



July 8, 2013

Representative Eugene O'Flaherty
Joint Committee on the Judiciary
Room 136
State House
Boston, MA 02133

Senator Katherine Clark
Joint Committee on the Judiciary
Room 410
State House
Boston, MA 02133

Re: Electronic Frontier Foundation Support of S.796/H.1684

Dear Senator Clark, Representative O'Flaherty, and Committee Members:

This brief letter is submitted in support of S.796/H.1684.

The Electronic Frontier Foundation ("EFF") is a non-profit organization member-supported civil liberties organization based in San Francisco, California, that works to protect rights in the digital world. EFF has more than 21,000 members across the country, with over 800 Massachusetts residents who donate to EFF and over 3,100 Massachusetts subscribers to the EFF mailing list.

EFF has worked hard to encourage legislatures and courts to recognize the threats new technologies pose to civil liberties and personal privacy, and has pushed for updates to electronic privacy laws in both local and federal governments. One of the biggest current threats is the dramatic increase in government requests for information generated by popular electronic devices like cell phones, tablets and computers.

When the Electronic Communications Privacy Act ("ECPA"), the federal law that governs law enforcement access to electronic data, was enacted in 1986 there was no such thing as the World Wide Web as we know it, let alone smartphones and e-mail inboxes with infinite storage capacity. Today, communicating online is a way of life and email is a ubiquitous form of communication for friends, family and businesses. New platforms like Twitter, Facebook and Linked In are creating new forums for online communication beyond traditional email. And the popularity of "cloud" storage has soared in recent years, allowing electronic correspondence, pictures and files to be stored online essentially forever. All of this data is increasingly being accessed through Internet connected "smartphones," which allowing wireless providers to pinpoint our precise location throughout the day as we connect from cell tower to cell tower.

Although technological changes have had a profound impact on how we talk to loved ones and do business, electronic privacy laws have failed to keep up. Law enforcement has been able to obtain much of this data without a search warrant, an essential judicial check on the police's ability to search our belongings. Just because our "papers, and effects" are now electronic and stored online does not mean they are unworthy of Fourth Amendment protection.

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Thankfully, S.796/H.1684 is a balanced way to bring Massachusetts' electronic privacy laws up to date with the technological realities of the 21st century.

Given how extraordinarily sensitive the electronic information about us can be – potentially revealing who we communicate with and how often, our religious and political habits and our location – a probable cause requirement and judicial oversight is necessary to ensure law enforcement access to this information is limited to situations where there is probable cause evidence of a crime will be found. The bill's reporting requirements will shed light on how many requests are being made, and how much these requests cost the state.

At the same time, S.796/H.1684 preserves law enforcement's ability to use electronic evidence as a powerful investigative tool for solving crimes and making people safe provided the police obtain a search warrant. The bill has common sense exceptions that relax the search warrant requirement in emergencies or with the consent of the user.

There has been a strong push recently in both Congress and state legislatures throughout the country to strike the right balance between allowing police access to investigatory tools and protecting privacy. Passing S.796/H.1684 will help make Massachusetts a national leader on electronic privacy.

EFF strongly supports S.796/H.1684 and urges this committee to approve it.

Sincerely,



Hanni Fakhoury, Esq.
Staff Attorney



Adi Kamdar
Activist