

## Part 10 Financial Information Privacy

### 7-1-1001 Definitions -- Written consent or court order for disclosure by financial institution -- Exception.

- (1) As used in this part:
- (a) "Account holder" means a person for whom an account is held by a financial institution.
  - (b) "Governmental entity" means:
    - (i) the state, including:
      - (A) a department;
      - (B) an institution;
      - (C) a board;
      - (D) a division;
      - (E) a bureau;
      - (F) an office;
      - (G) a commission;
      - (H) a committee; or
      - (I) an elected official; and
    - (ii) a political subdivision of the state, including:
      - (A) a county;
      - (B) a city;
      - (C) a town;
      - (D) a school district;
      - (E) a public transit district;
      - (F) a redevelopment agency;
      - (G) a special improvement district; or
      - (H) a taxing district.
  - (c) "Nonprotected record" means a record maintained by a financial institution to facilitate the conduct of the financial institution's business regarding a person or account, including:
    - (i) the existence of an account;
    - (ii) the opening and closing dates of an account;
    - (iii) the name under which an account is held; and
    - (iv) the name, address, and telephone number of an account holder.
  - (d) "Protected record" means a record that is not defined as a nonprotected record.
  - (e) "Record" means information that is:
    - (i) prepared, owned, received, or retained by a financial institution;
    - (ii)
      - (A) inscribed on a tangible medium; or
      - (B) stored in an electronic or other medium; and
    - (iii) retrievable in perceivable form.
- (2) Except for a governmental entity listed in Subsection 7-1-1006(1), an individual acting on behalf of a governmental entity may not request, obtain by subpoena, or otherwise obtain information from a state or federally chartered financial institution that constitutes a record reflecting the financial condition of any person without first obtaining:
- (a) written permission from all account holders of the account referenced in the record to be examined; or
  - (b) an order from a court of competent jurisdiction permitting access to the record.

- (3) This section does not apply to a review made by the commissioner to determine whether a financial institution is operating in accordance with law.

Amended by Chapter 381, 2009 General Session

**7-1-1002 Notice to person about whom information sought.**

- (1)
- (a) If a court order is obtained pursuant to Section 7-1-1001, the governmental entity that obtained the order shall notify the person about whom information is sought that a court order has been obtained:
    - (i) within three days of the day on which service of the order is made upon the financial institution; and
    - (ii) no later than seven days before the day fixed in the order as the day upon which the records are to be produced or examined.
  - (b) The notice required by Subsection (1)(a) shall be accompanied by:
    - (i) a copy of the order that has been served upon the financial institution;
    - (ii) a copy of the motion or application upon which the order is based; and
    - (iii) a statement setting forth the rights of the person under Section 7-1-1003.
- (2)
- (a) The notice shall be sufficient if, on or before the third day after issuance of the order, notice is:
    - (i) served in the manner provided in Rule 4 (d), Utah Rules of Civil Procedure, upon the person entitled to notice; or
    - (ii) mailed by certified or registered mail to the last-known address of the person entitled to notice.
  - (b) Notwithstanding Subsection (2)(a), if the person entitled to notice is deceased or under legal disability, notice shall be served upon or mailed to the last-known address of that person's executor, administrator, guardian, or other fiduciary.

Renumbered and Amended by Chapter 3, 2008 General Session

**7-1-1003 Intervention to challenge or stay order -- Burden on governmental entity.**

- (1) Notwithstanding any other law or rule of law, any person who is entitled to notice of a court order under Section 7-1-1002 shall have the right to intervene in any proceeding with respect to enforcement of the order to:
- (a) challenge the issuance of the order; or
  - (b) stay compliance with the order.
- (2) Upon intervention, the burden shall be on the governmental entity obtaining the order to show that there is reasonable cause for the issuance of the order.

Renumbered and Amended by Chapter 3, 2008 General Session

**7-1-1004 Reimbursement of financial institution for costs of obtaining information.**

- (1) Except as provided in Subsection (2), a financial institution is entitled to reimbursement by a governmental entity seeking information, for costs reasonably and directly incurred in searching for, reproducing, or transporting a record required to be produced if the financial institution produces the record:
- (a) pursuant to written permission by all account holders of the account referenced in the record in accordance with:

- (i) Subsection 7-1-1001(2)(a); or
  - (ii) Subsection 7-1-1006(2)(b)(iii);
  - (b) in compliance with an order obtained under this part; or
  - (c) in compliance with an order of a court or administrative body of competent jurisdiction.
- (2) A depository institution is not allowed reimbursement under this section by the State Tax Commission for information the depository institution provides or action the depository institution takes in accordance with Title 59, Chapter 1, Part 17, Depository Institution Data Match System and Levy Act.
- (3) The commissioner shall by rule establish the rates and conditions under which a governmental entity shall reimburse a financial institution.

Amended by Chapter 326, 2016 General Session

**7-1-1005 Admissibility of information restricted.**

- (1) Information obtained directly or indirectly from a financial institution in violation of Sections 7-1-1001 through 7-1-1003 may not be admissible in any court of this state against the person entitled to notice.
- (2) This section does not apply in any action:
- (a) between the financial institution and the person otherwise entitled to notice; or
  - (b) in which it is claimed that the financial institution has been the victim of fraud, embezzlement or any other criminal act committed by the person otherwise entitled to notice.

Renumbered and Amended by Chapter 3, 2008 General Session

**7-1-1006 Inapplicable to certain official investigations.**

- (1) Sections 7-1-1002 and 7-1-1003 do not apply if an examination of a record is a part of an official investigation by:
- (a) local police;
  - (b) a sheriff;
  - (c) a peace officer;
  - (d) a city attorney;
  - (e) a county attorney;
  - (f) a district attorney;
  - (g) the attorney general;
  - (h) the Department of Public Safety;
  - (i) the Office of Recovery Services of the Department of Human Services;
  - (j) the Insurance Department;
  - (k) the Department of Commerce;
  - (l) the Benefit Payment Control Unit or the Payment Error Prevention Unit of the Department of Workforce Services;
  - (m) the state auditor;
  - (n) the State Tax Commission; or
  - (o) the Department of Health or its designee, when undertaking an official investigation to determine whether an individual qualifies for certain assistance programs as provided in Section 26-18-2.5.
- (2) Except for the Office of Recovery Services, if a governmental entity listed in Subsection (1) seeks a record, the entity shall obtain the record as follows:
- (a) if the record is a nonprotected record, by request in writing that:

- (i) certifies that an official investigation is being conducted; and
  - (ii) is signed by a representative of the governmental entity that is conducting the official investigation; or
- (b) if the record is a protected record, by obtaining:
- (i) a subpoena authorized by statute;
  - (ii) other legal process:
    - (A) ordered by a court of competent jurisdiction; and
    - (B) served upon the financial institution; or
  - (iii) written permission from all account holders of the account referenced in the record to be examined.
- (3) If the Office of Recovery Services seeks a record, the Office of Recovery Services shall obtain the record pursuant to:
- (a) Subsection 62A-11-104(1)(g);
  - (b) Section 62A-11-304.1;
  - (c) Section 62A-11-304.5; or
  - (d) Title IV, Part D of the Social Security Act as codified in 42 U.S.C. 651 et seq.
- (4) A financial institution may not give notice to an account holder or person named or referenced within the record disclosed pursuant to Subsection (2)(a).
- (5) In accordance with Section 7-1-1004, the governmental entity conducting the official investigation that obtains a record from a financial institution under this section shall reimburse the financial institution for costs reasonably and directly incurred by the financial institution.

Amended by Chapter 344, 2011 General Session

**7-1-1007 Liability of financial institutions.**

A financial institution is not liable to an account holder or person named or referenced within a record:

- (1) for a disclosure that is the result of a subpoena, order, or request made pursuant to Sections 7-1-1001 through 7-1-1006 if the financial institution reasonably believes that the subpoena, order, or request is properly made under Sections 7-1-1001 through 7-1-1006; or
- (2) for a disclosure or action taken in good faith pursuant to a data match or administrative subpoena provided for by a statute listed in Subsection 7-1-1006(3).

Amended by Chapter 381, 2009 General Session