

**FINANCIAL INSTITUTIONS DISCLOSURE  
OF RECORDS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Margaret Dayton**

House Sponsor: Bradley M. Daw

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**LONG TITLE**

**General Description:**

This bill modifies the Financial Institutions Act to address obtaining a record by written permission of account holders.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides for obtaining a protected record by written permission of account holders;

and

- ▶ makes technical and conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**7-1-1001**, as last amended by Laws of Utah 2008, Chapter 268 and renumbered and amended by Laws of Utah 2008, Chapter 3

**7-1-1004**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**7-1-1006**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**7-1-1007**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **7-1-1001** is amended to read:

32 **7-1-1001. Definitions -- Written consent or court order for disclosure by**  
33 **financial institution -- Exception.**

34 (1) As used in this part:

35 (a) "Account holder" means a person for whom an account is held by a financial  
36 institution.

37 [~~(a)~~] (b) "Governmental entity" means:

38 (i) the state, including [~~all departments, institutions, boards, divisions, bureaus,~~  
39 ~~offices, commissions, committees, and elected officials; and~~];

40 (A) a department;

41 (B) an institution;

42 (C) a board;

43 (D) a division;

44 (E) a bureau;

45 (F) an office;

46 (G) a commission;

47 (H) a committee; or

48 (I) an elected official; and

49 (ii) a political subdivision of the state, including:

50 (A) a county[;];

51 (B) a city[;];

52 (C) a town[;];

53 (D) a school district[;];

54 (E) a public transit district[;];

55 (F) a redevelopment agency[;];

56 (G) a special improvement[;] district; or

57 (H) a taxing district.

58           ~~[(b)]~~ (c) "Nonprotected record" means a record maintained by ~~[the]~~ a financial  
59 institution to facilitate the conduct of ~~[its]~~ the financial institution's business regarding a  
60 person or account, including:

- 61           (i) the existence of an account;
- 62           (ii) the opening and closing dates of an account;
- 63           (iii) the name under which an account is held; and
- 64           (iv) the name, address, and telephone number of an account holder.

65           ~~[(e)]~~ (d) "Protected record" means a record that is not defined as a nonprotected  
66 record~~[-and]~~.

67           ~~[(d)]~~ (e) "Record" means information that is:

- 68           (i) prepared, owned, received, or retained by a financial institution;
- 69           (ii) (A) inscribed on a tangible medium; or
- 70           (B) stored in an electronic or other medium; and
- 71           (iii) retrievable in perceivable form.

72           (2) Except ~~[as provided in Section]~~ for a governmental entity listed in Subsection  
73 7-1-1006(1), an individual acting ~~[in]~~ on behalf of a governmental entity may not request,  
74 obtain by subpoena, or otherwise obtain information from a state or federally chartered  
75 financial institution that constitutes a record reflecting the financial condition of any person  
76 without first obtaining:

77           (a) written permission from ~~[the person that is named or referenced]~~ all account  
78 holders of the account referenced in the record to be examined; or

79           (b) an order from a court of competent jurisdiction permitting access to the record.

80           (3) This section does not apply to a review made by the commissioner ~~[of financial~~  
81 ~~institutions]~~ to determine whether a financial institution is operating in accordance with law.

82           Section 2. Section **7-1-1004** is amended to read:

83           **7-1-1004. Reimbursement of financial institution for costs of obtaining**  
84 **information.**

85           (1) A financial institution ~~[shall be]~~ is entitled to reimbursement by ~~[the]~~ a

86 governmental entity seeking ~~[the]~~ information, for costs reasonably and directly incurred in  
87 searching for, reproducing, or transporting ~~[books, papers, records, or other data]~~ a record  
88 required to be produced if the financial institution produces the record:

89 (a) pursuant to written permission by ~~[the person named or referenced in]~~ all account  
90 holders of the account referenced in the record in accordance with ~~[Section 7-1-1001];~~:

91 (i) Subsection 7-1-1001(2)(a); or

92 (ii) Subsection 7-1-1006(2)(b)(iii);

93 (b) in compliance with an order obtained under this part; or

94 (c) in compliance with an order of a court or administrative body of competent  
95 jurisdiction.

96 (2) The commissioner ~~[of financial institutions]~~ shall by rule establish the rates and  
97 conditions under which ~~[reimbursement shall be made]~~ a governmental entity shall reimburse  
98 a financial institution.

99 Section 3. Section **7-1-1006** is amended to read:

100 **7-1-1006. Inapplicable to certain official investigations.**

101 (1) Sections ~~[7-1-1001 through]~~ 7-1-1002 and 7-1-1003 do not apply ~~[when]~~ if an  
102 examination of ~~[records]~~ a record is a part of an official investigation by:

103 (a) local police;

104 (b) a sheriff;

105 (c) a peace officer;

106 (d) a city attorney;

107 (e) a county attorney;

108 (f) a district attorney;

109 (g) the attorney general;

110 (h) the Department of Public Safety;

111 (i) the Office of Recovery Services of the Department of Human Services;

112 (j) the Insurance Department;

113 (k) the Department of Commerce;

114 (l) the Benefit Payment Control Unit or the Payment Error Prevention Unit of the  
115 Department of Workforce Services;

116 (m) the state auditor; or

117 (n) the State Tax Commission.

118 (2) Except for the Office of Recovery Services, if a governmental entity listed in  
119 Subsection (1) seeks a record, the entity shall obtain the record as follows:

120 (a) if the record is a nonprotected record, by request in writing that:

121 (i) certifies that an official investigation is being conducted; and

122 (ii) is signed by a representative of the governmental entity that is conducting the  
123 official investigation; or

124 (b) if the record is a protected record, by obtaining:

125 (i) a subpoena authorized by statute; ~~or~~

126 (ii) other legal process:

127 (A) ordered by a court of competent jurisdiction; and

128 (B) served upon the financial institution~~[-]; or~~

129 (iii) written permission from all account holders of the account referenced in the  
130 record to be examined.

131 (3) If the Office of Recovery Services seeks a record, ~~[it]~~ the Office of Recovery  
132 Services shall obtain the record pursuant to:

133 (a) Subsection 62A-11-104(7);

134 (b) Section 62A-11-304.1;

135 (c) Section 62A-11-304.5; or

136 (d) Title IV, Part D of the Social Security Act as codified in 42 U.S.C. 651 et seq.

137 (4) A financial institution may not give notice to ~~[any]~~ an account holder or person  
138 named or referenced within the record disclosed pursuant to Subsection (2)(a).

139 (5) In accordance with Section 7-1-1004, the ~~[agency]~~ governmental entity conducting  
140 the official investigation that obtains a record from a financial institution under this section  
141 shall reimburse the financial institution for costs reasonably and directly incurred by the

142 financial institution.

143 Section 4. Section **7-1-1007** is amended to read:

144 **7-1-1007. Liability of financial institutions.**

145 A financial institution is not liable to [~~any~~] an account holder or person named or  
146 referenced within a record:

147 (1) for [~~any~~] a disclosure that is the result of a subpoena, order, or request made  
148 pursuant to Sections 7-1-1001 through 7-1-1006 if the financial institution reasonably believes  
149 that the subpoena, order, or request is properly made under Sections 7-1-1001 through  
150 7-1-1006; or

151 (2) for [~~any~~] a disclosure or action taken in good faith pursuant to a data match or  
152 administrative subpoena provided for by [~~the statutes~~] a statute listed in Subsection  
153 7-1-1006(3).