

Amendment No 5 to the Telecommunications Information Privacy Code 2003

Information Paper on Effect of the Amendment

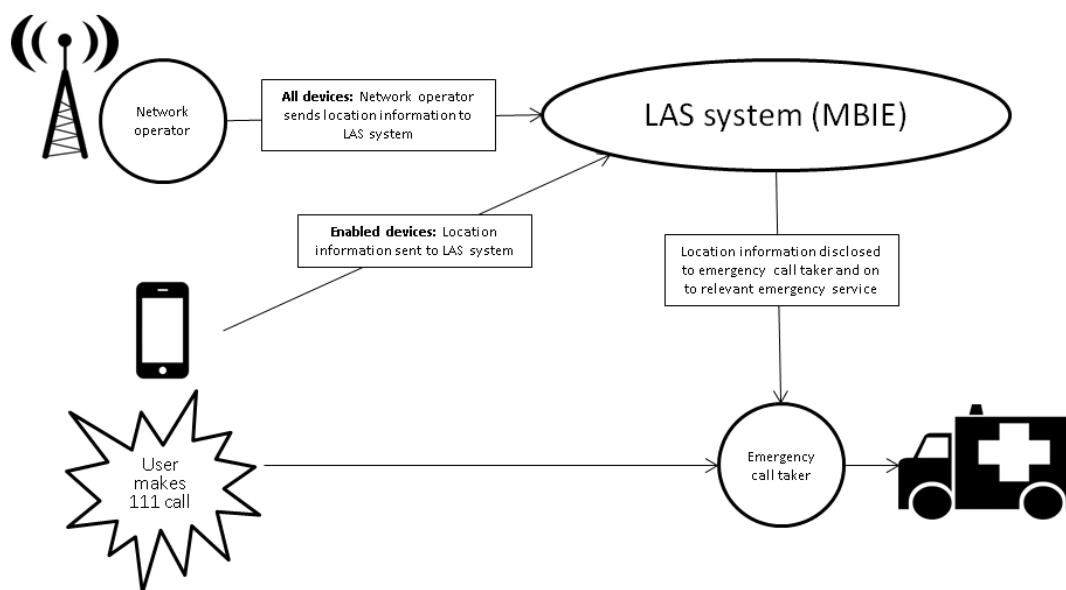
Amendment No 5 to the Telecommunications Information Privacy Code 2003 was issued by the Privacy Commissioner on 26 January 2017 and comes into force on 2 March 2017.

The amendment supports a new system for sharing emergency caller location information, which will be used by emergency service providers to more quickly and accurately respond to emergency calls.

Sharing emergency caller location information

Each year, more than 1 million emergency calls are transferred to the emergency services. Last year, the Police recorded over 1,800 incidents in which they were required to make a special information request to a network operator for information about the caller's location.

Until now, provision of location information about emergency callers from network operators was manual and slow. This resulted in delays in responding to emergency calls. A new system will allow 111 emergency call takers to quickly receive automatically generated information about the location of a caller using a mobile phone. The diagram below explains the system.



Schedule enables system with safeguards and controls

In the public's interests, the Commissioner is authorising this system – notwithstanding that this information sharing will occur without the express consent of the emergency caller – as it will facilitate better responses to emergency calls.

The amendment enables the system within defined boundaries and subject to controls, set out in Schedule 4. It seeks to ensure that the parties to this system can run it effectively and efficiently while protecting the privacy of individuals.

- Emergency caller location information (“ECLI”) can only be generated by an emergency call. The automated sharing of location information cannot be enabled for any other purpose.
- Only agencies which provide emergency services are permitted to collect and use ECLI (in addition to agencies involved in providing information or operating the system). The Schedule sets out a process for authorising new agencies to receive this information.
- The agencies involved may only collect, use or disclose ECLI for a defined set of permitted purposes, all related to responding to an emergency call.
- The agencies involved may retain ECLI only for as long as they need it to achieve these defined purposes.
- The Schedule creates a general duty of transparency, to ensure that the public understand and have confidence in the system.
- Any agencies which collect, retain and use ECLI must take reasonable steps to ensure that they do so in compliance with the requirements of the Schedule.
- A level of accountability is expected from the agencies involved, to demonstrate compliance and provide the Commissioner with confidence that the Schedule is operating effectively to enable the system while protecting individual privacy.

Questions and answers

Has a lack of such a system ever been a problem before?

A lack of high-precision caller location information can delay and sometimes prevent an emergency response. In June 2013, following the death of an emergency caller unable to provide his location, Coroner Ian Smith [called for](#) telecommunications companies to make location information immediately available to Police when emergency services were called (Roach [2013] NZCorC 67).

Does this happen in other countries?

Systems using Android technology operate in the UK and Estonia. Japan, South Korea and the United States have systems using different technology. EU law prohibits the collection and use of location information without consent (opt in) but provides an exemption to this for emergency response purposes (Article 10(b) of Directive 2002/58/EC).

What's the problem with an opt in system?

An opt in system can limit the effectiveness of information sharing that is in the interests of the individual and the public. This automated system ensures that *all* emergency callers will benefit, not just those who may have the knowledge or foresight to opt into it.

What's the Ministry of Business, Innovation and Employment's role in this?

The Ministry has responsibility for the Government's communications portfolio and, as part of this, the Ministry will oversee the operation of the database (the "LAS system") which will receive and process ECLI and make it available to the emergency services.

How long may these agencies keep ECLI?

The parties to the system may retain ECLI only for as long as they need it to meet the primary and secondary permitted purposes. The Ministry intends to retain the information in an identifiable form for a short period of time that covers the likely period within which the emergency services may need to receive it. It can retain the information in a non-identifiable form for longer than this to monitor the functionality of the LAS system. The emergency services may hold it longer as an event record.

Will turning off location services on a device prevent this information sharing?

An enabled mobile device will automatically engage location services and send location information to the LAS system when an emergency call is made. In addition, and regardless of device type, the network operator will send cell tower information to the LAS system. Turning off location services on a device will have no impact in either case.

Further questions and answers in respect of the system and this amendment are available in the [Information Paper](#) on the proposed amendment.

Annex

**Telecommunications Information Privacy Code 2003
Amendment No 5**

I, **JOHN EDWARDS**, Privacy Commissioner, now issue under section 51 of the Privacy Act 1993, this amendment to the Telecommunications Information Privacy Code 2003.

Issued by me at Wellington on 26 January 2017.

The SEAL of the Privacy Commissioner was)
 affixed to this amendment to the) *[L.S]*
 Telecommunications Information Privacy)
 Code 2003 by the Privacy Commissioner)

John Edwards

Privacy Commissioner

1. Title

This amendment is the Telecommunications Information Privacy Code 2003 Amendment No 5.

2. Commencement

This amendment will come into force on 2 March 2017.

3. Amendment to clause 4 (Application of code)

Clause 4(2) is amended as follows:

- Insert:**
- (h) additionally, for the purposes of Schedule 4:
 - (i) the relevant government agency;
 - (ii) an emergency service provider.

4. Amendment to clause 5 (rule 5)

Rule 5 is amended as follows:

Insert: (1A) Where a network operator discloses emergency caller location information in accordance with Schedule 4, it must ensure that additional steps required by clause 6 of Schedule 4 are taken to safeguard that information.

Note: Clause 6 of Schedule 4 requires particular steps to be taken to safeguard emergency caller location information.

5. Amendment to clause 5 (rule 11)

Rule 11(1) is amended as follows:

Insert: (ha) that the disclosure is in accordance with the requirements of Schedule 4;

6. Amendment to Schedule 3 (Caller line information presentation)

Clause 2 is amended as follows:

Delete: a 111 call

Substitute: to the 111 emergency call service (including a call to any other number that connects to that service)

7. Insertion of new Schedule 4 (Emergency caller location information (mobile))

The following Schedule 4 is inserted:

Schedule 4

Emergency caller location information (mobile)

Schedule 4 enables the disclosure of emergency caller location information ("ECLI") by network operators to emergency service providers, and the collection and use of ECLI by emergency service providers, for the purpose of establishing the location of an individual who has made an emergency call, in order to facilitate a response to that call.

The Schedule regulates location information which is automatically generated by enabled mobile devices, and by network operators using cell tower locations, when making an emergency call.

The Schedule limits the collection, retention, use and disclosure of ECLI to ensure that the sharing and use of this information is at all times connected with responding to an emergency call.

This Schedule applies only to location agencies, as defined in clause 1.

1. Interpretation

In this Schedule:

emergency call means any telecommunication from a mobile device to a specified emergency number

emergency caller means the individual who has made an emergency call

Emergency Caller Location Information (ECLI) means personal information indicating the approximate geographical position of a mobile device, which may include the latitude, longitude and altitude of that device, that is:

- (a) derived from an ECLI source; and
- (b) generated by an emergency call

Note: The definition of ECLI draws upon definitions of location information found in overseas regulations. It includes the latitude, longitude and altitude of a mobile device. The system as currently implemented will not collect altitude but the code permits this if the technology develops.

ECLI source means:

- (a) a mobile device enabled automatically to send ECLI to the Location Area Service (LAS) system when an emergency call is made; or
- (b) a network operator

Note: The definition of ECLI source reflects the ways in which this information is generated. Paragraph (a) relates to enabled mobile devices – the information will be sent by the device directly to the LAS system. Paragraph (b) relates to all mobile devices – the information will be derived from cell tower location and sent automatically by the relevant network operator.

emergency service provider means:

- (a) New Zealand Police;
- (b) New Zealand Fire Service;
- (c) The Priory in NZ of the Most Venerable Order of the Hospital of St John of Jerusalem (St John);
- (d) Wellington Free Ambulance Service (Incorporated);

- (e) any other agency authorised by the relevant government agency under clause 2 to receive ECLI from the LAS system

location agency means:

- (a) an emergency service provider;
- (b) a network operator;
- (c) the relevant government agency

Location Area Service (LAS) system means the system which receives and processes ECLI and makes ECLI available to emergency service providers for the permitted primary purpose and permitted secondary purpose

Note: The LAS system is operated by the relevant government agency, which is defined below.

permitted primary purpose means to enable an emergency service provider to facilitate a response to an emergency call

permitted secondary purpose means the following purposes that are directly related to the permitted primary purpose:

- (a) maintaining a record of the information used to establish the location of an emergency caller by an emergency service provider; and
- (b) monitoring and auditing the operation of the LAS system by the relevant government agency

Note: The permitted primary and secondary purposes restrict the use of ECLI and the LAS system. An agency may use personal information sourced from outside this system for other purposes where permitted by law (refer clause 3(4)).

relevant government agency means the government agency responsible for the LAS system

Note: The relevant government agency is currently the Ministry of Business, Innovation and Employment.

specified emergency number means 111 or any other emergency number, agreed by the location agencies from time to time, that connects to the 111 emergency call service.

2. Additional agencies authorised to receive ECLI from the LAS system

- (1) For the purposes of paragraph (e) of the definition of emergency service provider, the relevant government agency may authorise an agency to receive ECLI from the LAS system where that agency:
 - (a) provides emergency services to the public; and

- (b) requires ECLI from the LAS system for the permitted primary purpose.
- (2) An authorisation under subclause (1) will not take effect until the relevant government agency has notified the Commissioner.

Note: Before authorising an agency under clause 2, the relevant government agency is required by clause 7(1) to seek and obtain an assurance that the new agency will take the steps required by clause 6 to safeguard the ECLI it receives.

3. Collection, use and disclosure of ECLI

- (1) A location agency may collect, use or disclose ECLI if it believes on reasonable grounds that:
 - (a) the collection, use or disclosure is for a permitted primary purpose or permitted secondary purpose; and
 - (b) in the case of a disclosure – the disclosure is to another location agency.
- (2) The relevant government agency may collect ECLI in compliance with subclause (1)(a) either:
 - (a) directly from the mobile device used to make an emergency call; or
 - (b) from the relevant network operator.

Note: Clause 3(2) permits the relevant government agency – as the agency responsible for the LAS system – to collect ECLI from the emergency caller directly (via their enabled device) or from a network operator. In either case, consent of the emergency caller is not required.

- (3) A location agency may combine ECLI with other information – such as aggregated geolocation information – in order to improve the accuracy of ECLI for the permitted primary purpose.
- (4) A network operator or emergency service provider is restricted by this clause in its collection, use or disclosure of ECLI only to the extent that the information is sourced from the LAS system.

Note: Network operators and emergency service providers may collect or generate location information about emergency callers in other ways as permitted by the code or Privacy Act 1993. This Schedule regulates only the way location agencies may use location information derived from the LAS system.

Note: Clause 3 does not affect any action that is authorised or required by an enactment – Privacy Act 1993, s7.

4. General duty of transparency

- (1) Location agencies should apply a general policy of openness and transparency in respect of the ECLI system that enables individuals to understand and have confidence in the system.
- (2) Without limiting subclause (1), the information made available by location agencies in an appropriate way, such as on the agency's website or a shared website, should include:
 - (a) a general explanation of the ECLI system, including:
 - (i) how ECLI is generated and shared;
 - (ii) how ECLI will be used and the benefits to the public of the system;
 - (iii) where ECLI will be stored and for how long;
 - (iv) the current agencies participating in the system and their roles; and
 - (v) that the system is permitted by this Schedule; and
 - (b) guidance about individual access, correction and complaint rights in respect of the system.
- (3) Subclauses (1) and (2) do not require an emergency service provider or a network operator to notify an individual of the collection of ECLI at the time of an emergency call.

Note: Clause 4(3) recognises that notifying emergency callers during a call may slow an emergency response or otherwise prejudice the purposes for which ECLI is being collected.

5. Retention of ECLI

- (1) A location agency must not keep ECLI for longer than is required for a permitted primary purpose or permitted secondary purpose.
- (2) Where the relevant government agency retains ECLI for the purpose of monitoring or auditing the operation of the LAS system, reasonable steps must be taken to ensure that the information is not retained in a form that is capable of identifying an individual who made an emergency call.

6. Safeguards to ensure compliance

- (1) A location agency must take reasonable steps to ensure that it collects, retains, uses and discloses ECLI in compliance with the requirements of this Schedule.

- (2) Without limiting subclause (1), a location agency must:
- (a) develop and maintain written policies and procedures in respect of the collection, retention, use and disclosure of ECLI;
 - (b) provide information and training to relevant employees or agents to ensure compliance with these policies and procedures;
 - (c) monitor usage and regularly check compliance with the requirements of the Schedule and, in particular, with the limitations on the retention of ECLI; and
 - (d) take prompt and effective action in respect of any failure to comply with the requirements of the Schedule.

Note: The requirements of clause 6 are in addition to, and do not replace, the general obligations to keep personal information secure (refer rule 5 of the code and principle 5 of the Privacy Act 1993).

7. Assurance of compliance

- (1) The relevant government agency must, before authorising an agency under clause 2 to receive ECLI from the LAS system, seek and obtain an assurance that the agency will take the steps required by clause 6.
- (2) A location agency – including the relevant government agency – must, on request from the Commissioner, provide a written assurance that the steps required by clause 6 have been taken.

Note: Clause 7, in addition to the general transparency requirements set out in clause 4, ensures accountability in respect of the operation of both the system and this Schedule.

Explanatory note:

This note is not part of the amendment, but is intended to indicate its general effect.

This amendment, which comes into effect on 2 March 2017, amends the Telecommunications Information Privacy Code 2003 to enable the sharing of emergency caller location information in order to facilitate responses to emergency calls.

The amendment is deemed to be a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012.

Legislative history:

25 November 2016 - Public notice of intention to issue Amendment No 5 (Privacy Act, s48)

26 January 2017 – Amendment issued (Privacy Act, s51)

2 February 2017 – Amendment notified in the Gazette (Privacy Act, s49)

2 March 2017 – Amendment commences