

119TH CONGRESS
2D SESSION

S. _____

To amend the Privacy Protection Act of 1980 to update and strengthen protections for newsgathering records, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Privacy Protection Act of 1980 to update and strengthen protections for newsgathering records, and for other purposes.

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 “Privacy Protection Up-
5 dates Act”.

6 **SEC. 2. EXCLUSIONARY RULE FOR VIOLATIONS.**

7 Section 106 of the Privacy Protection Act of 1980
8 (42 U.S.C. 2000aa–6) is amended by striking subsection
9 (e) and inserting the following:

1 “(e)(1) Except in a civil action described in sub-
2 section (a), materials described in subsections (a) and (b)
3 of section 101 searched for or seized in violation of this
4 Act, and evidence derived therefrom, may not be used, re-
5 ceived in evidence, or otherwise disseminated in any inves-
6 tigation, trial, hearing, or other proceeding in or before
7 any court, grand jury, department, office, agency, regu-
8 latory body, legislative committee, or other authority of
9 the United States, a State, or political subdivision thereof.

10 “(2)(A) Any aggrieved person in any trial, hearing,
11 or proceeding in or before any court, department, office,
12 agency, regulatory body, or other authority of the United
13 States, a State, or a political subdivision thereof, may
14 move to suppress materials described in subsections (a)
15 and (b) of section 101 searched for or seized pursuant to
16 this Act, or evidence derived therefrom, on the grounds
17 that—

18 “(i) the materials were unlawfully searched for
19 or seized;

20 “(ii) the warrant or order permitting the search
21 or seizure of the materials is insufficient on its face
22 under the requirements of this Act; or

23 “(iii) the search or seizure was not made in
24 conformity with the warrant or order.

1 “(B) If the motion is granted, the materials, and evi-
2 dence derived therefrom, shall be treated as having been
3 obtained in violation of this Act.”.

4 **SEC. 3. OTHER REMEDIES PERMITTED.**

5 Section 106 of the Privacy Protection Act of 1980
6 (42 U.S.C. 2000aa-6) is amended—

7 (1) by striking subsection (d); and

8 (2) by redesignating subsections (e) through (h)
9 as subsections (d) through (g), respectively.

10 **SEC. 4. REQUIRED DISCLOSURES IN WARRANT APPLICA-**
11 **TION.**

12 Section 101 of the Privacy Protection Act of 1980
13 (42 U.S.C. 2000aa) is amended by adding at the end of
14 the following:

15 “(d)(1) In this subsection, the term ‘covered mate-
16 rials’ means materials described in subsection (a) or (b).

17 “(2) Except as provided in paragraph (3), a govern-
18 ment officer or employee may only search for or seize cov-
19 ered materials, pursuant to an exception described in sub-
20 section (a) or (b), if—

21 “(A) the officer or employee obtains a warrant
22 issued using the procedures described in the Federal
23 Rules of Criminal Procedure (or, in the case of a
24 State court, issued using State warrant procedures)
25 by a court of competent jurisdiction;

1 “(B) in the application for a warrant described
2 in paragraph (1), the officer or employee discloses—

3 “(i) the factual basis justifying the applica-
4 bility of an exception described in subsection (a)
5 or (b), including all information that—

6 “(I) might reasonably call into ques-
7 tion the accuracy of the information or the
8 reasonableness of any assessment in the
9 application, including how the materials
10 qualify as covered materials if no exception
11 is satisfied; or

12 “(II) otherwise raises doubts that an
13 exception applies; and

14 “(ii) all persons who are the targets of the
15 investigation or prosecution of the criminal of-
16 fense;

17 “(C) the court finds that—

18 “(i) an exception permits the search for or
19 seizure of the covered materials; and

20 “(ii) if the officer or employee argues that
21 an exception described in subsection (a)(1) or
22 (b)(1) applies, that a prosecution for the alleged
23 offense under the facts is consistent with the
24 First Amendment to the Constitution of the
25 United States; and

1 “(D) the court includes such limitations as the
2 court deems necessary to protect against—

3 “(i) the search for or seizure of covered
4 materials that are not justified by an exception;
5 and

6 “(ii) the harms that might follow from a
7 search or seizure described in clause (i).

8 “(3) A government officer or employee may search
9 for or seize covered materials pursuant to the exceptions
10 described in subsections (a)(2) and (b)(2), without fol-
11 lowing the procedures described in paragraph (2), if the
12 officer or employee—

13 “(A) takes reasonable measures to limit any
14 search or seizure to only those covered materials
15 that are necessary to address the harms giving rise
16 to the exception; and

17 “(B) not later than 48 hours after such search
18 or seizure, submits to a court of competent jurisdic-
19 tion an application that discloses—

20 “(i) the covered materials searched for or
21 seized;

22 “(ii) the measures described in subpara-
23 graph (A); and

24 “(iii) the information described in para-
25 graph (2)(B).

1 “(4)(A) Upon receipt of an application under para-
2 graph (3)(B), the court shall review the application and
3 issue an order determining whether the search or seizure
4 was justified by an exception described in paragraph (3).

5 “(B) If the court issues an order described in sub-
6 paragraph (A) that the search for or seizure of covered
7 materials was not justified by an exception described in
8 paragraph (3)—

9 “(i) the covered materials shall be treated as if
10 they were searched for or seized, as applicable, in
11 violation of this Act; and

12 “(ii) the court shall order the government offi-
13 cer or employee to—

14 “(I) immediately return all covered mate-
15 rials seized; and

16 “(II) destroy any copies of the covered ma-
17 terials seized.

18 “(C) If the court issues an order described in sub-
19 paragraph (A) that the search for or seizure of covered
20 materials was justified by an exception described in para-
21 graph (3), the court may order the government officer or
22 employee to take any measures that the court determines
23 are reasonable to appropriately balance the continued need
24 for the covered materials of the government officer or em-
25 ployee against the harms flowing from the continued ac-

1 cess to covered materials by the government officer or em-
2 ployee, including by ordering the return of any portions
3 of the covered materials, the destruction of any copies of
4 any portions of the covered materials, or by limiting the
5 use or dissemination of any portion of the covered mate-
6 rials.”.

7 **SEC. 5. CLARIFYING POSSESSION OF MATERIALS ON THE**
8 **CLOUD.**

9 Section 101 of the Privacy Protection Act of 1980
10 (42 U.S.C. 2000aa), as amended by section 4 of this Act,
11 is amended by adding at the end of the following:

12 “(e) For purposes of subsections (a) and (b), if the
13 materials described in such subsections are stored, held,
14 or maintained on an electronic communication service (as
15 defined in section 2510 of title 18, United States Code)
16 or remote computing service (as defined in section 2711
17 of title 18, United States Code) by or on behalf of a cus-
18 tomer or subscriber, the customer or subscriber shall be
19 the person deemed to possess such materials.”.