

Amendment No 5 to the Telecommunications Information Privacy Code 2003

Background Paper on Changes to Notified Amendment

Proposed Amendment No 5 to the Telecommunications Information Privacy Code 2003 was publicly notified by the Privacy Commissioner on 25 November 2016, with an invitation to make submissions.

Seven submissions were received. Submitters were generally supportive of both the policy reasons behind the proposed amendment and the substantive content of the amendment. No major changes to the amendment were sought but some technical submissions were made.

All submissions have been carefully considered by the Commissioner before issuing the amendment and are available at www.privacy.org.nz. Having considered the submissions, the Commissioner issued the amendment on 26 January 2017 with some changes. This paper briefly explains the changes.

Changes to the proposed amendment

The amendment as issued differs from the proposed amendment in the following small ways, as a result of submissions:

1. *The introductory text in Schedule 4 has been shortened and clarified.*
2. *The term “emergency response agency” has been amended throughout to “emergency service provider”.*
3. *The word “approximate” has been inserted into the definition of emergency caller location information in clause 1 of Schedule 4.*
4. *The definition of “permitted primary purpose” now reads “to enable an emergency service provider to facilitate a response to an emergency call”.*

This definition has been reformulated more accurately to capture the intended primary purpose for the gathering and sharing of emergency caller location information.

5. *The words “or a network operator” have been inserted into clause 4(3) of Schedule 4.*

Clause 4(3) provides an exemption to the principle 3(2) obligation to notify individuals that location information is being collected at the time of collection, to enable efficient call taking during an emergency. This exemption applied only to emergency service providers but should apply also to network operators, which provide first call response services.

6. *Clause 6, and the definition of “specified emergency number” in Schedule 4, have been amended to reflect the telecommunications process for connecting emergency calls.*

Submissions noted that have not resulted in changes

Some submissions received, while not resulting in changes to the amendment, warrant comment.

Implementing the transparency and safeguards requirements in the Schedule

The view was expressed that there would be benefits in the relevant government agency taking the lead in implementing the transparency and safeguards requirements in the Schedule.

It is important that all location agencies take responsibility for ensuring that their obligations under the Schedule 4 are met. If there are advantages in taking a cooperative approach, this may be an option worth exploring by these agencies as they implement the system.

The Commissioner has not accepted a submission that network operators should not be required to develop specific policies, procedures or training in respect of this system.

The safeguards are intended to build public trust in a system that dispenses with individual consent. It may be sufficient for network operators to incorporate material specific to this system into their current policies, processes and training, but it is important that every agency involved in this system assesses and addresses the new risks it creates.

Notifying emergency callers as soon as reasonably practicable after a call

The Commissioner was not persuaded by a submission that clause 4(3) of Schedule 4 should exempt location agencies from the principle 3(2) obligation to notify an individual as soon as reasonably practicable after collection.

Clause 4(3) exempts emergency service providers and network operators from the requirement to notify emergency callers of the collection of location information *at the time of the emergency call*. This is in recognition of the need for urgency. However, in a system such as this, which dispenses with individual consent, openness and transparency are highly desirable.

Expressly prohibiting certain secondary uses of ECLI

The Commissioner did not act on a request to expressly prohibit certain secondary uses of ECLI. Schedule 4 defines permitted primary and secondary purposes for collecting and using ECLI. These relate directly to responding to the emergency call to which the ECLI relates. An emergency service provider is not permitted to receive ECLI from the LAS system for secondary purposes not related to the emergency response.

However, emergency service providers may be able to rely on existing exceptions in the Privacy Act to request from a network operator or other source any information they might require for secondary purposes. Schedule 4 does not prohibit an agency from using personal information it has collected from a source other than the LAS system for wider lawful purposes.

Charging for the use of location services on enabled mobile devices

In response to a submitter question about whether consumers would be charged for the generation of location information when an emergency call was made, clarification was sought from the industry. The system will not require the use of a consumer's internet data and will not incur any charges to the individual concerned.