

Effective 5/14/2019

Chapter 23c
Electronic Information or Data Privacy Act

77-23c-101.1 Title.

This chapter is known as the "Electronic Information or Data Privacy Act."

Enacted by Chapter 362, 2019 General Session

77-23c-101.2 Definitions.

As used in this chapter:

- (1) "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.
- (2) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.
- (3)
 - (a) "Electronic information or data" means information or data including a sign, signal, writing, image, sound, or intelligence of any nature transmitted or stored in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.
 - (b) "Electronic information or data" includes the location information, stored data, or transmitted data of an electronic device.
 - (c) "Electronic information or data" does not include:
 - (i) a wire or oral communication;
 - (ii) a communication made through a tone-only paging device; or
 - (iii) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of money.
- (4) "Law enforcement agency" means an entity of the state or a political subdivision of the state that exists to primarily prevent, detect, or prosecute crime and enforce criminal statutes or ordinances.
- (5) "Location information" means information, obtained by means of a tracking device, concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device.
- (6) "Location information service" means the provision of a global positioning service or other mapping, location, or directional information service.
- (7) "Oral communication" means the same as that term is defined in Section 77-23a-3.
- (8) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.
- (9) "Transmitted data" means electronic information or data that is transmitted wirelessly:
 - (a) from an electronic device to another electronic device without the use of an intermediate connection or relay; or
 - (b) from an electronic device to a nearby antenna.
- (10) "Wire communication" means the same as that term is defined in Section 77-23a-3.

Renumbered and Amended by Chapter 362, 2019 General Session

Amended by Chapter 479, 2019 General Session, (Coordination Clause)

Amended by Chapter 479, 2019 General Session

77-23c-102 Electronic information or data privacy -- Warrant required for disclosure.

- (1)
- (a) Except as provided in Subsection (2), for a criminal investigation or prosecution, a law enforcement agency may not obtain, without a search warrant issued by a court upon probable cause:
 - (i) the location information, stored data, or transmitted data of an electronic device; or
 - (ii) electronic information or data transmitted by the owner of the electronic information or data:
 - (A) to a provider of a remote computing service; or
 - (B) through a provider of an electronic communication service.
 - (b) Except as provided in Subsection (1)(c), a law enforcement agency may not use, copy, or disclose, for any purpose, the location information, stored data, or transmitted data of an electronic device, or electronic information or data provided by a provider of a remote computing service or an electronic communication service, that:
 - (i) is not the subject of the warrant; and
 - (ii) is collected as part of an effort to obtain the location information, stored data, or transmitted data of an electronic device, or electronic information or data provided by a provider of a remote computing service or an electronic communication service that is the subject of the warrant in Subsection (1)(a).
 - (c) A law enforcement agency may use, copy, or disclose the transmitted data of an electronic device used to communicate with the electronic device that is the subject of the warrant if the law enforcement agency reasonably believes that the transmitted data is necessary to achieve the objective of the warrant.
 - (d) The electronic information or data described in Subsection (1)(b) shall be destroyed in an unrecoverable manner by the law enforcement agency as soon as reasonably possible after the electronic information or data is collected.
- (2)
- (a) A law enforcement agency may obtain location information without a warrant for an electronic device:
 - (i) in accordance with Section 53-10-104.5;
 - (ii) if the device is reported stolen by the owner;
 - (iii) with the informed, affirmative consent of the owner or user of the electronic device;
 - (iv) in accordance with a judicially recognized exception to warrant requirements;
 - (v) if the owner has voluntarily and publicly disclosed the location information; or
 - (vi) from a provider of a remote computing service or an electronic communications service if the provider voluntarily discloses the location information:
 - (A) under a belief that an emergency exists involving an imminent risk to an individual of death, serious physical injury, sexual abuse, live-streamed sexual exploitation, kidnapping, or human trafficking; or
 - (B) that is inadvertently discovered by the provider and appears to pertain to the commission of a felony, or of a misdemeanor involving physical violence, sexual abuse, or dishonesty.
 - (b) A law enforcement agency may obtain stored data or transmitted data from an electronic device or electronic information or data transmitted by the owner of the electronic information or data to a provider of a remote computing service or through a provider of an electronic communication service, without a warrant:
 - (i) with the informed consent of the owner of the electronic device or electronic information or data;
 - (ii) in accordance with a judicially recognized exception to warrant requirements; or

- (iii) subject to Subsection(2)(a)(vi)(B), from a provider of a remote computing service or an electronic communication service if the provider voluntarily discloses the stored or transmitted data as otherwise permitted under 18 U.S.C. Sec. 2702.
- (c) A prosecutor may obtain a judicial order as described in Section 77-22-2.5 for the purposes described in Section 77-22-2.5.
- (3) A provider of an electronic communication service or a remote computing service, the provider's officers, employees, or agents, or other specified persons may not be held liable for providing information, facilities, or assistance in good faith reliance on the terms of the warrant issued under this section or without a warrant in accordance with Subsection (2).
- (4) Nothing in this chapter:
 - (a) limits or affects the disclosure of public records under Title 63G, Chapter 2, Government Records Access and Management Act;
 - (b) affects the rights of an employer under Subsection 34-48-202(1)(e) or an administrative rule adopted under Section 63A-16-205; or
 - (c) limits the ability of a law enforcement agency to receive or use information, without a warrant or subpoena, from the National Center for Missing and Exploited Children under 18 U.S.C. Sec. 2258A.

Amended by Chapter 274, 2022 General Session

77-23c-103 Notification required -- Delayed notification.

- (1)
 - (a) Except as provided in Subsection (2), if a law enforcement agency executes a warrant in accordance with Subsection 77-23c-102(1) or 77-23c-104(3), the law enforcement agency shall notify the owner of the electronic device or electronic information or data specified in the warrant within 90 days after the day on which the electronic device or the electronic data or information is obtained by the law enforcement agency but in no case shall the law enforcement agency notify the owner more than three days after the day on which the investigation is concluded.
 - (b) The notification described in Subsection (1)(a) shall state:
 - (i) that a warrant was applied for and granted;
 - (ii) the kind of warrant issued;
 - (iii) the period of time during which the collection of the electronic information or data was authorized;
 - (iv) the offense specified in the application for the warrant;
 - (v) the identity of the law enforcement agency that filed the application; and
 - (vi) the identity of the judge who issued the warrant.
 - (c) For the notification requirement described in Subsection (1)(a), the time period under Subsection (1)(a) begins on the day after the day on which the owner of the electronic device or electronic information or data specified in the warrant is known, or could be reasonably identified, by the law enforcement agency.
- (2) A law enforcement agency seeking a warrant in accordance with Subsection 77-23c-102(1) (a) or 77-23c-104(3) may submit a request, and the court may grant permission, to delay the notification required by Subsection (1) for a period not to exceed 30 days, if the court determines that there is reasonable cause to believe that the notification may:
 - (a) endanger the life or physical safety of an individual;
 - (b) cause a person to flee from prosecution;
 - (c) lead to the destruction of or tampering with evidence;

- (d) intimidate a potential witness; or
 - (e) otherwise seriously jeopardize an investigation or unduly delay a trial.
- (3) When a delay of notification is granted under Subsection (2) and upon application by the law enforcement agency, the court may grant additional extensions of up to 30 days each.
- (4)
- (a) A law enforcement agency that seeks a warrant for an electronic device or electronic information or data in accordance with Subsection 77-23c-102(1)(a) or 77-23c-104(3) may submit a request to the court to delay a notification under Subsection (2) if the purpose of delaying the notification is to apprehend an individual:
 - (i) who is a fugitive from justice under Section 77-30-13; and
 - (ii) for whom an arrest warrant has been issued for a violent felony offense as defined in Section 76-3-203.5.
 - (b) The court may grant the request under Subsection (4)(a) to delay notification until the individual who is a fugitive from justice under Section 77-30-13 is apprehended by the law enforcement agency.
 - (c) A law enforcement agency shall issue a notification described in Subsection (5) to the owner of the electronic device or electronic information or data within 14 days after the day on which the law enforcement agency apprehends the individual described in Subsection (4)(a).
- (5) Upon expiration of the period of delayed notification granted under Subsection (2) or (3), or upon the apprehension of an individual described in Subsection (4)(a), the law enforcement agency shall serve upon or deliver by first-class mail, or by other means if delivery is impracticable, to the owner of the electronic device or electronic information or data a copy of the warrant together with notice that:
- (a) states with reasonable specificity the nature of the law enforcement inquiry; and
 - (b) contains:
 - (i) the information described in Subsection (1)(b);
 - (ii) a statement that notification of the search was delayed;
 - (iii) the name of the court that authorized the delay of notification; and
 - (iv) a reference to the provision of this chapter that allowed the delay of notification.
- (6) A law enforcement agency is not required to notify the owner of the electronic device or electronic information or data if the owner is located outside of the United States.

Amended by Chapter 42, 2021 General Session

77-23c-104 Third-party electronic information or data.

- (1) As used in this section, "subscriber record" means a record or information of a provider of an electronic communication service or remote computing service that reveals the subscriber's or customer's:
- (a) name;
 - (b) address;
 - (c) local and long distance telephone connection record, or record of session time and duration;
 - (d) length of service, including the start date;
 - (e) type of service used;
 - (f) telephone number, instrument number, or other subscriber or customer number or identification, including a temporarily assigned network address; and
 - (g) means and source of payment for the service, including a credit card or bank account number.

- (2) Except as provided in Chapter 22, Subpoena Powers for Aid of Criminal Investigation and Grants of Immunity, a law enforcement agency may not obtain, use, copy, or disclose a subscriber record.
- (3) A law enforcement agency may not obtain, use, copy, or disclose, for a criminal investigation or prosecution, any record or information, other than a subscriber record, of a provider of an electronic communication service or remote computing service related to a subscriber or customer without a warrant.
- (4) Notwithstanding Subsections (2) and (3), a law enforcement agency may obtain, use, copy, or disclose a subscriber record, or other record or information related to a subscriber or customer, without an investigative subpoena or a warrant:
 - (a) with the informed, affirmed consent of the subscriber or customer;
 - (b) in accordance with a judicially recognized exception to warrant requirements;
 - (c) if the subscriber or customer voluntarily discloses the record in a manner that is publicly accessible; or
 - (d) if the provider of an electronic communication service or remote computing service voluntarily discloses the record:
 - (i) under a belief that an emergency exists involving the imminent risk to an individual of:
 - (A) death;
 - (B) serious physical injury;
 - (C) sexual abuse;
 - (D) live-streamed sexual exploitation;
 - (E) kidnapping; or
 - (F) human trafficking;
 - (ii) that is inadvertently discovered by the provider, if the record appears to pertain to the commission of:
 - (A) a felony; or
 - (B) a misdemeanor involving physical violence, sexual abuse, or dishonesty; or
 - (iii) subject to Subsection 77-23c-104(4)(d)(ii), as otherwise permitted under 18 U.S.C. Sec. 2702.
- (5) A provider of an electronic communication service or remote computing service, or the provider's officers, employees, agents, or other specified persons may not be held liable for providing information, facilities, or assistance in good faith reliance on the terms of a warrant issued under this section, or without a warrant in accordance with Subsection (3).

Amended by Chapter 42, 2021 General Session

77-23c-105 Exclusion of records.

All electronic information or data and records of a provider of an electronic communications service or remote computing service pertaining to a subscriber or customer that are obtained in violation of the provisions of this chapter shall be subject to the rules governing exclusion as if the records were obtained in violation of the Fourth Amendment to the United States Constitution and Utah Constitution, Article I, Section 14.

Enacted by Chapter 362, 2019 General Session