

Policy Number: TCA-06
Title: Disclosure of Tax Commission Information
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1. Overview

The citizens and businesses in the State of Utah entrust the Tax Commission with sensitive personal and financial information, expecting the information to be kept confidential and to be used only for the intended purpose. Since much of this purpose is accomplished using automated systems, policies and procedures need to be in place to ensure that the Disclosure of Tax Commission Information policy and procedures are conducted according to business need and regulatory requirements.

2. Purpose

Therefore, the purpose of this policy is to establish a guideline for Tax Commission employees or contractor personnel and any other authorized parties that access Utah State Tax Commission information and information systems. Including but not limited to state and federal taxpayer data, motor vehicle data, criminal justice information, Motor Vehicle Enforcement Division (MVED) data and case files, ONRR Federal Data, Driver's License Division (DLD), Department of Workforce Services (DWS) and other regulatory protected information, for the disclosure of this information. Improper disclosure violates the law and jeopardizes the public trust which the Tax Commission must maintain in order to fulfill its mission of collecting revenue and equitably administering tax and motor vehicle laws.

3. Scope

This policy applies to all state employees, contractors, third-party service providers and any others who access, use, receive, process, protect, store, or transmit federal tax information (FTI), state taxpayer data, motor vehicle data, Motor Vehicle Enforcement Division (MVED) data and case files, Criminal Justice Information System (CJIS) data, Payment Card Industry (PCI) credit card data, financial information, ONRR federal data, Driver's License Division (DLD), Department of Workforce Services (DWS) and any other regulatory protected data on behalf of the Tax Commission.

The requirements and restrictions defined in this document will apply to any technology used to receive, process, store, access, protect and/or transmit sensitive

agency information, i.e., network infrastructures, databases, servers, applications, external media, mobile devices, hardcopy printouts, wireless networks, contractor systems, end user and administrator workstations and laptops, host operating systems, web servers, hypervisors, storage arrays, firewalls, virtual private networks (VPN), core routers, VoIP systems and cloud environments.

4. Exceptions

The Tax Commission Executive Director, or authorized designee, may acknowledge that under rare circumstances, a state employee or contract personnel may not be able to comply with these policy objectives. The Tax Commission Executive Director, or authorized designee, must approve in writing all such instances.

5. Definitions

- 5.1. Disclosure is defined as the sharing of confidential or private information with other individuals or accessing confidential information about individuals or business without a business need to know. Disclosure (including self-disclosure) of all records obtained from individuals is governed by state and federal law. Pursuant to state law, all such records shall be classified as public, private, controlled, or protected and access to any record is governed by the classification of that record under GRAMA. Information that is obtained in the regular course of an employee's position is confidential and cannot be disclosed without permission. Whatever information a Tax Commission employee sees, hears, or learns, which is of a confidential nature, will be kept secret unless the performance of duty or legal provision requires otherwise. Members of the public have a right to security and privacy, and information obtained about them must not be improperly divulged.
- 5.2. Federal Tax Information (FTI) - FTI consists of federal tax returns and return information (and information derived from it) that is in the agency's possession or control which is covered by the confidentiality protections of the IRC and subject to the IRC 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as Sensitive But Unclassified information and may contain personally identifiable information (PII). FTI includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement

5.3. Return and Return Information - IRC 6103(b)(1) defines a return as any tax or information return, estimated tax declaration, or refund claim (including amendments, supplements, supporting schedules, attachments, or lists) required by or permitted under the IRC and filed with the IRS by, on behalf of, or with respect to any person or entity. Examples of returns include forms filed on paper or electronically, such as Forms 1040, 941, 1120, and other informational forms, such as 1099 or W -2. Forms include supporting schedules, attachments, or lists that are supplemental to or part of such a return. Return information, in general, is any information collected or generated by the IRS with regard to any person's liability or possible liability under the IRC. IRC 6103(b)(2)(A) defines return information very broadly. It includes but is not limited to:

- 5.3.1. Information that IRS obtained from any source or developed through any means that relates to the potential liability of any person under the IRC for any tax, penalty, interest, fine, forfeiture, or other imposition or offense
- 5.3.2. Information extracted from a return, including names of dependents or the location of business
- 5.3.3. The taxpayer's name, address, and identification number
- 5.3.4. Information collected by the IRS about any person's tax affairs, even if identifiers, such as name, address, and identification number are deleted
- 5.3.5. Status of whether a return was filed, under examination, or subject to other investigation or processing, including collection activities
- 5.3.6. Information contained on transcripts of accounts

5.4. Records are defined as all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics that are prepared, owned, received, or retained by the Tax Commission including photocopies or reproductions by other mechanical or electronic means. A record is public unless otherwise expressly provided by statute.

Employee or contract personnel accessing any type of record must be justified and show the need and use of Tax Commission data. An employee or contract personnel may be required to justify their access to these records based on the specific need and use of the accessed information.

5.5. Private Records

- 5.5.1. A record is private if:

5.5.1.1. The record contains data on individuals that is private as provided by Section 63G-2-302.

5.5.1.2. The governmental entity has properly classified the record.

5.6. Controlled Records

5.6.1. A record is controlled if:

5.6.1.1. The record contains medical, psychiatric, or psychological data about an individual;

5.6.1.2. The government entity reasonably believes that:

5.6.1.2.1. Releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or

5.6.1.2.2. Releasing the information would constitute a violation of normal professional practice and medical ethics; and

5.6.1.2.3. The governmental entity has properly classified the record.

5.7. Protected Records

5.7.1. A record is protected if:

5.7.1.1. The record is classified as protected as provided by Section 63G-2-305.

5.7.1.2. The governmental entity has properly classified the record.

6. Policy

6.1. It is the policy of The Utah State Tax Commission (USTC) to protect Tax Commission information and to ensure that information is treated in accordance with the Government Records Access and Management Act (GRAMA), IRS Pub 1075 requirements, Driver's Privacy Protection Act (DPPA), Payment Card Industry (PCI) and Criminal Justice Information (CJIS) requirements.

6.2. Access to non-public records will be for a demonstrated need and use only, accessing records or screens where there is no need and use is improper disclosure of information and subject to disciplinary action by the Tax Commission. A need and use is defined as a response to a request or review of information necessary to resolve an account in accordance with assigned work.

6.3. Employees inappropriately accessing and/or disclosing tax information from federal tax documents and/or Tax Commission records may be subject to disciplinary action/and or criminal penalties. Inappropriate disclosure may include

self-disclosure or disclosure to others. Improper disclosure of information includes but is not limited to the following:

- 6.3.1. Accessing information other than on a professional need and use basis. Need and use includes accessing assigned accounts, individual inquiries and work assigned by supervisors.
 - 6.3.2. Browsing accounts, unless part of assigned duties.
 - 6.3.3. Disclosing information discovered in the course of conducting business to other employees who do not meet the need and use criteria.
 - 6.3.4. Disclosing information to any other party who does not have a legal right to that information.
 - 6.3.5. Through carelessness or inattention, allow tax related information under your care to be improperly accessed by others.
- 6.4. The agency shall disclose a private record:
- 6.4.1. To the subject of a record
 - 6.4.2. To the parent or legal guardian of an unemancipated minor who is the subject of the record
 - 6.4.3. To the legal guardian of a legally incapacitated individual who is the subject of the record
 - 6.4.4. To any other individual who has the power of attorney from the subject of the record or submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made
 - 6.4.5. Through a court order or summons signed by a judge
 - 6.4.6. Through a legislative subpoena
- 6.5. The agency does not have access to a controlled record.
- 6.6. The agency shall disclose a protected record:
- 6.6.1. To the person that submitted the record
 - 6.6.2. To any other individual who has power of attorney from all persons, governmental entities or political subdivisions whose interests are sought to be protected by the protected classification, or submits a notarized release from all persons, governmental entities or political subdivisions whose interests were sought to be protected by the protected classification or from

- their legal representatives dated no more than 90 days prior to the date the request was made.
- 6.6.3. Through a court order or summons signed by a judge
 - 6.6.4. Through a legislative subpoena
- 6.7. Local government access to information.
- 6.7.1. Local governments shall have access to information in accordance with Section 59-12-210 in order to verify that sales and use tax revenues collected by the commission are distributed to each county, city, and town in accordance with Sections 59-12-211 through 59-12-215.
 - 6.7.2. The commission shall allow access to an employee of a local government only for official matters if the chief executive officer or the chief executive officer's designee:
 - 6.7.2.1. Requests the information in writing;
 - 6.7.2.2. Specifies the employee who is approved to receive the information; and
 - 6.7.2.3. Specifically indicates the information sought and how that information will be used.
 - 6.7.3. For all information provided under this Subsection VI.G., the commission shall include language indicating that the information provided is subject to the confidentiality provisions of Section 59-1-403 and may not be re-disclosed unless it is aggregated.
- 6.8. Audio/Video Recording
- 6.8.1. Employees are prohibited from recording audio or video of conversations including online presentations and meetings, unless management has approved the recording in advance and the recording is fully compliant with the Commission's other privacy policies and state and federal law. This includes, but is not limited to, recording on personal or state issued cellular telephones and computers.
 - 6.8.2. In order to maintain compliance with IRS Publication 1075, recordings of FTI are strictly prohibited.
 - 6.8.3. Recordings must be deleted when no longer needed.
 - 6.8.4. Employees are prohibited from discussing any private or protected information while in a meeting that is being recorded.

7. Rules and Responsibility

It is the responsibility of the Tax Commission to ensure that written requests for Tax Commission information are treated in accordance with federal and state law.

- 7.1. The Disclosure Officer will provide updates and training seminars regarding information disclosure practices on an annual basis or more frequently when requested.
- 7.2. Routine requests for information outside of GRAMA should be routed immediately to the Taxpayer Services Division, USTC. Routine requests are identified as those individuals requesting non-public information who have authority to receive such information as defined in Utah Code Section 59-1-403. Information requests from the Office of Recovery Services under Utah Code Section 59-10-545(2) shall be routed to the Disclosure Officer.
- 7.3. Any GRAMA requests received shall be routed to the records officer of the Division for which the request is for. GRAMA requests are identified as those requests identified by the requesting party as GRAMA requests. All other non-routine requests for disclosure of confidential information should be routed to the agency Disclosure Officer.
- 7.4. This subsection applies to information that may be disclosed if the request for disclosure of that information requires the department to:
 - 7.4.1. Compile, format, manipulate, package, summarize, or tailor information; or
 - 7.4.2. Provide a record in a particular format, medium, or program not currently maintained by the department. A request under this subsection shall be made in writing and shall clearly indicate the requested information.
 - 7.4.3. A request under this subsection shall be directed to the division director or supervising commissioner of the employee who receives the request.
 - 7.4.4. The division director or supervising commissioner who receives a request under this subsection shall determine whether the request may be satisfied without unreasonably interfering with the department's duties and responsibilities.
 - 7.4.5. Information provided under this subsection:
 - 7.4.5.1. In the case of a non-media request, requestor shall be subject to a fee for research and any computer programming necessary to satisfy the request; and

7.4.5.2. In the case of a media request, requestor shall be subject to a fee for any computer programming necessary to satisfy the request.

7.5. Unless otherwise provided by Section 59-1-403, information provided in an aggregate format shall be subject to the following two restrictions if the aggregate comprises fewer than 10 returns or entities:

7.5.1. The number of entities or returns included in the aggregate shall be disclosed as "fewer than 10." The exact number may not be disclosed.

7.5.2. The aggregate dollar amount shall be rounded and disclosed as "less than _____." The aggregate dollar amount shall be rounded in accordance with the following criteria:

7.5.2.1. \$0 to \$10,000: round up to the nearest \$1,000 (e.g., \$100 = less than \$1,000)

7.5.2.2. \$10,001 to \$50,000: round up to the nearest \$5,000 (e.g., \$11,000 = less than \$15,000)

7.5.2.3. \$50,001 to \$100,000: round up to the nearest \$10,000 (e.g., \$51,000 = less than \$60,000)

7.5.2.4. \$101,000 to \$500,000: round up to the nearest \$50,000 (e.g., \$101,000 = less than \$150,000)

7.5.2.5. \$501,000 to \$1,000,000: round up to the nearest \$100,000 (e.g., \$501,000 = less than \$600,000)

7.5.2.6. over \$1,000,000: round up to the nearest \$250,000 (e.g., \$1,260,000 = \$1,500,000)

7.5.3. Notwithstanding 7.5, the commission may disclose information in the form of a scatter plot, graph or chart if such disclosure reasonably protects the identification of a particular taxpayer.

8. Monitoring and Reporting

The Disclosure Officer shall maintain appropriate electronic surveillance of Tax Commission records to ensure detection and investigation of unauthorized disclosures. Neither the Tax Commission nor its officers and employees shall be liable for damages resulting from the release of a record, other than a federal return or federal return information.

9. Enforcement

- 9.1. In the event of unauthorized access the Disclosure Officer will notify the Division Director, Deputy Executive Director and the HR Director.
- 9.2. If required the Disclosure Officer will notify the appropriate regulated agency (i.e. IRS, TIGTA, PCI, BCI, CJIS, etc.) of unauthorized disclosures and data breaches.