including the extent of any harm to national

security.

Requires, in matters other than criminal investigations or prosecutions, based on public information or information obtained from a source other than the covered person, that:

- the protected information sought is essential to the resolution of the matter, and
- the party seeking to compel disclosure establishes that the interest in compelling disclosure clearly outweighs the public interest in gathering and disseminating the information or news at issue and maintaining the free flow of information.

Exempts from such requirements:

- information or items obtained as the result of the eyewitness observations of, or obtained during the course of, alleged criminal conduct by the covered person (provided that the alleged criminal conduct is not the act of communicating the actual documents or information at issue), including any physical evidence or visual or audio recording of the conduct;
- protected information that is reasonably necessary to stop, prevent, or mitigate a specific case of death, kidnapping, substantial bodily harm, certain offenses against minors, or the incapacitation or destruction of critical infrastructure; and
- protected information sought by the federal government in a criminal matter under specified circumstances to prevent, mitigate, or identify the perpetrator of an act of terrorism or other acts reasonably likely to cause significant and articulable harm to national security. Sets forth special requirements with respect to criminal investigations or prosecutions of an allegedly unlawful disclosure of properly classified information.

Directs federal courts to give appropriate deference to a specific factual showing submitted by the head of any executive branch agency concerned.

Sets forth procedures with respect to information sought from electronic communications service providers.

Provides for judicial review, submissions under seal, and expedited appeals.

Actions Timeline

- **Dec 11, 2009:** Committee on the Judiciary. Reported by Senator Leahy with an amendment in the nature of a substitute. Without written report.
- **Dec 11, 2009:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 225.
- **Dec 10, 2009:** Committee on the Judiciary. Ordered to be reported with amendments favorably.
- **Feb 13, 2009:** Introduced in Senate
- **Feb 13, 2009:** Sponsor introductory remarks on measure. (CR S2340-2342)
- **Feb 13, 2009:** Read twice and referred to the Committee on the Judiciary.