

STORAGE OF ELECTRONIC RECORDS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill eliminates provisions regarding access to electronic records by government agencies and requires a search warrant in all cases.

Highlighted Provisions:

This bill:

- ▶ eliminates the provision that allows access to electronic records on a server longer than 180 days; and
- ▶ requires a search warrant in all cases for the contents of electronic records.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-23b-4, as enacted by Laws of Utah 1988, Chapter 251

77-23b-6, as last amended by Laws of Utah 1993, Chapter 38

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

Section 1. Section **77-23b-4** is amended to read:

77-23b-4. Disclosure by a provider -- Grounds for requiring disclosure -- Court



28 **order.**

29 (1) ~~[(a)]~~ A government entity may only require the disclosure by a provider of
30 electronic communication services of the contents of an electronic communication that is in
31 electronic storage in an electronic communication system ~~[for 180 days or less]~~ pursuant to a
32 warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal warrant.

33 ~~[(b) A governmental entity may require the disclosure, by a provider of electronic
34 communication systems, of the contents of an electronic communication that has been in
35 electronic storage in an electronic communication system for more than 180 days under
36 Subsection (2).]~~

37 ~~[(2) (a) A governmental entity may require a provider of remote computing services to
38 disclose the contents of any electronic communications to which Subsection (2)(a) is made
39 applicable by Subsection (2)(b):]~~

40 ~~[(i) without required notice to the subscriber or customer, if the governmental entity
41 obtains a warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal
42 warrant; or]~~

43 ~~[(ii) with prior notice from the governmental agency to the subscriber or customer if
44 the governmental entity:]~~

45 ~~[(A) uses an administrative subpoena authorized by a state or federal statute or a state
46 or federal grand jury subpoena; or]~~

47 ~~[(B) obtains a court order for disclosure under Subsection (4), except delayed notice
48 may be given under Section 77-23b-6.]~~

49 ~~[(b)]~~ (2) Subsection ~~[(2)(a)]~~ (1) applies to any electronic communication that is held or
50 maintained on that service:

51 ~~[(i)]~~ (a) on behalf of and received by means of electronic transmission from or created
52 by means of computer processing of communications received by means of electronic
53 transmission from a subscriber or customer of the remote computing service; and

54 ~~[(ii)]~~ (b) solely for the purpose of providing storage or computer processing services to
55 the subscriber or customer, if the provider is not authorized to access the contents of any
56 communication for purposes of providing any services other than storage or computer
57 processing.

58 (3) (a) (i) Except under Subsection (3)(a)(ii), a provider of electronic communication

59 services or remote computing services may disclose a record or other information pertaining to
60 a subscriber to or customer of the service, not including the contents of communication
61 covered by Subsection (1) [~~or (2)~~], to any person other than a governmental agency.

62 (ii) A provider of electronic communication services or remote computing services
63 shall disclose a record or other information pertaining to a subscriber to or customer of the
64 service, not including the contents of communication covered by Subsection (1) [~~or (2)~~], to a
65 governmental entity only when the entity:

66 (A) uses an administrative subpoena authorized by a state or federal statute or a state or
67 federal grand jury subpoena;

68 (B) obtains a warrant issued under the Utah Rules of Criminal Procedure or an
69 equivalent federal warrant;

70 (C) obtains a court order for the disclosure under Subsection (4); or

71 (D) has the consent of the subscriber or customer to the disclosure.

72 (b) A governmental entity receiving records or information under this subsection is not
73 required to provide notice to a subscriber or customer.

74 (4) (a) A court order for disclosure under [~~Subsection (2) or (3)~~] this section may be
75 issued only if the governmental entity shows there is reason to believe the contents of a wire or
76 electronic communication, or the records or other information sought, are relevant to a
77 legitimate law enforcement inquiry.

78 (b) A court issuing an order under this section, on a motion made promptly by the
79 service provider, may quash or modify the order, if the information or records requested are
80 unusually voluminous in nature or compliance with the order otherwise would cause an undue
81 burden on the provider.

82 (5) A cause of action [~~does~~] may not [~~it~~] be brought in any court against any provider
83 of wire or electronic communications services, its officers, employees, agents, or other
84 specified persons, for providing information, facilities, or assistance in accordance with the
85 terms of a court order, warrant, subpoena, or certification under this chapter.

86 Section 2. Section **77-23b-6** is amended to read:

87 **77-23b-6. Notifying subscriber or customer of court order -- Requested delay --**
88 **Grounds -- Limits.**

89 (1) (a) The governmental entity acting under [~~Subsection~~] Section 77-23b-4[(~~2~~)] may:

90 (i) if a court order is sought, include in the application a request for an order delaying
91 [the] notification [~~requirement under Subsection 77-23b-4(2)~~] to the subscriber for not to
92 exceed 90 days and, if the court determines there is reason to believe that notification of
93 existence of the court order may have an adverse result [~~under Subsection (1)(b)~~], the court
94 shall grant the order; or

95 (ii) if an administrative subpoena authorized by a state or federal statute or a state or
96 federal grand jury subpoena is obtained, delay [the] notification [~~required under Subsection~~
97 ~~77-23b-4(2)~~] to the subscriber for not to exceed 90 days, upon the execution of a written
98 certification of a supervisory official that there is reason to believe that the notification of the
99 existence of the subpoena may have an adverse result [~~under Subsection (1)(b)~~].

100 (b) An adverse result [~~under Subsection (1)(a)~~] is:

101 (i) endangering the life or physical safety of an individual;

102 (ii) flight from prosecution;

103 (iii) destruction of or tampering with evidence;

104 (iv) intimidation of potential witnesses; or

105 (v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

106 (c) The governmental entity shall maintain a true copy of certification under
107 Subsection (1)(a)(ii).

108 (d) Extensions of the delay of notification under Section 77-23b-4 of up to 90 days
109 each, may be granted by the court upon application, or by certification by a governmental
110 entity, but only in accordance with Subsection (2).

111 (e) On expiration of the period of delay of notification under Subsection (1)(a) or (d),
112 the governmental entity shall serve upon, or deliver by registered or first class mail, to the
113 customer or subscriber a copy of the process or request together with a notice:

114 (i) stating with reasonable specificity the nature of the law enforcement inquiry; and

115 (ii) informing the customer or subscriber:

116 (A) that information maintained for the customer or subscriber by the service provider
117 named in the process or request was supplied to or requested by that governmental authority
118 and the date the supplying or request took place;

119 (B) that notification of the customer or subscriber was delayed;

120 (C) which governmental entity or court made the certification or determination

121 pursuant to which that delay was made; and

122 (D) which provision of this chapter allows the delay.

123 (f) As used in this subsection, "supervisory official" means the investigative agent in
124 charge or assistant investigative agent in charge or an equivalent of an investigative agency's
125 headquarters or regional office; a county sheriff or chief deputy sheriff, or police chief or
126 assistant police chief; the officer in charge of an investigative task force or the assistant officer
127 in charge; or the attorney general, an assistant attorney general, a county attorney or district
128 attorney, a deputy county attorney or deputy district attorney, or the chief prosecuting attorney
129 of any political subdivision of the state.

130 (2) A governmental entity acting under Section 77-23b-4, when not required to notify
131 the subscriber or customer [~~under Subsection 77-23b-4(2)(a)~~], or to the extent that it may delay
132 notice under Subsection (1), may apply to a court for an order commanding the provider of
133 electronic communications service or remote computing service to whom a warrant, subpoena,
134 or court order is directed, for a period of time the court considers appropriate, to not notify any
135 other person of the existence of the warrant, subpoena, or court order. The court shall enter the
136 order if it determines that there is reason to believe that notification of the existence of the
137 warrant, subpoena, or court order will result in:

- 138 (a) endangering the life or physical safety of an individual;
- 139 (b) flight from prosecution;
- 140 (c) destruction of or tampering with evidence;
- 141 (d) intimidation of potential witnesses; or
- 142 (e) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Legislative Review Note
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Office of Legislative Research and General Counsel