

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1202
Judiciary

(Delegate Rosenberg)

Courts - Privilege - Disclosure - News or Information Sources

This bill redefines the eligibility requirements for the privilege against compelled disclosure of news or information sources and expands the persons who may claim the privilege. The privilege does not extend to public officials.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: The bill's requirements can be handled with existing budgeted resources.

Small Business Effect: Potential meaningful decrease in litigation expenditures for publications that do not fit the traditional definition of "news media" that will be covered by the privilege as a result of the bill.

Analysis

Bill Summary: The bill repeals the current statutory definition of "news media" and instead, specifies that a "covered person" for purpose of the privilege is a person who, at the inception of the news-gathering process; has the primary intent to investigate events and procure material to disseminate to the public news or information concerning events or other matters of public interest; and regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes on those matters by engaging in specified activities. "Covered person" includes the supervisor, employer, parent company, subsidiary, or an affiliate of an individual described above.

Unless otherwise specified, any judicial, legislative, or administrative body, or any body that has the power to issue subpoenas, may not compel a “covered person” to disclose the source of any news or information procured by the person or any news or information procured by the person for communication to the public, but not communicated.

A court may compel a “covered person” to disclose news or information, however, if the court finds that the party seeking protected news or information has established by clear and convincing evidence that:

- the news or information is relevant to a significant legal issue before any judicial, legislative, or administrative body, or any body that has the power to issue subpoenas;
- the news or information cannot, with due diligence, be obtained by any alternate means; and
- there is an overriding public interest in disclosure.

A court may not compel disclosure of the source of any news or information procured by a person protected under the privilege.

Current Law: “News media” means:

- newspapers;
- magazines;
- journals;
- press associations;
- news agencies;
- wire services;
- radio;
- television; and
- any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

A judicial, legislative, or administrative body, or any body that has the power to issue subpoenas, may not compel any person who is, or has been, employed by the news media in any news gathering or news disseminating capacity to disclose:

- the source of any news or information procured by the person while employed by the news media, whether or not the source has been promised confidentiality; or

- any news or information procured by the person while employed by the news media, in the course of pursuing professional activities, for communication to the public but which is not so communicated, in whole or in part.

A court may compel disclosure of news or information, if the court finds that the party seeking protected news or information has established by clear and convincing evidence that:

- the news or information is relevant to a significant legal issue before any judicial, legislative, or administrative body, or any body that has the power to issue subpoenas;
- the news or information cannot, with due diligence, be obtained by any alternate means; and
- there is an overriding public interest in disclosure.

A court may not compel disclosure of the source of any news or information procured by a person eligible for the privilege.

If any person employed by the news media disseminates a source of any news or information, or any portion of the news or information procured while pursuing professional activities, the protection from compelled disclosure is not waived by the individual.

Background: In 2004, the Court of Special Appeals determined that a person employed by a financial newsletter distributed to subscribers via the Internet that contains articles about publicly traded companies can assert the news media privilege. *Forensic Advisors Inc. v. Matrixx Initiatives, Inc.*, 170 Md. App. 520, 907 A.2d 855 (2006).

In 2008, a Worcester County District Court judge concluded that the news media privilege did not apply to a blogger who was being sued for defamation because the blogger was not *employed* by the news media. However, based on arguments made by the blogger citing other legal provisions, the court did not compel the blogger to reveal his source.

Additional Information

Prior Introductions: HB 1140 of 2005 extended the privilege to a person employed by a “weblog.” The bill received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), *The Daily Record*, Citizen Media Law Project, The Maryland Manual, *blogspot.com*, Department of Legislative Services

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