

ELECTRONIC INFORMATION OR DATA PRIVACY ACT

MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions concerning electronic information or data privacy.

Highlighted Provisions:

This bill:

- ▶ provides that law enforcement may obtain a specific category of electronic information or data with a subpoena under certain conditions;
- ▶ amends notification provisions after a search warrant has been executed; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-23c-102, as last amended by Laws of Utah 2022, Chapter 274

77-23c-103, as last amended by Laws of Utah 2021, Chapter 42

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

Section 1. Section **77-23c-102** is amended to read:



28 **77-23c-102. Electronic information or data privacy -- Warrant required for**
29 **disclosure.**

30 (1) (a) Except as provided in Subsection (2), for a criminal investigation or
31 prosecution, a law enforcement agency may not obtain, without a search warrant issued by a
32 court upon probable cause:

33 (i) the location information, stored data, or transmitted data of an electronic device; or

34 (ii) electronic information or data transmitted by the owner of the electronic
35 information or data:

36 (A) to a provider of a remote computing service; or

37 (B) through a provider of an electronic communication service.

38 (b) Except as provided in Subsection (1)(c), a law enforcement agency may not use,
39 copy, or disclose, for any purpose, the location information, stored data, or transmitted data of
40 an electronic device, or electronic information or data provided by a provider of a remote
41 computing service or an electronic communication service, that:

42 (i) is not the subject of the warrant; and

43 (ii) is collected as part of an effort to obtain the location information, stored data, or
44 transmitted data of an electronic device, or electronic information or data provided by a
45 provider of a remote computing service or an electronic communication service that is the
46 subject of the warrant in Subsection (1)(a).

47 (c) A law enforcement agency may use, copy, or disclose the transmitted data of an
48 electronic device used to communicate with the electronic device that is the subject of the
49 warrant if the law enforcement agency reasonably believes that the transmitted data is
50 necessary to achieve the objective of the warrant.

51 (d) The electronic information or data described in Subsection (1)(b) shall be destroyed
52 in an unrecoverable manner by the law enforcement agency as soon as reasonably possible after
53 the electronic information or data is collected.

54 (2) (a) A law enforcement agency may obtain location information without a warrant
55 for an electronic device:

56 (i) in accordance with Section [53-10-104.5](#);

57 (ii) if the device is reported stolen by the owner;

58 (iii) with the informed, affirmative consent of the owner or user of the electronic

59 device;

60 (iv) in accordance with a judicially recognized exception to warrant requirements;

61 (v) if the owner has voluntarily and publicly disclosed the location information; or

62 (vi) from a provider of a remote computing service or an electronic communications

63 service if the provider voluntarily discloses the location information:

64 (A) under a belief that an emergency exists involving an imminent risk to an individual
65 of death, serious physical injury, sexual abuse, live-streamed sexual exploitation, kidnapping,
66 or human trafficking; or

67 (B) that is inadvertently discovered by the provider and appears to pertain to the
68 commission of a felony, or of a misdemeanor involving physical violence, sexual abuse, or
69 dishonesty.

70 (b) A law enforcement agency may obtain stored data or transmitted data from an
71 electronic device or electronic information or data transmitted by the owner of the electronic
72 information or data to a provider of a remote computing service or through a provider of an
73 electronic communication service, without a warrant:

74 (i) with the informed consent of the owner of the electronic device or electronic
75 information or data;

76 (ii) with a subpoena under Section [77-22-2](#) if the stored or transmitted data or the
77 electronic information or data is an audio or video surveillance recording;

78 ~~(iii)~~ (iii) in accordance with a judicially recognized exception to warrant requirements;

79 or

80 ~~(iii)~~ (iv) subject to Subsection (2)(a)(vi)(B), from a provider of a remote computing
81 service or an electronic communication service if the provider voluntarily discloses the stored
82 or transmitted data as otherwise permitted under 18 U.S.C. Sec. 2702.

83 (c) A prosecutor may obtain a judicial order as described in Section [77-22-2.5](#) for the
84 purposes described in Section [77-22-2.5](#).

85 (3) A provider of an electronic communication service or a remote computing service,
86 the provider's officers, employees, or agents, or other specified persons may not be held liable
87 for providing information, facilities, or assistance in good faith reliance on the terms of the
88 warrant issued under this section or without a warrant in accordance with Subsection (2).

89 (4) Nothing in this chapter:

90 (a) limits or affects the disclosure of public records under Title 63G, Chapter 2,
91 Government Records Access and Management Act;

92 (b) affects the rights of an employer under Subsection 34-48-202(1)(e) or an
93 administrative rule adopted under Section 63A-16-205; or

94 (c) limits the ability of a law enforcement agency to receive or use information, without
95 a warrant or subpoena, from the National Center for Missing and Exploited Children under 18
96 U.S.C. Sec. 2258A.

97 Section 2. Section 77-23c-103 is amended to read:

98 **77-23c-103. Notification required -- Delayed notification.**

99 (1) (a) Except as provided in Subsection (2), if a law enforcement agency executes a
100 warrant in accordance with Subsection 77-23c-102(1) or 77-23c-104(3), the law enforcement
101 agency shall notify the owner of the electronic device or electronic information or data
102 specified in the warrant within 90 days after the day on which the electronic device or the
103 electronic data or information is obtained by the law enforcement agency but in no case shall
104 the law enforcement agency notify the owner more than three days after the day on which the
105 investigation is concluded.

106 (b) The notification described in Subsection (1)(a) shall state:

107 (i) that a warrant was applied for and granted;

108 (ii) the kind of warrant issued;

109 (iii) the period of time during which the collection of the electronic information or data
110 was authorized;

111 (iv) the offense specified in the application for the warrant;

112 (v) the identity of the law enforcement agency that filed the application; and

113 (vi) the identity of the judge who issued the warrant.

114 (c) For the notification requirement described in Subsection (1)(a), the time period
115 under Subsection (1)(a) begins on the day after the day on which the owner of the electronic
116 device or electronic information or data specified in the warrant is known, or could be
117 reasonably identified, by the law enforcement agency.

118 (2) A law enforcement agency seeking a warrant in accordance with Subsection
119 77-23c-102(1)(a) or 77-23c-104(3) may submit a request, and the court may grant permission,
120 to delay the notification required by Subsection (1) for a period not to exceed [30] 90 days, if

121 the court determines that there is reasonable cause to believe that the notification may:

- 122 (a) endanger the life or physical safety of an individual;
- 123 (b) cause a person to flee from prosecution;
- 124 (c) lead to the destruction of or tampering with evidence;
- 125 (d) intimidate a potential witness; or
- 126 (e) otherwise seriously jeopardize an investigation or unduly delay a trial.

127 (3) When a delay of notification is granted under Subsection (2) and upon application
128 by the law enforcement agency, the court may grant additional extensions of up to ~~[30]~~ 90 days
129 each.

130 (4) (a) A law enforcement agency that seeks a warrant for an electronic device or
131 electronic information or data in accordance with Subsection [77-23c-102\(1\)\(a\)](#) or
132 [77-23c-104\(3\)](#) may submit a request to the court to delay a notification under Subsection (2) if
133 the purpose of delaying the notification is to apprehend an individual:

- 134 (i) who is a fugitive from justice under Section [77-30-13](#); and
- 135 (ii) for whom an arrest warrant has been issued for a violent felony offense as defined
136 in Section [76-3-203.5](#).

137 (b) The court may grant the request under Subsection (4)(a) to delay notification until
138 the individual who is a fugitive from justice under Section [77-30-13](#) is apprehended by the law
139 enforcement agency.

140 (c) A law enforcement agency shall issue a notification described in Subsection (5) to
141 the owner of the electronic device or electronic information or data within 14 days after the day
142 on which the law enforcement agency apprehends the individual described in Subsection (4)(a).

143 (5) Upon expiration of the period of delayed notification granted under Subsection (2)
144 or (3), or upon the apprehension of an individual described in Subsection (4)(a), the law
145 enforcement agency shall serve upon or deliver by first-class mail, or by other means if
146 delivery is impracticable, to the owner of the electronic device or electronic information or data
147 a copy of the warrant together with notice that:

- 148 (a) states with reasonable specificity the nature of the law enforcement inquiry; and
- 149 (b) contains:
 - 150 (i) the information described in Subsection (1)(b);
 - 151 (ii) a statement that notification of the search was delayed;

- 152 (iii) the name of the court that authorized the delay of notification; and
- 153 (iv) a reference to the provision of this chapter that allowed the delay of notification.
- 154 (6) A law enforcement agency is not required to notify the owner of the electronic
- 155 device or electronic information or data if the owner is located outside of the United States.