

By Mr. Sisitsky, a petition (accompanied by bill, Senate, No. 1054) of Francis X. Bellotti, Attorney General, Alan D. Sisitsky and Salvatore Ciccarelli for legislation to amend the public records law and fair information practices act to protect the Commonwealth from disclosing information compiled for litigation. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT TO AMEND THE PUBLIC RECORDS LAW AND FAIR INFORMATION PRACTICES ACT.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to protect the Commonwealth from disclosure of certain information compiled in anticipation of litigation or for trial, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. Clause 26 of Section 7 of Chapter 4 of the Gen-
 2 eral Laws, as most recently amended by St. 1979, c. 230, is
 3 hereby amended by striking the period after sub-clause (i),
 4 inserting in its place a semi-colon, and adding the following
 5 paragraph after said sub-clause (i): —

6 (j) documents, information, and tangible things prepared
 7 in anticipation of litigation or for trial, and facts known and
 8 opinions held by experts acquired or developed in anticipa-
 9 tion of litigation, where such documents, information, tangible
 10 things, facts or opinions are not, or would not be discover-
 11 able in anticipation of pending civil or criminal court proceed-
 12 ings. This exception shall not apply where it is shown that
 13 court proceedings are anticipated or have been initiated pri-
 14 marily to negate the right of access to public records pro-
 15 vided by Section 10 of Chapter 66 of the General Laws.

1 SECTION 2. Section 2 of Chapter 66A of the General Laws,
 2 as most recently amended by St. 1977. c. 691, §§7 to 12, is

3 hereby amended by striking Clause (i) and inserting in place
4 thereof the following: —

5 (i) inform in writing an individual, upon his request,
6 whether he is a data subject, and if so, make such data fully
7 available to him or his authorized representative, upon his
8 request, in a form comprehensible to him, unless withholding
9 such personal data is authorized by this clause or any other
10 statute. A holder may withhold from a data subject: (I)
11 documents, information, and tangible things prepared in an-
12 ticipation of litigation or for trial, and facts known and
13 opinions held by experts acquired or developed in anticipa-
14 tion of litigation, where such documents, information, tangi-
15 ble things, facts or opinions are not, or would not be discov-
16 erable in anticipated or pending civil or criminal court pro-
17 ceedings; or (II) information which is currently the subject
18 of an investigation and the disclosure of which would probably
19 so prejudice the possibility of effective law enforcement that
20 such disclosure would not be in the public interest. The fore-
21 going sentence is not intended in any way to derogate from
22 any right or power of access the data subject might have
23 under administrative or judicial discovery procedures, and said
24 foregoing sentence shall not apply where it is shown that
25 court proceedings are initiated or anticipated primarily to
26 negate the personal data access rights provided in the first
27 sentence of this clause. In making any disclosure of informa-
28 tion to a data subject pursuant to this chapter, the holder may
29 remove personal identifiers relating to a third person, except
30 where such third person is an officer or employee of govern-
31 ment acting as such and would not be placed in physical
32 danger by the disclosure of his identity, and the data sub-
33 ject is not an officer or employee of government. No holder
34 shall rely on any exception contained in clause twenty-sixth
35 of section seven of chapter four to withhold from any data
36 subject personal data otherwise accessible to him under this
37 chapter.