

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 38

By: Dahm

AS INTRODUCED

An Act relating to electronic data; defining terms; prohibiting obtaining of certain data without a court order or search warrant; prohibiting use or disclosure of certain data; requiring destruction of certain data; providing exceptions; prohibiting admissibility of certain information; requiring certain notice; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 179.1 of Title 13, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

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 or remote computing service or location information service;

1 3. "Government entity" means the state, a county, a
2 municipality, a higher education institution, a local district, a
3 special service district or any other political subdivision of the
4 state or an administrative subunit of any political subdivision
5 including a law enforcement entity or any other investigative
6 entity, agency, department, division, bureau, board or commission,
7 or an individual acting or purporting to act for or on behalf of a
8 state or local agency;

9 4. "Location information" means information concerning the
10 location of an electronic device that, in whole or in part, is
11 generated or derived from or obtained by the operation of an
12 electronic device;

13 5. "Location information service" means the provision of a
14 global positioning service or other mapping, locational or
15 directional information service;

16 6. "Metadata" means the structural information of an electronic
17 file that contains data about the file itself rather than the
18 content of the file. The term includes but is not limited to hidden
19 text, formatting codes and formulae, and includes all contextual,
20 processing and use information necessary to identify and certify the
21 scope, authenticity and integrity of active or archival electronic
22 information or records;

1 7. "Remote computing service" means the provision of computer
2 storage or processing services by means of an electronic
3 communications system;

4 8. "Stored data" means data or records that are stored on an
5 electronic device that contains:

- 6 a. information revealing the identity of users of the
7 applicable service, device or program,
- 8 b. information about a user's use of the applicable
9 service, device or program,
- 10 c. information that identifies the recipient or
11 destination of a wire communication or electronic
12 communication sent to or by the user,
- 13 d. the content of a wire communication or electronic
14 communication sent to or by the user, or
- 15 e. any data, documents, files or communications stored by
16 or on behalf of the user with the applicable service
17 provider or on the user's electronic device; and

18 9. "Transmitted data" means data or records that are in the
19 possession, care, custody or control of a provider of a location
20 information service, an electronic communications service or a
21 remote computing service, which contains:

- 22 a. information revealing the identity of users of the
23 applicable service, device or program,

- b. information about a user's use of the applicable service, device or program,
- c. information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the user,
- d. the content of a wire communication or electronic communication sent to or by the user, or
- e. any data, documents, files or communications stored by or on behalf of the user with the applicable service provider or on the user's electronic device.

B. Except as provided in subsection C of this section, a government entity may not obtain the metadata, stored data or transmitted data of an electronic device without a court order or search warrant issued by a court upon probable cause. A government entity may not use, copy or disclose for any purpose location information, metadata, stored data or transmitted data of an electronic device that is not the subject of the court order or warrant that is collected as part of an effort to obtain the location information, metadata, stored data or transmitted data of the electronic device that is the subject of the court order or warrant. Such data shall be destroyed in an unrecoverable manner by the government entity no later than twenty-four (24) hours after the data is collected.

1 C. 1. A government entity shall not obtain the location
2 information, metadata, stored data or transmitted data of an
3 electronic device without a court order or search warrant issued by
4 a duly authorized court, unless:

- 5 a. the device is reported stolen by the owner,
- 6 b. in response to the user's call for emergency services,
- 7 c. the entity has the informed and affirmative consent of
8 the owner or user of the electronic device, or
- 9 d. there exists a possible life-threatening situation.

10 2. Any evidence obtained in violation of paragraph 1 of this
11 subsection shall not be admissible in any civil, criminal or
12 administrative proceeding and shall not be used in an affidavit of
13 probable cause in an effort to obtain a search warrant.

14 D. Notice shall be given to the user whose location
15 information, metadata, stored data, transmitted data or electronic
16 device was searched or obtained by a government entity.

17 SECTION 2. This act shall become effective November 1, 2023.

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