

Proposed Amendment No 5 to the Telecommunications Information Privacy Code 2003

Information Paper

This information paper assists those wishing to make a submission on proposed Amendment No 5 to the Telecommunications Information Privacy Code 2003.

The proposed amendment provides a clear lawful basis for the automated gathering and sharing of mobile emergency caller location information, to locate an emergency caller and thereby assist the emergency services to respond more quickly to an emergency.

Submissions

Address submissions to Office of the Privacy Commissioner at submissions@privacy.org.nz.
(If you do not have access to email, submissions may be posted to TIPC Amendment Submissions, Office of the Privacy Commissioner, PO Box 466, Auckland 1140.)

Deadline: 23 December 2016

Submissions may be made public by the Privacy Commissioner or released under the Official Information Act.

Enquiries: telephone Linda Williams on 09 302 8658.

25 November 2016

Sharing emergency caller location information

The Ministry of Business, Innovation and Employment is developing a system that will allow staff who handle 111 emergency calls to receive automatically generated information about the location of a caller using a mobile phone. Until now, information of this quality has not been available and the provision of lower-precision information from network operators has been manual and slow. This has resulted in delays in responding to emergency calls.

Emergency caller location information (“ECLI”) will be obtained from two sources:

- Where a caller is using an enabled mobile device, this device will automatically send high-precision location information to the emergency services.
- Where a caller is using any mobile device, the emergency call will trigger the sharing by network operators of lower-precision location information derived from the location of the cell tower closest to the mobile device.

Whatever the source, this information sharing will occur *without the express consent* of the emergency caller. Often, it may occur *without the knowledge* of the emergency caller. Unlike other technology which makes use of an individual’s location information, this system will not provide individuals with any choice.

The Commissioner takes the view that this lack of individual choice is warranted in this specific case, where information is being shared to facilitate better responses to emergency calls. This is an important public service and this gathering and sharing of information is in the interests of the public and the individual concerned. However, some clarity for all involved – the public, the emergency services and the network operators – is required, to ensure that this system is not prejudiced by uncertainty or over-caution and to protect and ring fence the information.

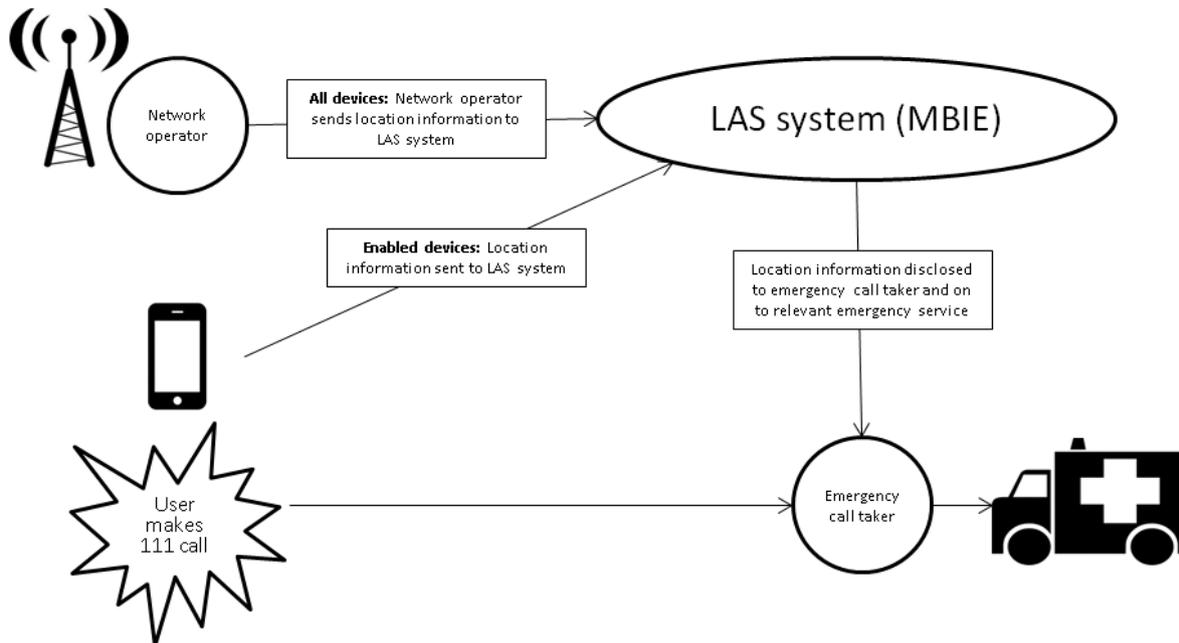
Recognising information sharing for legitimate safety purposes, this proposed amendment provides clarity and some control around the process. It seeks to ensure that the parties to this system can run it effectively and efficiently while protecting the privacy of individuals. For example, the amendment limits the retention and use of ECLI, safeguarding the public against uses that are not related to responding to an emergency call.

The amendment at a glance

The principal change proposed in this amendment is the insertion of a new Schedule 4 enabling the sharing of ECLI. This new schedule is attached, with notes, at Appendix 1.

The schedule enables the disclosure of ECLI by network operators to emergency services, and the collection and use of ECLI by emergency services, for the purpose of establishing the location of an individual who has made an emergency call.

The information flows permitted by the schedule



Other amendments to the code

The new schedule has required a number of associated amendments to the code. These amendments are set out in full at Appendix 2. In brief:

1. *Clause 2 (Commencement)* – The amendment is proposed to come into force on 2 March 2017, to coincide with the anticipated start of the system. However, this date may change if the Commissioner needs to take extra time to consider any novel issues of particular complexity raised in submissions.
2. *Clause 3 (Application of code)* – Clause 4(2) of the code is proposed to be amended to ensure that, for the purposes only of the new schedule, the code now applies also to the relevant government agency and emergency response agencies.
3. *Clause 4 (rule 5)* – Rule 5, which relates to storage and security, is proposed to be amended to refer to additional safeguards required by the new schedule.
4. *Clause 5 (rule 11)* – Rule 11, which relates to the disclosure of telecommunications information, is proposed to be amended to refer to the sharing of ECLI in accordance with the new schedule.
5. *Clause 6 (schedule 3)* – Schedule 3, which relates to the CLIP (Caller Line Identification Presentation – sometimes called caller-ID), is proposed to be amended to reflect the way emergency numbers are used. Reference only to the 111 number is inaccurate as other numbers may also connect with an emergency line.

Questions and answers

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

The Ministry has informed the Commissioner that 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).

What will the new schedule do?

The new schedule provides a lawful basis for the system the Ministry and industry are building to address the problem set out above. This system will enable the automated gathering and sharing of location information between a group of agencies, using new and existing technologies, for the purpose of locating an emergency caller and quickly responding.

Does this happen in other countries?

We are aware of systems using Android technology operating 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?

Some countries have tried developing mobile applications that individuals can download in order to opt in to information sharing. However, this option has been found technically not to be workable under NZ conditions. An opt in system limits 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 from this system, not just those who may have the knowledge or foresight to opt into it.

Are there limits on how ECLI can be used in this system?

The agencies involved in this system can only use ECLI for the permitted primary purpose – establishing the location of an emergency caller – or the permitted secondary purposes – which directly relate to the primary purpose and include monitoring the functioning of the system and allowing the emergency services to keep a record of the information they relied upon. Other laws may also permit the agencies to use this information in other ways.

What about the location information a network operator already collects and holds?

Part of this system uses location information generated by the network operators using cell tower location (cell tower ECLI). The amendment does not limit the collection or use of cell tower ECLI by network operators, which have other reasons to use this information, including ensuring that the network is operating properly.

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 the ECLI and make it available to the emergency services. The LAS system will be operated by a data service provider on the Ministry's behalf.

How long may these agencies keep the ECLI?

The schedule permits the Ministry and the emergency services to retain ECLI only for as long as they need it to meet the primary and secondary permitted purposes mentioned above. 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 access 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.

Why has the Commissioner chosen to amend this code rather than issue a new code of practice?

It will be more convenient to include these provisions in the Telecommunications Information Privacy Code, which has provided a regulatory framework for the handling of telecommunications information since 2003, than to create a standalone code of practice.

Appendix 1: Proposed Schedule 4 with notes

Schedule 4

Emergency caller location information (mobile)

Schedule 4 enables the disclosure of emergency caller location information (“ECLI”) by network operators to emergency response agencies, and the collection and use of ECLI by emergency response agencies, for the purpose of establishing the location of an individual who has made an emergency call.

The Schedule regulates high precision location information, which is automatically generated by enabled mobile devices, and low precision location information, which is automatically generated by network operators using cell tower locations. In both cases, the location information is generated only by 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

“Telecommunication” is defined in section 5 of the Telecommunications Act 2001. Reference is made to a “specified emergency number” rather than the 111 number. “Specified emergency number” is defined below.

emergency caller means the individual who has made an emergency call

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

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

This definition draws upon definitions of location information found in overseas statutes and regulations. It includes the latitude, longitude and altitude of a mobile device but not the direction of travel of that device, a common element in other definitions. Direction of travel is not information anticipated to be captured for the purposes of the LAS system as currently implemented.

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

The definition of ECLI source reflects the ways in which this information is generated as a result of an emergency call. Paragraph (a) relates to enabled mobile devices – the information will be sent 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 response agency 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

The process the relevant government agency must follow to authorise a new agency to receive ECLI from the LAS system is set out at clause 2 below. Location agencies are required by clause 4 to update their transparency statements when new agencies are permitted to access the LAS system.

location agency means:

- (a) an emergency response agency;
- (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 response agencies for the permitted primary purpose and permitted secondary purpose

permitted primary purpose means to enable an emergency response agency to establish the location of an emergency caller

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 response agency; and
- (b) monitoring and auditing the operation of the LAS system by the relevant government agency

To ensure agency and public trust in this system, it is important that the permitted uses of ECLI are limited to those directly related to responding to an emergency.

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

The relevant government agency is currently the Ministry of Business, Innovation and Employment. Location agencies are required by clause 4 to update their transparency statements if the relevant government agency changes.

specified emergency number means 111 or any number directed to the 111 emergency line as agreed by the location agencies from time to time.

The emergency line may be accessed by dialing other numbers, such as 999 and 911. Calls to those other numbers may also trigger the disclosure of location information.

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

- (1) For the purposes of paragraph (e) of the definition of emergency response agency, 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.

This system is designed to ensure efficient responses to emergency calls. Both the agencies permitted to receive ECLI from the LAS system and the permitted uses of ECLI are restricted to meet this core purpose. New agencies may only be permitted to receive ECLI from the LAS system if they require the information to respond to an emergency call.

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.

This system is available to a closed user group and for a specific purpose. This clause maintains these important protections but allows the location agencies some flexibility in how they meet the permitted primary and secondary purposes.

- (2) The relevant government agency may collect ECLI either:
 - (a) directly from the mobile device used to make an emergency call; or
 - (b) from the relevant network operator.
- (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.

The LAS system refines or improves the location information it receives from the mobile device or network operator. It does this by using aggregated geolocation information provided by other service providers – such as information about the general grouping of callers who are near to particular cell towers – to refine the probable radius within which a caller is likely to be. For example, a cell tower may serve a region but aggregated data held by service providers may show that nearly all callers using this cell tower tend to be located within only part of that region.

- (4) A network operator or emergency response agency is restricted by this clause in its collection, use or disclosure of information only to the extent that the information is sourced from the LAS system.

Network operators generate some location information by reference to their cell tower locations. Similarly, emergency response agencies may obtain some information about a caller's location other than by means of the LAS system (for example, by the context of the call). This schedule regulates the way location agencies may use the automated location information derived from enabled mobile devices and location information based on cell tower locations generated automatically on making emergency calls (both of which are sent to the LAS system). Network operators and emergency response agencies may use the location information they generate or gather from outside of this system in other ways permitted by law.

Additionally, 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.

Openness and transparency are building blocks of public trust. This is especially important given that information is being gathered and shared without the consent of the individuals concerned. This general duty of transparency is intended to ensure that the public

understands and has confidence in the system and the benefits it will provide to individuals and the wider community.

- (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 response agency to notify an individual of the collection of ECLI at the time of an emergency call.

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.

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.

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. This accountability will assist the Commissioner to have confidence in the agencies involved.

Appendix 2: Full text of proposed Amendment No 5

Telecommunications Information Privacy Code 2003 Amendment No 5

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 response agency

4. Amendment to clause 5 (rule 5)

Rule 5 is amended as follows:

- Insert:**
- (1A) Where a network operator discloses 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.

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 line or any number directed to the 111 emergency line

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 response agencies, and the collection and use of ECLI by emergency response agencies, for the purpose of establishing the location of an individual who has made an emergency call.

The Schedule regulates high precision location information, which is automatically generated by enabled mobile devices, and low precision location information, which is automatically generated by network operators using cell tower locations. In both cases, the location information is generated only by 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 geographical position of a mobile device, including the latitude, longitude and altitude of that device, that is:

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

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

emergency response agency 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 response agency;
- (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 response agencies for the permitted primary purpose and permitted secondary purpose

permitted primary purpose means to enable an emergency response agency to establish the location of an emergency caller

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 response agency; and
- (b) monitoring and auditing the operation of the LAS system by the relevant government agency

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

specified emergency number means 111 or any number directed to the 111 emergency line as agreed by the location agencies from time to time.

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

- (1) For the purposes of paragraph (e) of the definition of emergency response agency, 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.

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 either:
- (a) directly from the mobile device used to make an emergency call; or
 - (b) from the relevant network operator.
- (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 response agency is restricted by this clause in its collection, use or disclosure of information only to the extent that the information is sourced from the LAS system.

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 response agency to notify an individual of the collection of ECLI at the time of an emergency call.

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.

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.